

AMENDED AND SUPERSEDING¹ SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between (i) Seychelle Kessler (“Plaintiff” or “Settlement Class Representative”), on behalf of herself and on behalf of the Settlement Class (defined below), and (ii) Excel Fitness Consolidator LLC d/b/a Excel Fitness Management, LLC (“Excel” or “Defendant”) in the case titled *Kessler, et al. v. Excel Fitness Consolidator LLC d/b/a Excel Fitness Management, LLC*, Case No. CJ-2026-1077, in the District Court for Oklahoma County, Oklahoma (the “Action”). Defendant and Plaintiff are collectively referred to herein as the “Parties.”

RECITALS

WHEREAS, on February 9, 2026, Plaintiff filed a putative Class Action Petition against Defendant in the District Court for Oklahoma County, Oklahoma (the “Lawsuit”) relating to a Data Incident affecting Defendant which Defendant discovered on or around January 17, 2025, and asserted claims for negligence, negligence *per se*, breach of implied contract, and unjust enrichment;

WHEREAS, Defendant denies the allegations and all liability with respect to any and all facts and claims alleged in the Action, that the Class Representative and the class that have suffered any damage(s) or harm, and/or that the Action satisfies the requirements to be tried as a class action under Oklahoma Rules of Civil Procedure; and

WHEREAS, following extensive arm’s length settlement negotiations for several months, and the exchange of informal discovery, the Parties reached an agreement of the essential terms of settlement.

WHEREAS, this 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 fact alleged by Plaintiff 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 Released Parties or admission of the validity or lack thereof of any claim, allegation, or defense asserted in this Action or any other action.

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration provided for in this Agreement, the Parties agree to a full, complete, and final settlement and resolution of the Action and any and all causes of action and Released Claims (including Unknown Claims), subject to Court approval, on the following terms and conditions:

I. DEFINITIONS

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

¹ This document fully and entirely supersedes a prior Settlement Agreement and Release executed by the Parties.

1. “**Action**” means the putative class action lawsuit captioned *Kessler, et al. v. Excel Fitness Consolidator, LLC d/b/a Excel Fitness Management, LLC.*, Case No. CJ-2026-1077 pending in the District Court for Oklahoma County, Oklahoma.

2. “**Aggregate Cap**” means the maximum amount to be paid by Defendant for approved claims for Approved Claims for Out-of-Pocket and Extraordinary Losses, Lost Time Reimbursement, and Alternative Cash Payments under this Settlement Agreement and Release, which is no more than one hundred seventy-five thousand dollars (\$175,000).

3. “**Alternative Cash Payment**” means a cash payment of \$50.00 that Settlement Class Members may elect to receive in the alternative to claims for Out-of-Pocket and Extraordinary Losses, or Lost Time, as set forth in Paragraph 47.

4. “**Approved Claim**” means the timely submission of a Claim Form by a Participating Settlement Class Member that has been approved by the Settlement Administrator subject to the Claims Review Process.

5. “**Claim Form**” means the form(s) that will be available for Settlement Class Members to complete and submit a Settlement Claim (defined below) to the Settlement Administrator (defined below) and that is substantially in the form of **Exhibit C**. Settlement Class Members must submit a Claim Form, subject to the provisions of this Settlement Agreement, to obtain benefits under this Settlement Agreement. Class members shall swear and affirm under the laws of the United States and under penalty of perjury that the information supplied in the claim form and any documents submitted with the Claim Form are true and correct to the best of his or her knowledge or recollection.

6. “**Claims Deadline**” means the date by which all Claim Forms must be postmarked (if mailed) to the Settlement Administrator or submitted (if filed electronically) on the Settlement Website to be considered timely, and shall be set as a date ninety (90) days after the Notice Deadline. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, as well as in the Notice and the Claim Form.

7. “**Claims Period**” means the period of time during which Settlement Class Members may submit Claim Forms to receive settlement benefits, which will end ninety (90) days after the Notice Deadline.

8. “**Claims Review Process**” means the process for reviewing and determining whether claims are valid as set forth in Section IX.

9. “**Class Counsel**” means William B. of Federman & Sherwood.

10. “**Class Representative**” means Seychelle Kessler, the Plaintiff in the Action.

11. “**Court**” means the District Court for Oklahoma County, Oklahoma.

12. **“Credit Monitoring Services”** means two years of one-bureau credit monitoring provided by CyEx. These services include one-bureau credit monitoring; dark web monitoring; real-time inquiry alerts; and \$1 million in identity theft insurance, among other features.

13. **“Data Incident”** means the data security incident affecting Defendant which Defendant discovered in or around January 17, 2025.

14. **“Defendant’s Counsel”** means Amanda N. Harvey of Mullen Coughlin, LLC.

15. **“Effective Date”** means thirty (30) business days after all of the following conditions have occurred: (i) the Court enters the Preliminary Approval Order substantially in the form attached hereto as Exhibit D; (ii) the Court has entered a Final Approval Order and the Judgment finally approving this Settlement Agreement; and (iii) either (a) the date upon which the time expires for filing or noticing any reconsideration or appeal of the Final Approval Order and Judgment; or (b) if there is an appeal or appeals or reconsideration sought, the date on which the Final Approval Order and Judgment is affirmed without any material modification and is no longer subject to judicial review; and (iv) the date of final dismissal of any appeal or reconsideration or the final dismissal of any proceeding on certiorari with respect to the Final Approval Order and Judgment, and the Final Approval Order and Judgment is no longer subject to judicial review. Notwithstanding the above, any order modifying or reversing any attorneys’ fees, costs, and expenses or Service Award to a Class Representative shall not affect the “Effective Date” or any other aspect of the Final Approval Order and Judgment.

16. **“Fee Award and Costs”** means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Class Counsel in satisfaction of any request or claim for payment of attorneys’ fees, costs, and litigation expenses in connection with this Action.

17. **“Final Approval Hearing”** means the hearing to be conducted by this Court to determine the fairness, adequacy, and reasonableness of the Settlement and enter the Final Approval Order, materially in the form attached hereto as **Exhibit E**, approving the Settlement Agreement, approving the Fee Award and Expenses, and approving a Service Awards to the Class Representative.

18. **“Final Approval Order and Judgment”** means an order and judgment substantially in the form attached hereto as **Exhibit E** that the Court enters after the Final Approval Hearing, which orders that Judgment be entered accordingly, finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, and otherwise satisfies the settlement-related provisions of the Oklahoma Rules of Civil Procedure, and is consistent with all material provisions of this Agreement. Notwithstanding the foregoing, any order modifying or reversing any Attorneys’ Fees and Expenses Award or Service Award made in this case shall not affect whether the Final Approval Order is “Final” as defined herein or any other aspect of the Final Approval Order.

19. **“Final Approval Hearing”** means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to the Oklahoma Rules of Civil Procedure and whether to issue the Final Approval Order and the Judgment.

20. **“Litigation Costs and Expenses”** means reasonable costs and expenses incurred by counsel for Plaintiff in connection with commencing, prosecuting, and settling the Action.

21. **“Lost Time”** means time Settlement Class Members spent monitoring financial or other accounts, researching credit monitoring options and/or communicating with financial or other institutions, or otherwise dealing with issues related to the Data Incident, up to a maximum of three (3) hours at \$25.00 per hour (not to exceed \$75 per person), supported by an attestation that the activities were related to the Data incident, made under the penalty of perjury, subject to the \$4,000.00 cap on Out-of-Pocket and Extraordinary Losses as set forth in Paragraph 47.

22. **“Notice”** means notice of the proposed class action Settlement to be provided to Settlement Class Members, that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement, and which is to be provided substantially in the form attached hereto as **Exhibit A** (“Short Form Notice”) and **Exhibit B** (“Long Form Notice”).

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

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

25. **“Objection Deadline”** is the last day on which a Settlement Class Member may file an objection to the Settlement or the application for a Fee Award and Costs, with a copy to the court and counsel, , which will be sixty (60) days after the Notice Deadline.

26. **“Opt-Out”** means a Settlement Class Member (i) who timely submits a properly completed and executed Request for Exclusion, (ii) who does not rescind that Request for Exclusion prior to the Opt-Out Deadline, and (iii) as to which there is not a successful challenge to the Request for Exclusion.

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

28. **“Out-of-Pocket and Extraordinary Losses”** means unreimbursed, documented expenses and fees actually incurred or spent as a result of the Data Incident between January 17, 2025 and the Claims Period Deadline, up to \$4,000 that meet the following conditions: (i) the loss is an actual, documented, and unreimbursed monetary loss stemming from fraud or identity theft; (ii) the loss from fraud or identity theft was more likely than not caused by the Data Incident; (iii) the loss from fraud or identity theft was incurred after the date of the Data Incident; (iv) the loss from fraud or identity theft is not already covered by one or more of the other reimbursement categories; (v) 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 insurance and identity theft insurance; and (vi) is supported with third-party documentation, as set forth in Paragraph 47. The maximum amount any one Settlement Class Member may recover for Out-of-Pocket and Extraordinary Losses is \$4,000.00.

29. **“Participating Settlement Class Member”** means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Deadline, as set forth in Paragraph 60.

30. **“Personal Information”** includes, but is not limited to, name, addresses, email addresses, phone numbers, dates of birth, financial account information, and/or Social Security numbers. The term “Personal Information” is not intended here, nor should it be viewed as, having any bearing on the meaning of this term or similar term in any statute or other source of law beyond this Agreement, or how the Parties may use the term in other circumstances.

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

32. **“Released Claims”** shall collectively mean any and all past, present, and future claims, petitions, complaints, suits, demands, charges, causes of action, lawsuits, or other proceedings whereby a Person may seek set-offs, costs, expenses, attorneys’ fees, losses, rights, obligations, debts, contract enforcement, penalties, damages, or liabilities against another of any nature whatsoever, and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, in law or equity, by statute or common law, matured or not yet matured, 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 Parties based on, relating to, concerning or arising out of the Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include the right of any Settlement Class Member or any

of the Released Parties to enforce the terms of the settlement contained in this Settlement Agreement and shall not include the claims of Settlement Class Members who have timely and validly excluded themselves from the Class. Released Claims shall not include any claims unrelated to the Data Incident that Plaintiff and Settlement Class Members have, or may have in the future, against Defendant and, to avoid doubt, that Defendant may have, or may have in the future, against Plaintiff or any Settlement Class Member related to the Data Incident.

33. **“Released Parties”** means Defendant and each and every of its past, present, and future parent companies, partnerships, subsidiaries, affiliates, divisions, employees, servants, members, providers, partners, principals, directors, officers, shareholders, and owners, and all of their respective attorneys, heirs, executors, administrators, insurers, reinsurers, joint ventures, personal representatives, predecessors, successors, transferees, trustees, authorized agents, and assigns, and includes, without limitation, any Person related to any such entities who is, was, or could have been named as a defendant in the Litigation.

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

35. **“Service Award”** means compensation awarded by the Court and paid to the Settlement Class Representative in recognition of his or her role in this litigation.

36. **“Settlement”** means the settlement of the Action by and between the Parties, and the terms thereof as stated in this Amended and Superseding Settlement Agreement and Release.

37. **“Settlement Administrator”** means Simpluris, a notice and settlement administrator with recognized expertise in class action notice and claims generally and data security litigation specifically, as jointly agreed upon by the Settling Parties and approved by the Court, to administer the settlement.

38. **“Settlement Class”** means all current and former employees residing in the United States whose Personal Information was potentially accessible in the Data Incident discovered by Defendant in January 2025, including all those individuals who received notice of the Data Incident. Excluded from the Settlement Class are: (1) the judges presiding over this Action and their staff, and members of their direct families; (2) Defendant; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

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

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

41. **“Settlement Class Representative”** means Plaintiff Seychelle Kessler.

42. **“Settling Parties”** means, collectively, Defendant and Plaintiff, on behalf of themselves and on behalf of the Settlement Class Members.

43. **“Settlement Payment”** or **“Settlement Check”** means the payment to be made via mailed check or electronic payment to a Participating Settlement Class Member pursuant to the claims process as set forth in Paragraph 50.

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

45. **“Unknown Claims”** means any of the Released Claims that any Settlement Class Member, including Plaintiff, does not know or suspect to exist in his/her favor at the time of the release of the Released Parties that, if known by him or her, might have affected his or her settlement with, and release of, the Released Parties, 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, including the Unknown Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiff 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 Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, 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 Plaintiff, 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 Plaintiff expressly shall have, and each other Settlement

Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

46. “United States” means all 50 states, the District of Columbia, and all territories.

II. SETTLEMENT BENEFITS

47. **Cash Benefits.** Defendant will pay Approved Claims for Out-of-Pocket and Extraordinary Losses, and/or Lost Time Reimbursement, or, in the alternative, Alternative Cash Payments, as described below up to the Aggregate Cap of One-Hundred Seventy-Five Thousand Dollars and Zero Cents (\$175,00.00). In the unlikely event that the total Settlement benefits claimed in Approved Claims for Out-of-Pocket and Extraordinary Losses, and/or Lost Time Reimbursement, or, in the alternative, Alternative Cash Payments exceed \$175,000, such Approved Claims will be decreased pro rata to stay within the maximum \$175,000 cap. Approved Claims for Credit Monitoring Services are not included in this cap. Settlement Class Members who submit a valid and timely Claim Form may choose from all applicable claim categories (a) through (d) below or, in the alternative, an Alternative Cash Payment.

- a. **Credit Monitoring Services.** Settlement Class Members shall be offered an opportunity to enroll in two (2) years of one-bureau Credit Monitoring Services provided through CyEx.
- b. **Claims for Out-of-Pocket and Extraordinary Losses.** Settlement Class Members who submit a valid Claim Form with supporting third-party documentation shall be eligible to receive compensation for Extraordinary Losses (as defined in Paragraph 28) of up to \$4,000.00, and meets the following conditions:
 - i. The loss is an actual, documented, and unreimbursed monetary loss stemming from fraud or identity theft;
 - ii. The loss from fraud or identity theft was more likely than not caused by the Data Security Incident;
 - iii. The loss was incurred after January 17, 2025, and before the Claims Period Deadline;
 - iv. *Out of pocket expenses actually incurred* as a result of the Data Incident, including, without limitation, and by way of example, professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after mailing of the notice of Data Incident, through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

- v. The loss is not already covered by the Lost Time category; and
 - vi. The Participating 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 insurance and identity theft insurance.
- c. **Claims for Lost Time.** Settlement Class Members who submit a valid Claim Form shall be eligible to receive compensation for Lost Time (as defined in Paragraph 21), up to three (3) hours at a rate of \$25.00 per hour (for a maximum of \$75.00) per claimant. Participating Class Members must submit a valid Claim Form and provide attestation, under penalty of perjury, on the Claim Form that the activities they performed were related to the Data Incident. Claims for Lost Time are subject to the \$4,000.00 cap for Out-of-Pocket and Extraordinary Losses.
- d. **Alternative Cash Payment:** Settlement Class Members can make a Claim for a single forty-five dollar and zero cents (\$50.00) cash payment in the alternative to Claims for Out-of-Pocket and Extraordinary Losses, Lost Time, and Credit Monitoring. In other words, if a Settlement Class Member claims the Alternative Cash Payment, they cannot also receive compensation for Out-of-Pocket and Extraordinary Losses or Lost Time. To receive this benefit, Settlement Class Members must submit a valid Claim Form.

48. **Business Practice Commitments.** Upon request, Defendant will provide a confidential declaration to Class Counsel describing its information security enhancements since the Data Incident and estimating, to the extent reasonably calculable, the cost of those enhancements. Defendant will pay the cost of such enhancements separate and apart from all other settlement benefits and apart from the Aggregate Cap.

VI. CLAIMS PROCESS AND PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS

49. **Submission of Electronic and Hard Copy Claims.** Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via the Settlement Website or physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. In submitting a Claim Form, a Settlement Class Member must affirm under the laws of the United States that the information and documents submitted are true and correct. The Settlement Class Member must submit reasonable third-party documentation for out-of-pocket expense claims, and third-party documentation for extraordinary loss claims. The Settlement Administrator will maintain records of all Claim Forms submitted until the later of: (a) one hundred and eighty (180) days after the Effective Date; or (b) the date all Claim Forms have been fully processed in accordance with the terms of this Agreement. Information submitted by Settlement Class Members in connection with Claim Forms shall be deemed confidential and protected as such by the Settlement Administrator, Class Counsel, and Defendant's Counsel.

50. **Claims Review Process.** The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent a claim for Credit Monitoring Services, Out-of-Pocket and Extraordinary Losses, Lost Time, and/or an Alternative Cash Payment is valid.

- a. The Settlement Administrator will verify that each person who submits a Claim Form is a member of the Settlement Class.
- b. Settlement Administrator will determine that each Claim Form submitted by a Settlement Class Member was submitted during the Claims Period and is timely.
- c. The Settlement Administrator will determine to what extent documentation for Out-of-Pocket Losses and Extraordinary Losses reflects losses actually and reasonably incurred and that were more likely than not caused by the Data Incident.
- d. In determining whether claimed Extraordinary Losses are more likely than not caused by the Data Incident, the Settlement Administrator will consider: (i) the timing of the alleged loss and whether it occurred on or after January 17, 2025; (ii) the explanation of the Settlement Class Member as to why the alleged loss was caused by the Data Incident; and (iii) any other factors the Settlement Administrator reasonably deems relevant.
- e. The Settlement Administrator is authorized to contact any Settlement Class Member (by email, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.
- f. No decision of the Settlement Administrator shall be deemed to constitute a finding, admission, or waiver by Defendant as to any matter of fact, law, or evidence having any collateral effect on any proceedings in any forum or before any authority.
- g. To the extent the Settlement Administrator determines that a timely claim by a Settlement Class Member is deficient in whole or in part, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and provide the Settlement Class member twenty-one (21) days to cure the deficiencies. If the Settlement Administrator subsequently determines that the Settlement Class Member has not cured the deficiencies, the Settlement Administrator will notify the Settlement Class Member within ten (10) days of that determination. The Settlement Administrator may consult with the Parties in making these determinations.
- h. If a Settlement Class Member receives notice that the Settlement Administrator has determined that the deficiencies it identified have not been cured, the Settlement Class Member may request an appeal in writing, including any supporting documents. The appeal must be submitted within twenty-one (21) days of the Settlement Administrator sending the notice. In the event of an appeal, the Settlement Administrator shall provide the Parties with all relevant documentation regarding the appeal. The Parties will confer regarding the appeal. If they agree on a disposition of the appeal, that disposition will be final and non-appealable. If they cannot agree on disposition of the

appeal, the dispute will be submitted to the Settlement Administrator for final, non-appealable disposition. In reaching disposition, the Settlement Administrator is authorized to communicate with counsel for the Parties separately or collectively.

51. Payment.

- a. After the Effective Date, and after final determinations have been made with respect to all claims submitted during the Claims Period pursuant to the Claims Review Process, the Settlement Administrator shall provide the Parties an accounting of all Approved Claims for Credit Monitoring Services, Out-of-Pocket and Extraordinary Losses, Lost Time, and/or an Alternative Cash Payment and also provide funding instructions and a properly completed and duly executed IRS Form W-9, along with any other necessary forms, to Defendant. Within forty-five (45) days of receiving this accounting, Defendant or its representative shall transmit the funds needed to pay Approved Claims for Credit Monitoring Services, Ordinary Losses, Lost Time, Extraordinary Losses and/or an Alternative Cash Payment in accordance with the terms of this Agreement.
- b. Payments issued by the Settlement Administrator for Approved Claims for Out-of-Pocket and Extraordinary Losses, Lost Time, or an Alternative Cash Payment shall be issued in the form of a check, or via electronic means (through means agreed to by the Parties) and sent as soon as practicable after the Settlement Administrator receives the funds.
- c. All Settlement Class Members who fail to submit a valid Claim Form for any benefits under this Agreement within the Claims Period, or such other period as may be ordered by the Court, shall be forever barred from receiving any payments or benefits pursuant to the Settlement, but will in all other respects be subject to and bound by the provisions of this Agreement, including but not limited to the releases contained herein, and the Final Approval Order and Judgment.

52. Limitation on Reimbursable Expenses. Nothing in this Settlement Agreement shall be construed as requiring Defendant to provide, and Defendant shall not be required to provide, for a payment for the same loss or injury that was already reimbursed or compensated by any other source. No payment shall be made for emotional distress, personal/bodily injury, or punitive damages, as all such amounts are not recoverable pursuant to the terms of the Settlement Agreement and Release.

53. Timing. Settlement Checks shall bear the legend that they expire if not negotiated within ninety (90) days of their issue date.

54. Returned Checks. For any Settlement Check returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send an email and/or place a telephone call to that Participating Settlement Class Member to obtain updated address information. Any replacement

Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

55. **Voided Checks.** In the event a Settlement Check becomes void, the Participating Settlement Class Member to whom that Settlement Check was made payable will forfeit the right to payment and will not be entitled to payment under the Settlement, and the Agreement will in all other respects be fully enforceable against the Participating Settlement Class Member. No later than one hundred and twenty (120) days after the issuance of the last Settlement Check, the Settlement Administrator shall take all steps necessary to stop payment on any Settlement Checks that remain uncashed.

VII. SETTLEMENT CLASS NOTICE

56. **Timing of Notice.** Within fourteen (14) days after the date of the Preliminary Approval Order, Defendant shall provide the Settlement Class List to the Settlement Administrator. Within thirty (30) days after the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Short Form Notice to the members of the Settlement Class. The Settlement Administrator shall make the Long Form Notice and Claim Form available to Settlement Class Members on the Settlement Website.

57. **Form of Notice.** Notice shall be disseminated via U.S. mail to Settlement Class Members with the Short Form Notice. Before Notices are mailed, Class Counsel and Defendant's Counsel shall first be provided with a proof copy (reflecting what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and any orders of the Court. For Notices sent via postcard that are returned as undeliverable, the Settlement Administrator shall use reasonable efforts (e.g., skip trace) to identify an updated mailing address and resend the postcard notice if an updated mailing address is identified.

58. **Settlement Website.** The Settlement Administrator will establish and publish the Settlement Website as soon as practicable following entry of the Preliminary Approval Order, but prior to dissemination of the Notice. The Settlement Website shall contain relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, this Agreement, Plaintiff's motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiff's motion for an award of attorneys' fees, and costs and service award, and the operative petition in the Action. The Settlement Website shall also include a toll-free telephone number, email address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. Settlement Class Members shall be able to submit Claims online via the Settlement Website. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.

59. **Cost of Notice and Administration.** Defendant will pay for the reasonable Notice and Administrative Expenses, which will be paid separately from payments and/or costs associated with providing the Settlement benefits in Paragraph 47, as invoiced. The Settlement Administrator shall provide an invoice, payment instructions, and a properly completed and duly executed IRS

Form W-9, along with any other necessary forms, to Defendant within ten (10) days of the entry of the Preliminary Approval Order.

VIII. OPT-OUTS AND OBJECTIONS

60. **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or “opt-out” of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than sixty (60) days after the Notice Deadline (the “Opt-out Deadline”). The Request for Exclusion must include the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. The Notice must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement. All persons who Opt-Out shall not receive any benefits or be bound by the terms of this Agreement. No person shall purport to exercise any exclusion rights of any other person, or purport to (a) opt-out Settlement Class Members as a group, in the aggregate, or as a class; or (b) opt-out more than one Settlement Class Member on a single Request for Exclusion, or as an agent or representative. Any such purported Request(s) for Exclusion shall be void, and the Settlement Class Member(s) who is or are the subject of such purported Request(s) for Exclusion shall be treated as a Participating Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and Judgment entered thereon, unless he or she submits a valid and timely Request for Exclusion.

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

62. Within seven (7) days after the Objection Deadline and Opt-out Deadline, the Settlement Administrator shall furnish to counsel for the parties a complete list of all timely and valid requests for exclusions and objections.

IX. DUTIES OF THE SETTLEMENT ADMINISTRATOR

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

- a. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- b. Causing the Notice Program to be effectuated in accordance with the terms of this Settlement Agreement and orders of the Court;
- c. Performing National Change of Address searches and/or skip tracing on the Settlement Class List;
- d. Providing Notice to Settlement Class Members via U.S. mail;
- e. Establishing and maintaining the Settlement Website;
- f. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) business day;
- g. Responding to any mailed or emailed Settlement Class Member inquiries within one (1) business day;
- h. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;
- i. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and Defendant's Counsel a copy thereof no later than seven (7) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;
- j. After the Effective Date, processing and transmitting settlement payments to Settlement Class Members;
- k. Providing weekly or other periodic reports to Class Counsel and Defendant's Counsel that include information regarding claims, objections, Opt-Outs, and other data agreed to between Class Counsel, Defendant's Counsel and the Settlement Administrator;

1. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and
- m. Performing any function related to settlement administration as provided for in this Agreement or at the agreed-upon instruction of Class Counsel or Defendant's Counsel, including, but not limited to, verifying that settlement payments have been distributed.

X. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION

64. **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and the Judgment of this Settlement and the occurrence of the Effective Date. Should: (1) the Settlement not receive final approval from the Court, (2) the Effective Date not occur, or (3) the Agreement is otherwise terminated or cancelled pursuant to the terms of this Settlement Agreement and Release, the certification of the Settlement Class shall be void, and neither the Agreement nor any order or other action relating to the agreement shall be offered by any person as evidence or cited in support of a motion to certify a class for any purpose other than this Settlement. Defendant reserves the right to contest class certification for all other purposes. The Parties further stipulate to designating the Class Representative as the representative for the Settlement Class.

65. **Preliminary Approval.** Following execution of this Agreement, Class Counsel shall file a motion for preliminary approval of this Settlement with the Court. Class Counsel shall provide Defendant's counsel with a draft of the motion for preliminary approval within a reasonable time frame prior to filing same to ensure that there are no requested revisions from Defendant. The proposed Preliminary Approval Order shall be in the form attached as **Exhibit D**.

66. **Final Approval.** Class Counsel shall move the Court for a Final Approval Order of this Settlement and request that Judgment be entered, to be issued following the Final Approval Hearing, within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline. In connection with the motion for preliminary approval, counsel for the parties shall request that the Court set a date for the Final Approval Hearing that is no earlier than 120 days after entry of the Preliminary Approval Order. Class Counsel shall provide Defendant's counsel with a draft of the motion for final approval within a reasonable time frame prior to filing same to ensure that there are no requested revisions from Defendant. The proposed Final Approval Order shall be in the form attached as **Exhibit E**.

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

Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

XI. MODIFICATION AND TERMINATION

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

69. **Termination.** Class Counsel (on behalf of the Settlement Class Members) and Defendant shall have the right to terminate this Agreement by providing written notice of their or its election to do so ("Termination Notice"): (1) within fourteen (14) days of the Court's refusal to grant preliminary approval of the Settlement in any material respect; (2) the Court's refusal to enter the Final Approval Order and Judgment in any material respect; or (3) the date the Final Approval Order and Judgment is modified or reversed in any material respect by any appellate or other court. No order of the Court or modification or reversal or appeal of any order of the Court concerning the amounts of the attorneys' fees and costs and/or Service Award shall constitute grounds for termination of the Settlement.

70. **Effect of Termination.** In the event of a termination as provided in Paragraph 69, this Agreement shall be considered null and void; all of the Parties' obligations under the Agreement shall cease to be of any force and effect and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved. Finally, in such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this Action or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

XII. RELEASES

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

72. **Unknown Claims.** The Released Claims include the release of Unknown Claims. "Unknown Claims", as defined in Section I, means claims that could have been raised in the Action and claims Releasing Parties do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or

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

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

Upon the Effective Date, each Releasing Party shall be deemed to have, and shall have, waived any and all provisions, rights, and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims or relation of the Released Parties thereto, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this paragraph. The Parties acknowledge, and the Releasing Parties shall be deemed by operation of the Agreement to have acknowledged, that the foregoing waiver is a material term of the Agreement. Each Releasing Party waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Settlement Agreement.

73. **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Settlement Class Representative and other Participating Settlement Class Members shall be enjoined from initiating, asserting, or prosecuting any and all Released Claims, including Unknown Claims, in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order and Judgment. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this Section.

XIII. SERVICE AWARD

74. **Service Award.** At least fifteen (15) days before the Opt-Out and Objection Deadlines, Class Counsel will file a motion seeking service award payments not to exceed Three Thousand Dollars and Zero Cents (\$3,000) for the Class Representative, Seychelle Kessler, in recognition of her contributions to this Action, subject to Court approval. Defendant shall pay the Court-approved Service Award to an account established by Settlement Class Counsel within fourteen (14) days after the Effective Date. Settlement Class Counsel will ensure payment instructions are provided through secure processes. Settlement Class Counsel will then distribute the Service Award. The amount of attorneys' Fee Award and Costs was negotiated after the primary terms of the Settlement were negotiated.

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

XIV. ATTORNEYS' FEES, COSTS, EXPENSES

76. **Attorneys' Fee Award and Costs.** At least fifteen (15) days before the Opt-Out and Objection Deadlines, Class Counsel will file a motion for Fee Award and Costs, to include any Litigation Costs and Expenses, to be paid by Defendant. Defendant agrees not to oppose Class Counsel's request for an award of Attorneys' Fee Award and Costs not to exceed One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00). If Class Counsel seeks more than \$150,000.00 in attorneys' fees and costs Defendant reserves all rights to object and oppose such request. Defendant shall pay the Court-approved Attorneys' Fee Award and Costs to an account established by Class Counsel within thirty (30) days after the Effective Date and Class Counsel's provision of its properly complete and duly executed IRS Form W-9 and payment instructions, whichever is later. Class Counsel will ensure payment instructions are provided through secure processes. The Attorneys' Fee Award and Costs will be allocated by Class Counsel. Defendant's obligations with respect to the Court-approved Attorneys' Fee Award and Costs shall be fully satisfied upon transmission of the funds into the account established by Class Counsel. The amount of Attorneys' Fee Award and Costs was negotiated after the primary terms of the Settlement were negotiated.

77. **No Effect on Agreement.** The finality or effectiveness of the Settlement, including the Final Approval Order and Judgement, shall not depend on the amount or timing of service award approved and awarded by the Court or any appeal thereof. The amount and timing of service award is intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the service award shall constitute grounds for termination of this Agreement.

XV. NO ADMISSION OF LIABILITY

78. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever. Defendant has denied and continues to deny each of the claims and contentions alleged in the Petition. Defendant specifically denies that a class could or should be certified in the Action for litigation purposes. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

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

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

XVI. MISCELLANEOUS

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

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

83. **Resolution.** The Parties intend this Agreement to be a final and complete resolution of all disputes between them with respect to the Action. The Parties each agree that the Settlement and this Agreement were negotiated in good faith and at arm's-length and reflects a Settlement reached voluntarily after consultation with legal counsel of their choice.

84. **Other Litigation.** Plaintiff and Class Counsel will not cooperate with or encourage any action or filing of claims against Defendant or any Released Parties related to any of the allegations or claims alleged in the Action.

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

86. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiff and Defendant.

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

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

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

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

91. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.

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

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

94. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically, by facsimile, or through e-mail of an Adobe PDF shall be deemed an original.

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

William B. Federman
FEDERMAN & SHERWOOD
10205 N. Pennsylvania Ave
Oklahoma City, OK 73120
Tel: (425) 235-1560
Email: wbf@federmanlaw.com

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

Amanda N. Harvey
MULLEN COUGHLIN LLC
1452 Hughes Rd Suite 200
Grapevine, TX 76051
Tel: (267) 930-1697
Email: aharvey@mullen.law

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

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

SIGNATURES

SEYCHELLE KESSLER

By: Seychelle Kessler
Seychelle Kessler (Mar 27, 2026 09:29:06 CDT)

Date: Mar 27, 2026

FEDERMAN & SHERWOOD

Counsel for Plaintiffs and the Class (as to form only)

By: [Signature]
William B. Federman

Date: April 27, 2026

EXCEL FITNESS CONSOLIDATOR, LLC

By: _____

Date: _____

Name: _____

Title: _____

MULLEN COUGHLIN LLC

Counsel for Defendant (as to form only)

By: _____
Amanda N. Harvey

Date: _____

Amanda N. Harvey
MULLEN COUGHLIN LLC
1452 Hughes Rd Suite 200
Grapevine, TX 76051
Tel: (267) 930-1697
Email: aharvey@mullen.law

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

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

SIGNATURES

SEYCHELLE KESSLER

By: _____

Date: _____

FEDERMAN & SHERWOOD

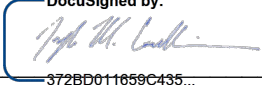
Counsel for Plaintiff and the Class (as to form only)

By: _____

Date: _____

William B. Federman

EXCEL FITNESS CONSOLIDATOR, LLC

By:  _____
DocuSigned by: 372BD011659C435...

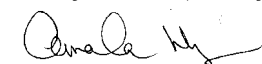
Date: 4/27/2026

Name: Joseph Cancelliere

Title: Chief Financial Officer

MULLEN COUGHLIN LLC

Counsel for Defendant (as to form only)

By:  _____
Amanda N. Harvey

Date: 4/27/26

EXHIBIT A
(POSTCARD NOTICE)

Excel Fitness Data Incident Settlement
c/o Settlement Administrator
P.O. Box _____
Santa Ana, CA 92799-9958

Kessler, et al. v. Excel Fitness
Consolidator, LLC d/b/a Excel Fitness
Management, LLC.
Case No. CJ-2026-1077

IF YOUR PRIVATE INFORMATION WAS
POTENTIALLY ACCESSED IN THE JANUARY
2025 EXCEL FITNESS MANAGEMENT, LLC.,
DATA INCIDENT, A PROPOSED CLASS
ACTION SETTLEMENT MAY AFFECT YOUR
RIGHTS AND MAY ENTITLE YOU TO
BENEFITS AND A CASH PAYMENT.

A court has authorized this Notice.
This is not a solicitation from a lawyer.
You are not being sued.

THIS NOTICE IS ONLY A SUMMARY.
VISIT WWW.SETTLEMENTWEBSITE.COM
OR SCAN THIS QR CODE
FOR COMPLETE INFORMATION.



First-Class
Mail
US Postage
Paid
Permit # _____

«Barcode»

Postal Service: Please do not mark barcode

Claim #: XXX- «LoginID» - «MailRec»

«First1» «Last1»

«Addr1» «Addr2»

«City», «St» «Zip»

«Country»

Why am I receiving this notice?

A Settlement has been reached with Excel Fitness Consolidator, LLC d/b/a Excel Fitness Management, LLC. ("Excel Fitness") in a class action lawsuit ("Settlement"). The case is about unauthorized e-mail access in January 2025 (the "Data Incident"). Excel Fitness denies that it did anything wrong, and the Court has not decided who is right. The parties have agreed to settle the lawsuit to avoid the risks, disruption, and uncertainties of continued litigation. A copy of the Settlement is available online.

Who is included in the Settlement?

The Court has defined the class as: "All current and former employees residing in the United States whose Personal Information was potentially accessible in the Data Incident discovered by Defendant in January 2025, including all those individuals who received notice of the Data Incident."

The Court has appointed an experienced attorney, called "Class Counsel," to represent the Class.

What are the Settlement benefits?

You can claim two years of **Credit Monitoring** by CyEx Financial Shield Complete and one or more of the **cash payment** options.

If you have documented losses you can get back up to **\$4,000** for out-of-pocket expenses. If you spent time fixing problems caused by this incident, you can get back \$25/hour for up to three hours (up to **\$75**).

*Instead of any other cash payment option, you can get a one-time **\$50** payment.*

Full details and instructions are available online.

How do I receive a benefit?

File all of your claims online. For a full paper Claim Form call **1-XXX-XXX-XXXX**. Claims must be submitted online or postmarked by **[Claims Deadline]**.

What if I don't want to participate in the Settlement?

If you do not want to be part of the Settlement, you must exclude yourself by **[Opt-Out Deadline]** or you will not be able to sue Excel Fitness for the claims made in *this* lawsuit. If you exclude yourself, you cannot get benefits from this Settlement. If you want to object to the Settlement, you may file an objection by **[Objection Deadline]**. The Settlement Agreement, available online, explains how to exclude yourself or object.

When will the Court approve the Settlement?

The Court will hold a hearing in this case on **[FA Hearing Date]** at the **321 Park Avenue, Rm. 315, Oklahoma County, OK 73102** to consider whether to approve the Settlement. The Court will also consider Class Counsel's request for attorney's fees and costs of up to \$150,000, and \$3,000 for the Plaintiff. You may attend the hearing at your own cost, but you do not have to.

EXHIBIT B
(LONG FORM NOTICE)

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Kessler, et al. v.
Excel Fitness Consolidator, LLC d/b/a Excel Fitness Management, LLC.
Case No. CJ-2026-1077
District Court of Oklahoma County, Oklahoma

IF YOUR PRIVATE INFORMATION WAS POTENTIALLY IMPACTED IN THE JANUARY 2025 EXCEL FITNESS MANAGEMENT, LLC., DATA INCIDENT, A PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS, AND ENTITLE YOU

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

You are not being sued.

Please read this Notice carefully and completely.

- A Settlement has been reached with Excel Fitness Consolidator, LLC d/b/a Excel Fitness Management, LLC. (“Excel Fitness” or “Defendant”) in a class action lawsuit. This case is about unauthorized e-mail access that occurred in January 2025 (the “Data Incident”). Certain e-mails that contained private information were potentially accessed. These e-mails may have contained your name, financial account information and/or Social Security number.
- The lawsuit is called *Kessler, et al. v. Excel Fitness Consolidator, LLC d/b/a Excel Fitness Management, LLC.*, Case No. CJ-2026-1077. It is pending in the District Court of Oklahoma County, Oklahoma (the “Litigation”).
- Excel Fitness denies that it did anything wrong, and the Court has not decided who is right.
- The parties have agreed to settle the lawsuit (the “Settlement”) to avoid the costs and risks, disruptions, and uncertainties of continuing the Litigation.
- Excel Fitness' records indicate that you are a Class Member, and may be entitled to benefits under the Settlement. You may have received a previous notice directly from Excel Fitness.
- Your rights are affected whether you act or don't act. ***Please read this Notice carefully and completely.***

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
SUBMIT A CLAIM	The only way to receive benefits or payments from this Settlement is by submitting a valid and timely Claim Form. The fastest way to submit your Claim Form is online at www.[SettlementWebsite].com. If you prefer, you can download the Claim Form from the Settlement Website and mail it to the Settlement Administrator. You may also call or email the Settlement Administrator to receive a paper copy of the Claim Form.	<u> </u> , 2026
OPT OUT OF THE SETTLEMENT	You can choose to opt out of the Settlement and receive no benefit or payment. This option allows you to sue, continue to sue, or be part of another lawsuit against the Defendants related to the legal claims resolved by this Settlement. You can hire your own lawyer at your own expense.	<u> </u> , 2026
OBJECT TO THE SETTLEMENT AND/OR ATTEND A HEARING	If you do not opt out of the Settlement, you may object to it by writing to the Court about why you don't like the Settlement. You may also ask the Court for permission to speak about your objection at the Final Approval Hearing. If you object, you may also file a claim for Settlement benefits.	<u> </u> , 2026
DO NOTHING	Unless you opt out of the Settlement, you are automatically part of the Settlement. If you do nothing, you will not receive benefits or payments from this Settlement and you will give up the right to sue, continue to sue, or be part of another lawsuit against the Defendant related to the legal claims resolved by this Settlement.	No Deadline

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement.

WHAT THIS NOTICE CONTAINS

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Basic Information

1. Why was this Notice issued?

The District Court of Oklahoma County, Oklahoma, authorized this Notice. You have a right to know about the proposed Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to grant final approval of the Settlement. This Notice explains the lawsuit, your legal rights, what benefits are available, and who can receive them.

The lawsuit is called *Kessler, et al. v. Excel Fitness Consolidator, LLC d/b/a Excel Fitness Management, LLC.*, Case No. CJ-2026-1077 . It is pending in the District Court of Oklahoma County, Oklahoma. The person that filed this lawsuit is called the “Plaintiff” (or “Class Representative”) and the company she sued, Excel Fitness Consolidator, LLC d/b/a Excel Fitness Management, LLC., is called the “Defendant.”

2. What is this lawsuit about?

This lawsuit alleges that in January 2025 unauthorized e-mail access occurred where certain e-mails that contained private information were potentially accessed. These files may have contained personal information such as name, financial account information, and/or Social Security numbers.

3. What is a class action?

In a class action, one or more individuals sue on behalf of other people with similar claims. These individuals are called the “Plaintiffs” or “Class Representatives.” Together, the people included in the class action are called a “Class” or “Class Members.” One court resolves the lawsuit for all Class Members, except for those who opt out from the settlement. In this Settlement, the Class Representative is Seychelle Kessler. Everyone included in this Action are the Class Members.

4. Why is there a Settlement?

The Court did not decide whether the Plaintiff or the Defendant are right. Both sides have agreed to a Settlement to avoid the costs and risks of a trial, and to allow the Class Members to receive benefits from the Settlement. The Plaintiff and her attorney think the Settlement is best for all Class Members.

Who is in the Settlement?

5. Who is included in the Settlement?

The court has defined the Class this way: “All current and former employees residing in the United States whose Personal Information was potentially accessible in the Data Incident discovered by Defendant in January 2025, including all those individuals who received notice of the Data Incident.”

6. Are there exceptions to being included?

Yes. Excluded from the Class are: (1) the Judge in this case, and the Judge’s family and staff; (2) Excel Fitness and its officers, directors, and related companies; and (3) anyone who validly excludes themselves from the Settlement.

If you are not sure whether you are a Class Member, you can ask for free help any time by contacting the Settlement Administrator at:

- Email: [info@\[SettlementWebsite\].com](mailto:info@[SettlementWebsite].com)
- Call toll free, 24/7: 1-XXX-XXX-XXXX
- By mail: Excel Fitness Data Incident Settlement
c/o Settlement Administrator
[PO Box Number]
Santa Ana, CA 92799-9958

You may also view the Settlement Agreement at [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com).

The Settlement Benefits

7. What does the Settlement provide?

All Settlement Class Members may claim **Credit Monitoring Services** and one or more of the **cash payment** options. The benefits are explained in more detail below.

CREDIT MONITORING SERVICES. All Class Members are eligible to enroll in two years of CyEx Financial Shield Complete. This benefit comes with \$1 million in identity theft insurance, and includes:

- fraud or identity theft
- unauthorized financial transactions
- personal information associated with high-risk transactions

If anything suspicious happens, you will be able to talk to a fraud resolution agent to help fix any problems.

CASH BENEFIT OPTIONS

Claims for Out-of-Pocket and Extraordinary Losses. If you incurred actual, documented out-of-pocket losses due to the Data Incident, you can get back up to **\$4,000.00**. The losses must have occurred between January 17, 2025, and [Claims Deadline].

This benefit covers out-of-pocket expenses like:

- losses because of identity theft or fraud
- fees for credit reports, credit monitoring, or freezing and unfreezing your credit

- cost to replace your IDs
- postage to contact banks by mail

You need to send proof, like bank statements or receipts, to show how much you spent or lost. You can also send notes or papers you made yourself to explain or support other proof, but those notes or papers alone are not enough to make a valid claim. Your proof or notes should show that your expenses were because of the Data Incident.

You cannot claim a payment for expenses that have already been reimbursed by a third party.

Claims for Lost Time. Class Members who spent time responding to the Data Incident may claim up to three hours, at \$25.00 per hour, for a maximum of **\$75.00**.

You must have spent the time on tasks related to the Data Incident. Some examples include things like:

- changing your passwords
- investigating suspicious activity in your accounts
- researching the Data Incident

You must attest that the time claimed was spent as a result of the Data Incident.

Alternative Cash Payment. *Instead of any other cash payment option*, you may claim a one-time cash payment. This payment is expected to be **\$50.00**, but may be larger or smaller depending on the total claims filed. You do not have to provide any proof or explanation to claim this payment.

There is an aggregate cap of \$175,000.00 on these benefits. This means that if the total value of benefits claimed is over \$175,000.00, everyone's payments will be reduced *pro rata* so that they add up to \$175,000.00.

A full description of how this works is available in Settlement Agreement, at [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com).

If you have questions about these benefits, you can ask for free help any time by contacting the Settlement Administrator at:

- Email: [info@\[SettlementWebsite\].com](mailto:info@[SettlementWebsite].com)
- Call toll free, 24/7: 1-XXX-XXX-XXXX
- By mail: Excel Fitness Data Incident Settlement
c/o Settlement Administrator
[PO Box Number]
Santa Ana, CA 92799-9958

8. What claims am I releasing if I stay in the Class?

If you stay in the class, you won't be able to be part of any other lawsuit against Excel Fitness about the issues that this Settlement covers. The "Releases" section of the Settlement Agreement (Section XII) describes the legal claims that you give up if you remain in the Class. The Settlement Agreement is available at [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com).

Submitting a Claim Form for a Settlement Payment

9. How do I submit a claim for a Settlement benefit?

The fastest way to submit your Claim Form is online at [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com). If you prefer, you can download a printable Claim Form from the website and mail it to the Settlement Administrator at:

Excel Fitness Data Incident Settlement
c/o Settlement Administrator
[PO Box Number]
Santa Ana, CA 92799-9958

You may also contact the Settlement Administrator to request a Claim Form by telephone, toll free, 1-XXX-XXX-XXXX, by email [info@\[SettlementWebsite\].com](mailto:info@[SettlementWebsite].com), or by U.S. mail at the address above.

10. Are there any important Settlement payment deadlines?

If you are submitting a Claim Form online, you must do so by [Claims Deadline]. If you are submitting a claim by U.S. mail, the completed and signed Claim Form, including supporting documentation, must be postmarked no later than [Claims Deadline].

11. When will the Settlement benefits be issued?

The Court will hold a final approval hearing on [FA Hearing Date] (see Question 18). If the Court approves the Settlement, there may be appeals. We do not know if appeals will be filed, or how long it will take to resolve them if they are filed.

Settlement payments will be distributed if the Court grants final approval, and after any appeals are resolved.

The Lawyers Representing You

12. Do I have a lawyer in the case?

Yes, the Court has appointed attorney William B. Federman of Federman & Sherwood, to represent you and other Class Members ("Class Counsel").

13. Should I get my own lawyer?

You will not be charged for Class Counsel's services. If you want your own lawyer, you may hire one at your expense.

14. How will Class Counsel be paid?

Class Counsel will ask the court to approve \$150,000.00 as reasonable attorney's fees and costs of litigation. This amount will be paid by Excel Fitness.

Class Counsel will also ask for a Service Award payment of \$3,000.00 for the Class Representative. Service Award payment will also be paid by Excel Fitness.

Excluding Yourself from the Settlement

15. How do I opt out of the Settlement?

If you do not want to be part of the Settlement, you must formally exclude yourself from the Settlement. This is called a Request for Exclusion, and is sometimes also called “opting out.” If you opt out, you will not receive Settlement benefits or payment. However, you will keep any rights you may have to sue Excel Fitness on your own about the legal issues in this case.

If you exclude yourself, you are telling the Court that you do not want to be part of the Settlement. You will not be eligible to receive any Settlement benefits if you exclude yourself.

The deadline to exclude yourself from the Settlement is **[Opt-Out Deadline]**.

To be valid, your Request for Exclusion must have the following information:

- (1) the name of the Litigation: *Kessler, et al. v. Excel Fitness Consolidator, LLC d/b/a Excel Fitness Management, LLC.*, Case No. CJ-2026-1077, pending in the District Court of Oklahoma County, Oklahoma;
- (2) your full name, mailing address, telephone number, and email address;
- (3) personal signature; and
- (4) the words “Request for Exclusion” or a clear and similar statement that you do not want to participate in the Settlement.

You may only exclude yourself—not any other person.

Mail your Request for Exclusion to the Settlement Administrator at:

Excel Fitness Data Incident Settlement
ATTN: Exclusion Request
[PO Box Number]
Santa Ana, CA 92799-9958

Your Request for Exclusion must be submitted, postmarked, or emailed by **[Opt-Out Deadline]**.

Commenting on or Objecting to the Settlement

16. How do I tell the Court if I like or do not like the Settlement?

If you are a Class Member and do not like part or all of the Settlement, you can object to it. Objecting means telling the Court your reasons for why you think the Court should not approve the Settlement. The Court will consider your views.

You cannot object if you have excluded yourself from the Settlement (**see Question 15**)

You must provide the following information for the Court to consider your objection:

- (1) the name of the Litigation: *Kessler, et al. v. Excel Fitness Consolidator, LLC d/b/a Excel Fitness Management, LLC.*, Case No. CJ-2026-1077 , pending in the District Court of Oklahoma County, Oklahoma;
- (2) your full name, mailing address, telephone number, and email address;
- (3) a clear description of all the reasons you object; include any legal support, such as documents, you may have for your objection;
- (4) whether the objection applies only to you, or to other Class Members, as well;
- (5) if you have hired your own lawyer to represent you for this objection, provide their name, bar number, and contact information;
- (6) whether or not you or your lawyer would like to speak at the Final Approval Hearing;
- (7) if you or your lawyer have objected in any other cases, list the names, courts, and civil action numbers for each of those cases;
- (8) your signature (or, if you have hired your own lawyer, your lawyer's signature).

For your objection to be valid, it must meet each of these requirements.

To be considered by the Court, you must file your complete objection with the Clerk of Court by **[OBJECTION DATE]**. You must also send a copy of the objection to the Settlement Administrator.

Clerk of the Court	Settlement Administrator
Clerk of the Court 321 Park Avenue, Rm. 315 Oklahoma City, OK 73102	Excel Fitness Data Incident Settlement ATTN: Objections [PO Box Number] Santa Ana, CA 92799-9958

17. What is the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is opting out and stating 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 the Settlement no longer affects you.

The Court's Final Approval Hearing

18. When is the Court's Final Approval Hearing?

The Court will hold a final approval on **[FA Hearing Date]** at **[Hearing Time]** Central Time, in Room 315 of the District Court of Oklahoma County, Oklahoma, at **[321 Park Avenue, Oklahoma City, Oklahoma 73102]**.

At the final approval hearing, the Court will decide whether to approve the Settlement. The court will also decide how Class Counsel should be paid, and whether to award a Service Award payment to the Class Representative. The Court will also consider any objections to the Settlement.

If you are a Class Member, you or your lawyer may ask permission to speak at the hearing at your own cost (**See Question 16**).

The date and time of this hearing may change without further notice. Please check [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com) for updates.

19. 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, but you do not have to.

If you file an objection, you do not have to come to the Final Approval Hearing to talk about it; the Court will consider it as long as it was filed on time. You may also pay your own lawyer to attend, but you do not have to.

If I Do Nothing

20. What happens if I do nothing at all?

If you do nothing, you will not receive a benefit from this Settlement.

You will also give up the rights described in **Question 8**.

Getting More Information

21. How do I get more information?

This Notice is a summary of the proposed Settlement. The full Settlement Agreement and other related documents are available at the Settlement Website, [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com).

If you have additional questions, you can ask for free help any time by contacting the Settlement Administrator at:

- Email: [info@\[SettlementWebsite\].com](mailto:info@[SettlementWebsite].com)
- Call toll free, 24/7: 1-XXX-XXX-XXXX
- By mail: Excel Fitness Data Incident Settlement
c/o Settlement Administrator
[PO Box Number]
Santa Ana, CA 92799-9958

You can obtain copies of publicly filed documents by visiting the office of the Clerk of the Court, 321 Park Avenue, Room 315, Oklahoma City, Oklahoma

DO NOT CONTACT THE COURT OR CLERK OF COURT REGARDING THIS SETTLEMENT

EXHIBIT C
(CLAIM FORM)

Your claim must
be submitted
online or
postmarked by:
[Claims Deadline]

***Kessler, et al. v. Excel Fitness Consolidator, LLC
d/b/a Excel Fitness Management, LLC.***

Case No. [CASE NUMBER]
District Court of Oklahoma County, Oklahoma

DATA INCIDENT SETTLEMENT CLAIM FORM

Your claim must
be submitted
online or
postmarked by:
[Claims Deadline]

GENERAL INSTRUCTIONS

Who is eligible to file a claim? The court has defined the Class this way: “All current and former employees residing in the United States whose Personal Information was potentially accessible in the Data Incident discovered by Defendant in January 2025, including all those individuals who received notice of the Data Incident.”

Excluded from the Settlement Class are: (1) the Judge in this case, and the Judge’s family and staff; (2) Excel Fitness and its officers, directors, and related companies; and (3) anyone who validly excludes themselves from the Settlement.

**COMPLETE THIS CLAIM FORM IF YOU ARE A CLASS MEMBER AND WISH TO RECEIVE ONE OR MORE OF THE
FOLLOWING SETTLEMENT BENEFITS**

AVAILABLE BENEFITS

All Settlement Class Members may claim **Credit Monitoring Services** and one or more of the **cash payment** options. The benefits are explained in more detail below.

CREDIT MONITORING SERVICES. All Class Members are eligible to enroll in two years of CyEx Financial Shield Complete. This benefit comes with \$1 million in identity theft insurance, and includes:

- fraud or identity theft
- unauthorized financial transactions
- personal information associated with high-risk transactions

If anything suspicious happens, you will be able to talk to a fraud resolution agent to help fix any problems.

CASH BENEFIT OPTIONS

Claims for Out-of-Pocket and Extraordinary Losses. If you incurred actual, documented out-of-pocket losses due to the Data Incident, you can get back up to **\$4,000.00**. The losses must have occurred between January 17, 2025, and [Claims Deadline].

This benefit covers out-of-pocket expenses like:

- losses because of identity theft or fraud
- fees for credit reports, credit monitoring, or freezing and unfreezing your credit
- cost to replace your IDs
- postage to contact banks by mail

Questions? Call 1-XXX-XXX-XXXX Toll-Free or Visit [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com)

Your claim must
be submitted
online or
postmarked by:
[Claims Deadline]

**Kessler, et al. v. Excel Fitness Consolidator, LLC
d/b/a Excel Fitness Management, LLC.**

Case No. [CASE NUMBER]
District Court of Oklahoma County, Oklahoma

DATA INCIDENT SETTLEMENT CLAIM FORM

Your claim must
be submitted
online or
postmarked by:
[Claims Deadline]

You need to send proof, like bank statements or receipts, to show how much you spent or lost. You can also send notes or papers you made yourself to explain or support other proof, but those notes or papers alone are not enough to make a valid claim. Your proof or notes should show that your expenses were because of the Data Incident.

You cannot claim a payment for expenses that have already been reimbursed by a third party.

Claims for Lost Time. Class Members who spent time responding to the Data Incident may claim up to three hours, at \$25.00 per hour, for a maximum of **\$75.00**.

You must have spent the time on tasks related to the Data Incident. Some examples include things like:

- changing your passwords
- investigating suspicious activity in your accounts
- researching the Data Incident

You must attest that the time claimed was spent as a result of the Data Incident.

Alternative Cash Payment. *Instead of any other cash payment option*, you may claim a one-time cash payment. This payment is expected to be **\$50.00**, but may be larger or smaller depending on the total claims filed. You do not have to provide any proof or explanation to claim this payment.

There is an aggregate cap of \$175,000.00 on these benefits. This means that if the total value of benefits claimed is over \$175,000.00, everyone's payments will be reduced *pro rata* so that they add up to \$175,000.00.

A full description of how this works is available in Settlement Agreement, at [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com).

If you have questions about these benefits, you can ask for free help any time by contacting the Settlement Administrator at:

- Email: [info@\[SettlementWebsite\].com](mailto:info@[SettlementWebsite].com)
- Call toll free, 24/7: 1-XXX-XXX-XXXX
- By mail: Excel Fitness Data Incident Settlement
c/o Settlement Administrator
[PO Box Number]
Santa Ana, CA 92799-9958

**THE MOST EFFICIENT WAY TO SUBMIT YOUR CLAIMS IS ONLINE AT
[www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com)**

Questions? Call 1-XXX-XXX-XXXX Toll-Free or Visit [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com)

Your claim must
be submitted
online or
postmarked by:
[Claims Deadline]

***Kessler, et al. v. Excel Fitness Consolidator, LLC
d/b/a Excel Fitness Management, LLC.***

Case No. [CASE NUMBER]
District Court of Oklahoma County, Oklahoma

DATA INCIDENT SETTLEMENT CLAIM FORM

Your claim must
be submitted
online or
postmarked by:
[Claims Deadline]

You may also print out and complete this Claim Form, and submit it by U.S. mail.

An electronic image of the completed Claim Form can also be emailed to [info@\[SettlementWebsite\].com](mailto:info@[SettlementWebsite].com)

You must submit your Claim Form online, by mail, or by email no later than [Claims Deadline].

Questions? Call 1-[XXX-XXX-XXXX] Toll-Free or Visit [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com)

Your claim must
be submitted
online or
postmarked by:
[Claims Deadline]

**Kessler, et al. v. Excel Fitness Consolidator, LLC
d/b/a Excel Fitness Management, LLC.**

Case No. [CASE NUMBER]
District Court of Oklahoma County, Oklahoma

DATA INCIDENT SETTLEMENT CLAIM FORM

Your claim must
be submitted
online or
postmarked by:
[Claims Deadline]

I. CLASS MEMBER NAME AND CONTACT INFORMATION

Print your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this claim form. All fields are required. **Please print legibly.**

First Name

Last Name

Street Address

City

State

Zip Code

Email Address

Phone Number

Notice ID (if known)

II. CREDIT MONITORING SERVICES

☐ Check this box if you would like to enroll in two years of CyEx Financial Shield Complete.

III. CLAIMS FOR OUT-OF-POCKET AND EXTRAORDINARY LOSSES

☐ Check this box if you would like to claim reimbursement for documented losses due to identity theft or fraud. You can get back up to \$4,000.00.

Please complete the table below, describing the supporting documentation you are submitting.

Description of Documentation Provided	Amount
Example: Unauthorized bank transfer	\$500
TOTAL CLAIMED:	

If you have more expenses than rows, you may attach additional sheets of paper to account for them. Please print your name and sign the bottom of each additional sheet of paper.

Questions? Call 1-XXX-XXX-XXXX Toll-Free or Visit [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com)

Your claim must
be submitted
online or
postmarked by:
[Claims Deadline]

***Kessler, et al. v. Excel Fitness Consolidator, LLC
d/b/a Excel Fitness Management, LLC.***

Case No. [CASE NUMBER]
District Court of Oklahoma County, Oklahoma

DATA INCIDENT SETTLEMENT CLAIM FORM

Your claim must
be submitted
online or
postmarked by:
[Claims Deadline]

IV. CLAIMS FOR LOST TIME

If you spent time fixing problems caused by Data Incident, please select how many hours (up to three) you spent.

I spent (select only **one**): ☐ 1 hour (\$25.00) ☐ 2 hours (\$50.00) ☐ 3 hours (\$75.00)

If you claim Out-Of-Pocket and Extraordinary Losses (Section III, above), the combined total is capped at \$4,000.00

V. ALTERNATIVE CASH PAYMENT

☐ Check this box if you want to claim a one-time \$50.00 cash payment.

DO NOT CLAIM THIS BENEFIT IF YOU ARE CLAIMING PAYMENTS FROM SECTION III OR IV.

VI. PAYMENT SELECTION

Please select **one** of the following payment options, which will be used if you are claiming a cash payment.

☐ **PayPal**
Email address, if different than you provided in Section 1: _____

☐ **Venmo**
Mobile number, if different than you provided in Section 1: _____

☐ **Zelle**
Email address or mobile number, if different than you provided in Section 1: _____

☐ **Virtual Prepaid Card**
Email address, if different than you provided in Section 1: _____

☐ **Physical Check**
Payment will be mailed to the address provided in Section 1.

Your claim must
be submitted
online or
postmarked by:
[Claims Deadline]

***Kessler, et al. v. Excel Fitness Consolidator, LLC
d/b/a Excel Fitness Management, LLC.***

Case No. [CASE NUMBER]
District Court of Oklahoma County, Oklahoma

DATA INCIDENT SETTLEMENT CLAIM FORM

Your claim must
be submitted
online or
postmarked by:
[Claims Deadline]

VII. ATTESTATION & SIGNATURE

I swear and affirm on penalty of perjury that the information provided in this Claim Form, including supporting documentation, is true and correct to the best of my knowledge. I understand that my claim is subject to verification and that I may be asked to provide supplemental information by the Settlement Administrator before my claim is considered complete and valid.

Signature

Printed Name

Date

EXHIBIT D
(PRELIMINARY APPROVAL ORDER)

**IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA**

SEYCHELLE KESSLER and REGINALD	)	
LIPFORD, individually and on behalf of all	)	
similarly situated persons,	)	
	)	
Plaintiffs,	)	
	)	Case No. CJ-2026-1077
	)	
vs.	)	
	)	
EXCEL FITNESS CONSOLIDATOR,	)	
LLC, d/b/a Excel Fitness Management,	)	
LLC	)	
	)	
Defendant.	)	

PRELIMINARY APPROVAL ORDER

WHEREAS, this Action¹ is a putative class action before this Court;

WHEREAS, Plaintiff, individually, and on behalf of the proposed Settlement Class, and Excel Fitness Consolidator, LLC, (“Excel” or “Defendant”) have entered into the Settlement Agreement, which is subject to review and approval by the Court under 12 O.S. § 2023, and which, together with its exhibits, provides for a complete dismissal with prejudice of the claims asserted in the Action against Excel should the Court grant Final Approval of the Settlement;

WHEREAS, Plaintiff filed an unopposed motion requesting entry of an order to: (1) conditionally certify the Settlement Class; (2) granting preliminary approval of the Settlement Agreement; (3) appoint Plaintiff as Class Representative; (4) appoint William B. Federman of Federman & Sherwood as Class Counsel; (5) approve the method and form of Notice to be sent to the Settlement Class members; (6) approve the Claim Form and claims process; (7) order the

¹ The capitalized terms used herein are defined and have the same meaning as used in the Settlement Agreement unless otherwise stated.

Settlement's opt out and objection procedures; (8) appoint the Claims Administrator; (9) stay all deadlines in the Action pending Final Approval of the Settlement; (10) enjoin and bar all members of the Settlement Class from initiating or continuing in any litigation or asserting any claims against Excel and the Released Parties arising out of, relating to, or in connection with the Released Claims prior to the Court's decision to grant Final Approval of the Settlement; and (11) set a date for the Final Fairness Hearing; and

WHEREAS, the Court having reviewed the Motion along with the Settlement Agreement and its exhibits finds that substantial and efficient grounds exist for entering this Preliminary Approval Order granting the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Settlement Class Certification:** Pursuant to 12 O.S. § 2023(C)(1), the Action is hereby preliminarily certified as a class action on behalf of the following Settlement Class:

all current and former employees residing in the United States whose Personal Information was potentially accessible in the Data Incident discovered by Defendant in January 2025, including all those individuals who received notice of the Data Incident.

The Settlement Class specifically excludes: (1) the judges presiding over this Action and their staff, and members of their direct families; (2) Defendant; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

2. **Class Representative:** The Court approves Plaintiff Seychelle Kessler as Class Representative having found her as adequate class representative.

3. **Class Counsel:** The Court appoints William B. Federman of Federman & Sherwood as Class Counsel to serve as Class Counsel. In appointing class counsel, 12 O. S. § 2023(F) requires the Court to consider (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex

litigation, and other types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. The Court may also consider other matters pertinent to counsel's ability to fairly and adequately represent the interest of the class. 12 O.S. § 2023(F). The Court finds that proposed Class Counsel have expended a reasonable amount of time, effort, and expense investigating the Data Incident and that Class Counsel are highly skilled and knowledgeable concerning class action practice.

4. **Settlement Class Findings:** The Court finds, for purposes of settlement only, that the Settlement Class meets the requirements of 12 O.S. §§ 2023(A) and (B). Joinder of all Class Members in a single proceeding would be impracticable, if not impossible, because of their numbers and dispersion. Common issues exist among Class Members and predominate over questions affecting individual Class Members only: in particular, whether Excel was negligent regarding its handling of Plaintiff's personal information. The Class Representative's claims are typical of those of the Class, as the Class Representative had or may have had her private information accessed or acquired in the Data Incident. The Class Representative and her counsel will fairly and adequately protect the interests of the Class as the Class Representative has no interests antagonistic to the Class and have retained counsel who are experienced and competent to prosecute this matter on behalf of the Class. Finally, a class settlement is superior to other methods available for a fair resolution of the controversy.

5. **Preliminary Approval of Settlement:** The Court hereby preliminarily approves the settlement, as embodied in the Settlement Agreement, as being fair, reasonable, and adequate and in the best interest of the named Plaintiff and the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described herein. The Court finds the Settlement meets the considerations set for in 12 O.S. § 2023.

6. **Claims Administrator:** The Parties are authorized to use Simpluris as the Claims Administrator to supervise and administer the Notice, as well as to administer the Settlement should the Court grant Final Approval.

7. **Approval of Notice Program and Notices:** The Court approves the form and procedure for disseminating notice of the proposed settlement to the Class as set forth in the Settlement Agreement. The Court finds that the Notice Program: (a) is the best notice practicable under the circumstances; (b) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class members of the pendency of the Action, the terms of the Settlement, the effect of the proposed Settlement (including the Releases contained therein), and their right to opt-out of or to object to the proposed Settlement and appear at the Final Approval Hearing; (c) constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (d) satisfies the requirements of 12 O.S. § 2023, including the Due Process Clause of the United States Constitution, the rules of this Court and all other applicable law and rules. The date and time of the Final Approval Hearing shall be posted on the Settlement Website and included in the Long Form Notice, Postcard Notice, and Publication Notice, respectively, before they are mailed or published.

8. **Claim Form and Claims Process:** The Court approves the Claim Form as set forth in the Settlement and the Claims process to be implemented by the Claims Administrator. The Claim Form is straightforward and easy to complete, allowing each Settlement Class Member to elect the alternative Settlement Class Member Benefits. Should the Court grant Final Approval to the Settlement, Settlement Class Members who do not opt-out of the Settlement shall be bound by its terms even if they do not submit Claims.

9. As set forth in the Settlement Agreement, Excel shall bear all costs and expenses

associated with providing notice to the Class and administering the proposed settlement.

10. **Dissemination of Notice and Claim Forms**: The Court directs the Claims Administrator to disseminate the Notices and Claim Form as approved herein. Class Counsel and Excel's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this order or the Settlement, including making, without the Court's further approval, minor form or content changes to the Notices and Claim Form they jointly agree are reasonable or necessary.

11. **Objections to the Settlement**: Any member of the Class who intends to object or comment on the request for final approval of the Settlement Agreement or on the Fee Application must, no later than sixty (60) days after the Notice Deadline, submit his or her written objection to the Settlement Administrator. The written objection must include: (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature (or electronic equivalent) of the Settlement Class Member or the Settlement Class Member's attorney.

12. Any objecting Class Member may appear, in person or by counsel, at the Final Fairness Hearing to show cause why the proposed Settlement should not be approved as fair, adequate and reasonable, or to object to any application of attorneys' fees, Service Award, and

reimbursement of litigation costs and expenses, but only if the Class Member has first filed written objections to the proposed settlement by the deadline set forth in this Order. The objecting Class Member must file and serve on all counsel designated in the Class Notice, a notice of intention to appear at the Final Fairness Hearing (“Notice of Intention to Appear”) by the Objection Deadline. The Notice of Intention to Appear must include copies of all papers, exhibits, or other evidence that the objecting Class Members (or his/her counsel) will present to the Court in connection with the Final Fairness Hearing. Any Class Member who does not provide a Notice of Intention to Appear by the deadline set forth in this Order, and who does not file an objection that complies with the requirements set forth in this Order and the Class Notice, will be deemed to have waived any objections to the Settlement and will be barred from speaking or otherwise presenting views at the Final Fairness Hearing.

13. If a Class Member files an objection to the Settlement, Class Counsel or Excel’s Counsel may depose the objector consistent with the Oklahoma Statutes at an agreed upon location and seek to have the objector produce documentary evidence or other tangible things relevant to the objection. An objector’s failure to make him or herself available for deposition or to comply with expedited discovery requests may result in the Court striking the objector’s objection or otherwise affecting that person’s substantive rights. The Court reserves the right to tax the costs of such discovery to the objector or the objector’s counsel should it determine that the objection was frivolous and was made for improper purposes.

14. **Opt-Outs from the Settlement Class:** Any Class Member shall have the right to opt out of the Class and the Settlement by sending a written request for exclusion from the Class to the addresses listed in the Notices, postmarked or delivered no later than sixty (60) days after the Notice Deadline. To be effective, The Request for Exclusion must include the name of the

proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. No person shall purport to exercise any exclusion rights of any other person, or purport to (a) opt-out Settlement Class Members as a group, in the aggregate, or as a class; or (b) opt-out more than one Settlement Class Member on a single Request for Exclusion, or as an agent or representative. Any such purported Request(s) for Exclusion shall be void, and the Settlement Class Member(s) who is or are the subject of such purported Request(s) for Exclusion shall be treated as a Participating Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and Judgment entered thereon, unless he or she submits a valid and timely Request for Exclusion. Any Class Member who does not submit a timely and valid opt-out shall be subject to and bound by the Settlement Agreement and every order or judgment entered concerning the Settlement Agreement.

15. **Termination**: If the Settlement is terminated, not approved, canceled, fails to become effective for any reason, or the Effective Date does not occur, this order shall become null and void and shall be without prejudice to the rights of Plaintiff, the Settlement Class members, and Excel, all of whom shall be restored to their respective positions in the Action as provided in the Agreement.

16. **Stay**: All pretrial proceedings in this Action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Settlement and this Preliminary Approval Order.

17. Upon the entry of this order, with the exception of Class Counsel, Excel's Counsel, Excel, and the Class Representative implementation of the Settlement and the approval process in this Action, all members of the Settlement Class shall be provisionally enjoined and barred from

asserting any claims or continuing any litigation against Excel and the Released Parties arising out of, relating to, or in connection with the Released Claims prior to the Court's decision as to whether to grant Final Approval of the Settlement.

18. **Jurisdiction:** For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of this Court.

19. **Final Fairness Hearing:** A hearing on final approval of the Settlement Agreement, an award of fees and expenses to Class Counsel, and a Service Award to the Class Representative (the "Final Fairness Hearing") shall be held on the ____ day of _____, 2026 at ____: ____ .M. CST before the undersigned in Courtroom _____ of the District Court of Oklahoma County, 321 Park Ave., Oklahoma City, OK 73102. At the Final Fairness Hearing, the Court will consider (a) whether the Settlement should be approved as fair, reasonable, and adequate for the class; (b) whether a judgment granting approval of the Settlement and dismissing the lawsuit with prejudice should be entered; and (c) whether Class Counsel's application for attorneys' fees and expenses and Service Award for the Class Representative should be granted.

20. **Fee Application:** Class Counsel shall file an application for attorneys' fees and costs and Service Award to the Class Representative ("Fee Application") within forty-five (45) days after the Notice Deadline.

21. **Final Approval:** Counsel for the respective parties shall file memoranda, declarations, and other statements and materials in support of the request for final approval of the parties' Settlement Agreement no later than two (2) weeks before the Final Approval Hearing.

22. The procedures and requirements for filing objections in connection with the Final

Fairness Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement Agreement so as to protect the due process rights of all Class Members.

23. No later than five (5) days before the Final Approval Hearing, the Parties shall have the option to file any reply in support of the final approval of the Settlement Agreement and Class Counsel shall have the option to file any reply in support of the Fee Application, if necessary.

24. The Court reserves the right to adjust the date of the Final Fairness Hearing and related deadlines. If dates are altered, the revised hearing date and deadlines shall be posted on the settlement website referenced in the Class Notice. The parties will not be required to re-send or re-publish class notice.

25. **Schedule:** The Court hereby sets the following schedule of events:

Event	Date
Defendant to Provide Class Member Information to Claims Administrator	10 days after Preliminary Approval
Notice Deadline	30 days after Preliminary Approval
Deadline to File Motion for Attorneys' Fees, Costs, and Service Award	45 days after the Notice Deadline
Opt Out Deadline	60 days after the Notice Deadline
Objection Deadline	60 days after the Notice Deadline
Deadline to Respond to Objections	14 days before Final Approval Hearing
Deadline to Submit Claim Forms	90 days after the Notice Deadline
Deadline to File Motion for Final Approval	14 days before Final Approval Hearing
Final Approval Hearing	_____, 2026 at __:__ a.m./p.m. CT <i>*To be scheduled by the Court at least 120 days after the Order Granting Preliminary Approval is entered.</i>

SO ORDERED this _____ day of _____, 2026.

HONORABLE

SIGNED AND AGREED BY:

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Counsel for Plaintiff and the Class

EXHIBIT E
(PRELIMINARY APPROVAL ORDER)

**IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA**

SEYCHELLE KESSLER and REGINALD	)	
LIPFORD, individually and on behalf of all	)	
similarly situated persons,	)	
	)	
Plaintiffs,	)	
	)	Case No. CJ-2026-1077
	)	
vs.	)	
	)	
EXCEL FITNESS CONSOLIDATOR,	)	
LLC, d/b/a Excel Fitness Management,	)	
LLC	)	
	)	
Defendant.	)	

**FINAL APPROVAL ORDER GRANTING PLAINTIFF’S MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION FOR
ATTORNEYS’ FEES, COSTS, AND SERVICE AWARD**

WHEREAS, on _____, 2026 Plaintiff submitted to the Court their Unopposed Motion for Final Approval of Class Action Settlement.

WHEREAS, on _____, 2026, Plaintiff submitted to the Court their Motion for Attorneys’ Fees, Costs, Expenses, and Service Award;

WHEREAS, on _____, 2026, the Court entered its Order granting Preliminary Approval of the Settlement, which, *inter alia*: (1) preliminarily approved the Settlement; (2) determined that, for purposes of the Settlement only, the Action should proceed as a class action pursuant to 12 O.S. § 2023 and certified the class: (3) appointed Plaintiff as settlement Class Representative; (4) appointed William B. Federman of Federman & Sherwood as settlement Class Counsel; (5) approved the form and manner of Notice and the Notice Program; (6) approved the Claim process and Claim Form; and (7) set the Final Fairness Hearing;

WHEREAS, thereafter, Notice was provided in accordance with the Court’s Preliminary

Approval Order;

WHEREAS, on _____, 2026, the Court held a Final Approval Hearing to determine whether the Settlement was fair, reasonable, and adequate, and to consider settlement Class Counsel's Application for Attorneys' Fees, Costs, and Service Award;

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. This Court has jurisdiction over this matter pursuant to 12 O.S. § 2004(F) and personal jurisdiction over all Parties to the Action, including Settlement Class Members.

2. This Order incorporates the definitions in the Settlement Agreement, and all capitalized terms used in this Order have the same meanings as set forth in that Agreement, unless otherwise defined herein.

3. The Notice provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances and constituted due and sufficient notice of the proceedings and matters set forth therein to all persons entitled to notice. The Notice and Notice Program fully satisfied the requirements of due process, 12 O.S. § 2023(C), and all other applicable law and rules. The Claims process is also fair, and the Claim Form is easily understandable.

4. The Settlement is in all respects fair, reasonable, and adequate, after considering all of the 12 O.S. § 2023(C) factors, highlighted by evidence that: (A) the settlement Class Representative and settlement Class Counsel have adequately represented the Settlement Class; (B) the Settlement was negotiated in good faith and at arm's length among competent, experienced counsel with the assistance of a qualified mediator; (C) the Settlement relief is adequate; and (D) the Settlement treats Settlement Class Members equitably relative to each other. The Settlement was made based on a record that is sufficiently developed and complete to have enabled the Parties

to adequately evaluate and consider their positions.

5. Pursuant to 12 O.S. § 2023(E), the Court finds after a hearing and based upon all submissions of the parties and other interested persons, including any objections filed with the Court, the Settlement proposed by the Parties is fair, reasonable, and adequate. The terms and provisions of the Agreement were the product of good-faith arm's-length negotiations among experienced counsel. Approval of the Agreement will result in substantial savings of time, money and effort to the Court and the Parties, and will further the interests of justice.

6. Based on the information presented to the Court, the Claim process has proceeded as ordered and consistent with the Agreement and Preliminary Approval Order. All Settlement Class Members who submitted Valid Claims shall receive their Settlement Class Member Benefits pursuant to the Settlement's terms. All Settlement Class Members who did not submit a Claim, or for whom the Claim is determined to be invalid, shall still be bound by the terms of the Settlement and Releases therein.

7. The distribution plan for Settlement Class Member Benefits proposed by the Parties in the Agreement is fair, reasonable, and adequate.

8. The Settlement Class Representative and Settlement Class Counsel have fairly and adequately represented, and will continue to adequately represent and protect, the interests of Settlement Class Members in connection with the Settlement.

9. Because the Court grants Final Approval of the Settlement set forth in the Agreement as fair, reasonable, and adequate, the Court authorizes and directs implementation of all terms and provisions of the Settlement.

10. All Parties to this Action, including all Settlement Class Members, are bound by the Settlement as set forth in the Settlement Agreement and this Order.

11. Pursuant to 12 O.S. § 2023(C), the Court finds that Class Representative Seychelle Kessler are members of the Class, that their claims are typical of the Class, and that they fairly and adequately protected the interests of the Class throughout the proceedings in the Action. The appointment of Plaintiff as the Settlement Class Representative is therefore affirmed.

12. Having considered the factors set forth in 12 O.S. § 2023(F), the Court finds that Class Counsel have fairly and adequately represented the Class for purposes of entering into and implementing the Settlement and thus the appointment of William Federman of Federman & Sherwood as Settlement Class Counsel is affirmed.

13. The Court affirms its findings that the Settlement Class meets the relevant requirements of 12 O.S. §§ 2023(A) and (B) and for purposes of the settlement that: joinder of all Class Members in a single proceeding would be impracticable, if not impossible, because of their numbers and dispersion. Common issues exist among Class Members and predominate over questions affecting individual Class Members only: in particular, whether Excel was negligent regarding its handling of Plaintiff's personal information. The Class Representative's claims are typical of, indeed identical to, those of the Class, as the Class Representative had her private information accessed or acquired in the Data Incident. The Class Representative and her counsel will fairly and adequately protect the interests of the Settlement Class, as the Class Representative has no interests antagonistic to the Settlement Class and have retained counsel who are experienced and competent to prosecute this matter on behalf of the Settlement Class. Finally, a class settlement is superior to other methods available for a fair resolution of the controversy.

14. Therefore, pursuant to 12 O.S. § 2023(C) the Court finally certifies the following Settlement Class:

all current and former employees residing in the United States whose Personal Information was potentially accessible in the Data Incident discovered by

Defendant in January 2025, including all those individuals who received notice of the Data Incident.

The Settlement Class excludes: (1) the judges presiding over this Action and their staff, and members of their direct families; (2) Defendant; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

15. Judgment shall be, and hereby is, entered dismissing the Action with prejudice.

16. As of the Effective Date, and in exchange for the relief described in the Settlement, the Releasing Parties hereby fully and irrevocably release and forever discharge the Released Parties from the Released Claims.

17. In consideration for this Agreement and the consideration set forth herein, Plaintiff and Settlement Class Members and Releasing Parties acknowledge that the Releases and the release herein include potential claims and costs that may not be known or suspected to exist and that Plaintiff and the Settlement Class Members hereby agree that all rights under California Civil Codes § 1542, and any similar law of any state or territory of the United States, are expressly and affirmatively waived. California Civil Code § 1542 states as follows:

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

18. Pursuant to 12 O.S. § 2023(G), the settlement Class Counsel is awarded \$150,000.00 for attorneys' fees, expenses and costs. Class Counsel initiated the Action on behalf of Plaintiff and acted to protect the Class. Their efforts have produced the Agreement entered into in good faith that provides a fair, reasonable, adequate, and certain results for the Class. Class Counsel is entitled to reasonable attorneys' fees and reimbursement of expenses for their work. These attorneys' fees, expenses, and costs shall be paid by Excel.

19. The Settlement Class Representative shall be awarded a Service Award in the amount of \$3,000.00 each. The Service Award shall be paid for by Excel.

20. Plaintiff and all Settlement Class Members and Releasing Parties, and persons purporting to act on their behalf, are permanently enjoined from commencing or prosecuting (either directly, representatively, or in any other capacity) any of the Released Claims against any of the Released Parties in any action or proceeding in any court, arbitration forum, or tribunal.

21. The Court hereby retains and reserves jurisdiction over: (1) implementation of this Settlement and any distributions to the Settlement Class Members; (2) the Action, until the Effective Date, and until each and every act agreed to be performed by the Parties shall have been performed pursuant to the terms of the Agreement, including the exhibits appended thereto; and (3) all Parties, for the purpose of enforcing and administering the Settlement.

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

23. Pursuant to 12 O.S. § 2023(C), all persons who satisfy the Class Definition above shall be bound by this Order.

24. None of the Settlement, this Order, nor the fact of the Settlement constitutes any admission by any of the Parties of any liability, wrongdoing, or violation of the law, damages, or

lack thereof, or of the validity or invalidity of any claim or defense asserted in the Action.

25. The Court finds that no reason exists for delay in ordering final judgment pursuant to 12 O.S. § 681 and hereby directs the Clerk to enter this Order forthwith.

26. The Clerk of Court is hereby directed to enter final judgment forthwith.

SO ORDERED this _____ day of _____, 2026.

HONORABLE

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Up to \\$175K Excel Fitness Management Settlement Wraps Up Data Breach Lawsuit](#)
