

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

HILARY REMIJAS and JOANNE KAO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

THE NEIMAN MARCUS GROUP, LLC, a
Delaware limited liability company,

Defendant.

Case No. 1:14-cv-01735

Judge Sharon Johnson Coleman

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF REVISED CLASS ACTION SETTLEMENT AND
CERTIFICATION OF SETTLEMENT CLASS**

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I. INTRODUCTION

Plaintiffs Hilary Remijas and Joanne Kao (collectively, “Plaintiffs” or “Settlement Class Representatives”) brought this lawsuit as a putative class action on behalf of consumers whose credit or debit card information (“Payment Card Information”) was potentially compromised in a 2013 cybersecurity incident (the “Cybersecurity Incident” or “the Incident”) that affected certain stores owned by Defendant The Neiman Marcus Group LLC (“Neiman Marcus” or “Defendant”) between July 16, 2013 and October 30, 2013 (the “Malware Period”). Plaintiffs assert claims for negligence, breach of implied contract, unjust enrichment, violation of state unfair business practices statutes, invasion of privacy, and violation of state data breach acts.

As the Court is aware, this case has a long history involving three presiding judges, an appeal to the Seventh Circuit, extended mediation before Judge Wayne R. Andersen (Ret.), and a prior settlement agreement about which notice was provided to the settlement class before the Court ultimately denied final approval of that proposed settlement. (Dkt. 194.) Plaintiffs and Defendant carefully considered the Court’s written opinion denying final approval of the prior settlement, and believe that the Revised Settlement (filed as Exhibit 1 hereto) addresses the issues that led the Court to deny final approval. In particular, the Revised Settlement:

- Narrows the settlement class by removing from it those individuals who did not shop at Defendant’s stores during the Malware Period, which the parties believe resolves the “fundamental conflict” in the prior settlement identified by the Court between class members who shopped during the Malware Period and those who only shopped after the Malware Period ended (Dkt. 194 at 8);
- Provides the same relief as the prior settlement to settlement class members who used a payment card at one of Defendant’s stores during a time when the malware was actually operating (“Group 1 Class Members”);
- Newly provides monetary relief to class members who shopped at one of Defendant’s stores during the Malware Period, but not at a store during a time

when that the malware was actually operating (“Group 2 Class Members”), to address the Court’s concern that the non-monetary relief does not benefit the class (*id.* at 8–9);

- Is supported by a class representative who is a Group 1 Class Member (Plaintiff Remijas) and one who is a Group 2 Class Member (Plaintiff Kao), thus ensuring that both groups’ interests were fully represented in the negotiations leading to the Revised Settlement and confirming that the Revised Settlement is fair to both groups, to address the Court’s concern as to whether the class representatives and class counsel could adequately represent both groups (*id.* at 6–7);
- Effectively doubles the notice efforts provided to settlement class members by providing an entirely new round of notice, with a substantially higher reach percentage and frequency than the notice program in the prior settlement, while honoring claims filed in response to the notice of the prior settlement, which the parties expect will substantially increase the claims rate, to address the Court’s concerns about the prior notice effort (*id.* at 10);
- Provides for the creation of a web page where potential claimants can input basic information and receive instant feedback stating whether that information is consistent with information associated with Group 1 Class Members, Group 2 Class Members, or neither, and thus provide a preliminary (though not dispositive) indication as to whether the individual is entitled to monetary benefits under the Revised Settlement and, if so, the amount of such benefits, to address the Court’s concerns about requiring class members to decide whether to file a claim or exclude themselves before they know how they are situated (*id.* at 6); and
- Protects the interests of persons who were members of the prior settlement class but who are not included in the Revised Settlement class by providing them with notice (equivalent to notice provided to class members) informing them that they are not included in the Revised Settlement, and by tolling their individual claims while such notice is provided.

The Revised Settlement is the product of extensive arms’ length negotiations between experienced and informed counsel, including multiple mediation sessions with the Honorable Judge Wayne R. Andersen (Ret.) of JAMS, a retired federal district judge with substantial experience in class action litigation and settlement, as well as numerous telephonic conferences between counsel, both with and without the facilitation of the Honorable Judge Andersen. The Revised Settlement Agreement is fair, reasonable, and adequate given the claims, the alleged harm, and the parties’ respective litigation risks. It is “within the range of possible approval”

and, thus, merits preliminary approval. *E.g., In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 346 (N.D. Ill. 2010).

If approved, this Revised Settlement will result in a Settlement Fund of up to \$1.6 million. (Revised Settlement at ¶ 49.) The Settlement Fund will be used to pay (i) eligible claimants who submit valid and timely Claims, (ii) Service Awards, (iii) Attorneys' Fees and Expenses, (iv) any taxes due on the Settlement Payments Fund, and (v) the Settlement Administration Charges. (*Id.* ¶¶ 50-51.) The Settlement also provides for an effective notice program, featuring direct notice to all Revised Settlement class members for whom Neiman Marcus has contact information, as well as internet advertising and publication notice, all of which are well-tailored to disseminate the best notice practicable. (*Id.* ¶¶ 58-65.) In exchange for these benefits, Revised Settlement class members will provide a general release to Neiman Marcus for all claims relating to the Cybersecurity Incident. (*Id.* at ¶¶ 73-76.)

For the reasons set forth above and explained in more detail below, Settlement Class Representatives respectfully request that the Court enter an Order, substantially in the form attached as Exhibit D to the Revised Settlement Agreement: (1) preliminarily approving the terms of the Revised Settlement as within the range of fair, adequate, and reasonable; (2) provisionally certifying the Revised Settlement class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes; (3) approving the notice program set forth in the Revised Settlement Agreement and approving the form and content of the notice; (4) approving the procedures set forth in the Revised Settlement Agreement for settlement class members to exclude themselves from the settlement class or to object to the Revised Settlement; (5) staying all proceedings in this matter unrelated to the Revised Settlement pending final approval; (6) staying and/or enjoining, pending final approval of the Revised Settlement, any actions brought by settlement class members concerning a released claim; and (7) scheduling a fairness hearing

for a time and date convenient for the Court.

II. SUMMARY OF LITIGATION, INVESTIGATION, AND SETTLEMENT

A. Procedural History Preceding the Prior Settlement

In January 2014, Neiman Marcus announced that it experienced the Cybersecurity Incident, which potentially compromised the credit or debit card information of some of its customers who used a credit card or debit card at certain store locations. In its notification letter to customers disclosing the Incident, Defendant offered anyone who made a payment card purchase at Neiman Marcus between January 2013 and January 2014 one year of free credit monitoring. Before initiating this litigation, plaintiffs' counsel investigated the underlying facts, including by analyzing Defendant's public statements concerning the Cybersecurity Incident.

On March 12, 2014, Plaintiff Remijas filed her original Complaint in this action. (Dkt. 1.) Prior to this time, other complaints related to the Incident already had been filed against Neiman Marcus, including *Frank v. Neiman Marcus Group*, No. 14-cv-00233-ADS-GRB (E.D.N.Y. filed Jan. 13, 2014), and *Wong v. The Neiman Marcus Group, LLC*, No. 2:14-cv-00703-SJO-JC (C.D. Cal. filed Jan. 29, 2014). Similar actions followed, including *Chau v. Neiman Marcus Group, Ltd, Inc.*, No. 14-cv-597 (S.D. Cal. filed Mar. 14, 2014) and *Shields v. The Neiman Marcus Group, LLC*, No. 14-cv-752 (S.D. Cal. filed Apr. 1, 2014). After these actions were filed, plaintiffs' counsel in all the actions related to the Incident met and conferred in order to self-organize the cases for the sake of judicial economy and efficiency. (Declaration of Tina Wolfson ("Wolfson Decl.") ¶ 7.) Plaintiffs agreed to consolidate and proceed with their cases in the Northern District of Illinois. (*Id.* ¶ 8.) Ms. Remijas moved for leave to amend the complaint in her action to include additional plaintiffs and their claims (Dkt. 22), which the Court granted on June 2, 2014. (Dkt. 26.) Plaintiffs filed ar First Amended Complaint on June 6, 2014. (Dkt. 27.)

After filing, plaintiffs' counsel's investigation continued. In this regard, plaintiffs' counsel retained and consulted with experts on data security issues, who helped analyze publicly available information concerning the Incident. Plaintiffs' counsel fought for early discovery, filing, in the *Frank* case cited above, a motion to expedite discovery and, later, a motion to compel Defendant to participate in a Rule 26 conference so that regular discovery could proceed. (*Frank*, Dkt. Nos. 5, 29.) Counsel to Plaintiff Frank also filed a motion for a protective order seeking to curtail Defendant's communications to the class. (*Frank*, Dkt. No. 4.) The *Frank* court did not rule upon those motions before the cases were effectively consolidated in this Court.

On July 2, 2014, in this action, Defendant moved to dismiss Plaintiffs' First Amended Complaint for lack of standing under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6). (Dkt. 35.) Plaintiffs opposed but, on September 16, 2014, the Court granted Defendant's motion to dismiss under Rule 12(b)(1) and dismissed the action on standing grounds. (Dkt. 49.)

Plaintiffs appealed and, after oral argument, this Court's dismissal was reversed by the Seventh Circuit. *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015). The Seventh Circuit held that Plaintiffs adequately alleged standing under Article III of the U.S. Constitution. (Dkt. 66 at 17.) Following the Seventh Circuit's reversal and denial of Neiman Marcus's petition for rehearing en banc, Defendant renewed its Motion to Dismiss under Rule 12(b)(6) for failure to state a claim. (Dkt. 75.) On January 13, 2016, the Court denied Defendant's Motion to Dismiss, stating that "[d]ismissal is not appropriate at this time." (Dkt. 84.) On October 26, 2016, the Court issued an Executive Committee Order, transferring the action from the Honorable James B. Zagel to the Honorable Samuel Der-Yeghiayan. (Dkt. 121.)

B. The Prior Settlement and Revised Settlement

In December 2015, the parties began discussing possible settlement, which resulted in a long series of arms' length negotiations, including mediation and numerous post-mediation discussions between counsel and the mediator. (Wolfson Decl. ¶ 13.) In connection with the mediation, Plaintiffs requested information from NMG. NMG provided information sufficient to permit Plaintiffs and Class Counsel to evaluate the claims and potential defenses and to meaningfully conduct informed settlement discussions. (*Id.* ¶ 16.) Before entering into the prior settlement agreement, Plaintiffs' counsel conducted a thorough examination, investigation, and evaluation of the relevant law and facts to assess the merits of the claims and defenses. (*Id.* ¶ 18.)

The Honorable Judge Wayne R. Andersen (Ret.) of JAMS served as the mediator in two formal all-day mediation sessions, taking place on December 22, 2015 and on March 2, 2016, as well as numerous subsequent telephonic conversations and negotiations. (*Id.* ¶ 14.) Judge Andersen is a highly respected and experienced class action mediator, who joined JAMS following more than twenty-six years on the bench, spending the most recent nineteen years as a U.S. District Judge for the Northern District of Illinois. (*Id.* ¶ 15.) During the settlement negotiations, Plaintiffs obtained substantial information from Defendant concerning the Incident. (*Id.* ¶ 16.)

Following these discussions, and extensive and detailed negotiations over the details of the prior settlement, Plaintiffs moved for preliminary approval of the prior settlement on March 17, 2017. (Dkt. 144.) In brief, the prior settlement included a settlement class of all individuals who held a payment card used to make a purchase at any Neiman Marcus store (excluding restaurant and online purchases) between July 16, 2013 and January 10, 2014 (that is, all Group 1 Class Members, Group 2 Class Members, as well as individuals whose cards were used only after the malware ceased operation on October 30, 2013). Group 1 Class Members filing valid and

timely claims could recover up to \$100; other class members were not eligible for a monetary recovery.

Judge Der-Yeghiayan granted preliminary approval of the prior settlement and preliminarily certified the settlement class on June 21, 2017 (Dkt. 154). The Settlement Administrator then provided the notice ordered by the Court. Objections were filed to the prior settlement (Dkt. 164, 165), on which the parties and objectors submitted briefing. Judge Der-Yeghiayan held a fairness hearing on October 26, 2017. (Dkt. 183.) On January 16, 2018, in light of Judge Der-Yeghiayan's decision to retire from the Court as of February 17, 2018, this action was reassigned to Judge Sharon Johnson Coleman. (Dkt. 188.)

On September 17, 2018, the Court issued an opinion denying final certification of the prior settlement and decertifying the settlement class. (Dkt. 194.) The Court cited one principal reason for its decision: that there was a "fundamental" and "inevitable conflict" between class members who shopped during the Malware Period and those who did not (*id.* at 8–9). The Court noted that it saw "no adequacy problem as between the recovering and non-recovering class members [*i.e.*, Group 1 Class Members and Group 2 Class Members] who made their purchases within the malware period." (*Id.* at 7.) The Court did, however, note several other concerns about the prior settlement, including that:

- No settlement class representative clearly represented class members whose cards were used only after the Malware Period ended (*id.* at 8 n.3);
- It offered no meaningful relief to class members whose credit card information was not compromised (Group 2 Class Members), yet did not inform class members whether they would recover monetarily from the settlement (*i.e.*, whether they were a Group 1 Class Member) until after they filed claims (*id.* at 6, 8);
- A representation in Plaintiffs' preliminary approval motion that all class members would be given direct notice was incorrect because direct notice was only given to all class members for whom Neiman Marcus had contact

information;¹ and

- The Court viewed the number of claims filed—16,447 out of a class of approximately 2.2 million—as low, suggesting that further notice efforts were warranted. (*Id.* at 10.)

Following the Court’s rejection of the prior settlement, the parties began to negotiate a revised settlement that would address the concerns raised by the Court. The parties participated in another all-day mediation with Judge Andersen on January 23, 2019, which was also attended by counsel to one of the objectors to the prior settlement. The parties reached agreement as to all material terms of the Revised Settlement on June 12, 2019 and thereafter continued to negotiate with that objector’s counsel, including in communications through Judge Andersen. (Wolfson Decl. ¶¶ 24-26.) After those negotiations failed to bear fruit, the parties determined to seek approval of the Revised Settlement without the objector’s counsel’s agreement.

The parties designed the Revised Settlement to address each of the Court’s concerns with the prior settlement, including by:

- Narrowing the settlement class to exclude those whose cards were not used at one of Defendant’s stores during the Malware Period, thus resolving the “fundamental” conflict identified by the Court and eliminating the need for a settlement class representative who shopped exclusively outside the Malware Period;
- Making all settlement class members eligible for significant monetary relief, including those class members whose cards were not used at a store when the malware was actually operating; and
- Effectively doubling notice efforts by providing an entirely new round of

¹ Plaintiffs explained that this statement was the result of an error, which the Court noted that it had no reason to doubt. (*Id.* at 10.) Indeed, other contemporaneously-filed documents clearly indicated that direct notice was given to all class members for whom Neiman Marcus had contact information (*see, e.g.*, Dkt. No. 145-1 at ¶ 62 (“The Settlement Administrator shall send the Summary Notice via E-Mail to all Settlement Class Members for whom Neiman Marcus can ascertain an e-mail address from its records with reasonable effort.”); Dkt. No. 145-9 at ¶ 7 (“The notice program . . . provides individual notice to all Class Members who can be identified through reasonable effort.”)).

notice to settlement class members, while still honoring claims filed under the previous settlement.

Plaintiffs have filed a Second Amended Complaint, with Defendant's consent, that narrows the settlement class definition and removes as proposed class representatives two individuals (Melissa Frank and Debbie Farnoush) who no longer are class members under the narrowed settlement class definition. The Second Amended Complaint also removes allegations that the malware continued to operate after October 30, 2013, which information gleaned since the original complaint was filed confirms to be true. (Dkt. 213.)

C. Terms of the Proposed Revised Settlement

i. Monetary Relief

Defendant will pay up to \$1.6 million to create a settlement fund. (Revised Settlement ¶ 49.) Up to \$400,000 of the settlement fund will be used to pay charges and costs invoiced or charged by the settlement administrator arising from implementation of the notice program and administration of the Settlement, which the parties expect will amount to \$400,000. (*Id.* ¶ 50.) In the unlikely event that settlement administration charges are less than \$400,000, Defendant would retain the difference. (*Id.* ¶ 50(b).) If settlement administration charges exceed \$400,000, such excess charges will be paid using funds set aside for payments to class members that have not been claimed and, if such funds are not sufficient to pay those excess charges, then Defendant will pay the excess charges not covered by unclaimed funds. (*Id.* ¶ 50(c).)

The remaining \$1.2 million of the settlement fund will be used to pay eligible claimants who submit valid and timely claims, any taxes due, any service awards to Plaintiffs and attorneys' fees and expenses ordered by the court. (*Id.* ¶ 51.) If such payments do not exhaust this portion of the settlement fund, then the remaining funds would be used to pay any excess notice and administration costs, to make supplemental distributions to certain class members, and

to make a charitable contribution. (*Id.* ¶ 53(c).) Each Group 1 Class Member who submits a valid Claim will receive up to \$100, and each Group 2 Class Member who submits a valid Claim will receive up to \$25. (*Id.* ¶ 53(b).)

In addition, the Settlement provides for valuable changes to Defendant's business practices, designed to ensure that similar incidents do not re-occur in the future. (*Id.* ¶ 52.)

ii. The Claims Process

The parties have developed a streamlined and convenient method to determine whether a claimant has a valid claim. Claimants need only answer two questions to submit a claim:

Question One. A claimant must state whether his or her credit or debit card was used at a Neiman Marcus store between July 16, 2013 and October 30, 2013. (*Id.* Ex. A.) Answering this question in the affirmative establishes that the claimant is a member of the settlement class. Claimants who answer in the negative are not class members.

Question Two. Claimants who answer the first question in the affirmative must provide at least one of two additional sets of information to submit a valid claim. First, claimants may provide (i) the last four digits of the payment card used at a Neiman Marcus store between July 16, 2013 and October 30, 2013, and (ii) the dates and locations that that card was used at a Neiman Marcus store between these dates. Second, claimants may provide the full name and billing address associated with the payment card. This information is necessary to determine whether the payment card was actually used at a time and place that malware capable of collecting payment card data was operational (and therefore, determine whether the claimant is a Group 1 Class Member or Group 2 Class Member). Because Neiman Marcus does not possess the full name and billing address of all of the payment cards used during the Malware Period, it is possible that claimants who submit only the name and billing address associated with their

payment card will have their claims denied due to a lack of information sufficient to determine whether or not that card was used during the Malware Period. The Claim Form therefore clearly explains this possibility and explains that claimants may avoid it by submitting the last four digits of the payment card used at a Neiman Marcus store during the Malware Period, along with the dates and locations of such purchases. If the information submitted by the claimant establishes that their card was actually used during the Malware Period, then they will be eligible to receive a monetary benefit; if it does not, they will not, because the claimant will not have established that he or she is a class member. (*Id.* ¶ 40.)

Finally, Claimants must affirm that the information they provided is true, and that the claimant is the cardholder of the card identified in the response to Question Two. (*Id.* Ex. A.)

This claim validation procedure is convenient for claimants. It is possible for claimants to submit a valid claim using only information from their memory, such as the name and billing address of a potentially-affected payment card. All of the information requested is easily ascertainable from billing records that claimants may have in their files or be able to quickly obtain from the websites maintained by the issuers of their payment cards. Unlike in other data breach class action settlements, claimants need not collect or submit any documents to the settlement administrator in order to obtain a monetary benefit, which would substantially increase the burden on potential claimants.

In order to ensure that the claims rate is as high as possible, and to maximize the value delivered to the settlement class, the parties have agreed that claims submitted under the prior settlement will be treated as though submitted under the Revised Settlement; no further action by

such claimants will be required.²

Each class member who submits a valid and timely claim—including those who submitted valid and timely claims under the prior settlement—are eligible to receive a monetary payment. The Settlement Payments Fund will first be used to pay any taxes due on the settlement fund, any service awards to Plaintiffs ordered by the Court, and any attorneys' fees and expenses awarded by the Court. Once these payments have been made, the Settlement Administrator will pay an amount of up to \$100 to each Group 1 Class Member who submitted a valid and timely claim (the same relief offered to them under the prior settlement) and up to \$25 to each Group 2 Class Member who submitted a valid and timely claim. In the event that the aggregate value of valid and timely claims exceeds the amount remaining in the Settlement Payments Fund after taxes, service awards, and attorneys' fees and expenses are paid, then the cash payment provided to each class member who submitted a valid and timely claim will be reduced on a *pro rata* basis,³ and such class members will be paid a *pro rata* amount that exhausts the Settlement Payments Fund.

In the event that there are funds left in the Settlement Payments Fund after all class members who submitted a valid and timely claim have been paid \$100, then the remaining funds

² If any settlement class member who submitted a claim under the prior settlement files an opt-out notice, then they will be treated as having opted out of the Revised Settlement. (Revised Settlement Agreement ¶ 69.) Their prior claim will not be paid, and they will not be subject to the release set forth in the Revised Settlement. (*Id.*)

³ Specifically, should a *pro rata* reduction be necessary, the amount payable to Group 2 Class Members will be reduced first, with a minimum of \$5.00, followed by reduction of the amount payable to Group 1 Class Members, with a minimum of \$10.00, followed by a further reduction of the amount payable to Group 2 Class Members and then a further reduction of the amount payable to Group 1 Class Members. (*Id.* ¶ 53(b).) The parties designed this structure to ensure, to the extent possible, that all settlement class members receive a cash payment regardless of the number of valid and timely claims filed, while ensuring that Group 1 Class Members (who may have actually had their payment card information affected) do not receive relief inferior to Group 2 Class Members (whose payment card information was not affected).

will be distributed as follows: First, such funds will be used to pay any costs of providing class notice and administering the Revised Settlement in excess of \$400,000. Second, if there are funds remaining in the Settlement Payments Fund after payment of any such excess notice and administration costs, the Settlement Administrator will estimate the cost of sending a check to each class member who could have submitted a valid claim but did not for whom Defendant has a mailing address, and subtract that amount from the remaining funds. After subtracting this cost, any remaining amounts will be distributed to such class members on a *pro rata* basis, provided that each such distribution would exceed \$5.00. Third, if there are funds remaining in the Settlement Payments Fund after any such distribution, such remaining funds shall be donated to a charitable organization chosen jointly by the Parties. (*Id.* ¶ 53.)

The Parties have thus designed a process to distribute the Settlement Payments Fund that will provide substantial monetary benefits to all class members who submit valid and timely claims and may provide substantial monetary benefits to class members who could have submitted valid and timely claims, but did not.

iii. Dissemination of Notice to the Class

Settlement class members for whom Neiman Marcus can ascertain an e-mail or mailing address from its records with reasonable effort will directly receive the Summary Notice (*Id.*, Ex. F) by e-mail, and, if a valid e-mail address is not available, by U.S. Mail to the extent such information is available in Neiman Marcus's records. (*Id.* ¶ 65.)

The Settlement Administrator also will promulgate publication notice by purchasing both print and online advertisements. The publication notice program for the Revised Settlement is designed to have a higher reach percentage (79.18%, with an average frequency of 3.00 times) (*id.*, Ex. H ¶ 10) than the publication notice program achieved for the prior settlement (71.48%, with an average frequency of 2.95 times) (Dkt. 167-2 ¶ 5). This substantial increase in the notice

program's reach was intended to address the Court's request that the parties "consider whether further attempts at notice are warranted in this case." (Dkt. 194 at 10.) These reach percentages are calculated based on the publication notice plan alone; they do not include the direct notice of the Revised Settlement that will be given to individuals for whom Neiman Marcus has e-mail or mailing addresses, so the actual reach percentage will likely be well in excess of 80%.

Although individuals whose cards were used only after the Malware Period ended are not included in this settlement class, the parties have agreed that notice of the Revised Settlement will still be provided to these individuals using the same methods being used to provide notice to the revised settlement class members. The notice will inform these individuals that they are no longer part of a putative class action or settlement class, and that the statute of limitations on their individual claims will no longer be tolled, ensuring that they are not prejudiced by their exclusion from the revised settlement class.

The Court's opinion disapproving the prior settlement cited "[t]he refusal to inform class members of how they were situated until after they opted into the settlement" as a reason for that disapproval. (Dkt. 194 at 6.) The Parties have addressed this concern by directing the Settlement Administrator to create, on the Settlement Website, a page where potential class members may enter certain specific information (such as last name on, and the last four digits of the number of, their payment card that they believe was used at a Neiman Marcus store during the Malware Period), and receive instantaneous feedback about whether that information is consistent with information known about cards held by Group 1 Class Members (in which case, the submitter may be eligible to receive up to \$100), Group 2 Class Members (in which case, the submitter may be eligible to receive up to \$25), or neither (in which case, the submitter may not be a Revised Settlement class member and thus not entitled to benefits under the Revised Settlement). Use of this web site is in no way mandatory, and individuals are free to submit claims without

using it, but for those who wish to do so, it can provide a preliminary indication about whether the individual is a Revised Settlement class member, and if so, the amount of benefits to which he or she may be entitled.

In addition, the Long Form Notice (*id.*, Ex. C) will be made available on the Settlement Website (www.NMSettlement.com). The Settlement Administrator also will establish a toll-free telephone number through which settlement class members may ask questions or request a mailed copy of the Long Form Notice and Claim Form. (*Id.* ¶ 64.) The Summary Notice will refer settlement class members to the Settlement website, which will make available the Long Form Notice, Summary Notice, the Revised Settlement Agreement, any motion seeking final approval of the Settlement, any motion for an award of attorneys' fees and expenses or service awards to Plaintiffs, the Preliminary Approval Order, the Claim Form, the Second Amended Complaint, and other relevant Court documents that class counsel and Defendant agree to post or that the Court orders to be posted. (*Id.* ¶ 62.) Finally, Defendant will comply with the requirements of 28 U.S.C. §1715 ("CAFA"). *Id.* ¶ 55.

iv. Service Awards to Class Representatives

Each of the Settlement Class Representatives took the initiative to commence this litigation, assisted in case development, stayed apprised throughout the litigation, and accepted risks and responsibilities individually and on behalf of others similarly situated. Therefore, subject to Court approval and in recognition of these efforts, the Revised Settlement Agreement allows each Settlement Class Representative to apply for a service award of up to two thousand five hundred dollars (\$2,500), no later than 14 days prior to the Objection Deadline, to be paid out of the Settlement Fund. (Revised Settlement Agreement, ¶ 77.)

v. Attorneys' Fees and Expenses

The Revised Settlement Agreement provides that Class Counsel will make their application for reasonable attorneys' fees, costs, and expenses at least 14 days before the Objection Deadline. (*Id.* ¶ 78.) Class counsel agree not to seek an award of attorneys' fees, costs, and expenses in excess of five hundred and thirty thousand dollars (\$530,000). (*Id.*) This maximum amount is stated on the relevant notice forms. (*Id.* Exs. D, G.) Neiman Marcus reserves the right to object to Class Counsel's request for attorneys' fees, costs, and expenses. (*Id.* ¶ 78.)

vi. Release Provisions

If the Court grants final approval to the Revised Settlement, settlement class members will automatically be deemed to have released Defendant of all claims, known or unknown, that relate to the Incident that were or could have been alleged in this action. (*Id.* ¶¶ 73-76.) The Released Claims do not include any claims arising from or relating to any conduct by Neiman Marcus after the date the Revised Settlement Agreement was executed. (*Id.* ¶ 74.)

vii. Opt-Out Procedure and Opportunity to Object

Any settlement class member may request to be excluded from the Revised Settlement by sending a written request to the Settlement Administrator postmarked no later than the Opt-Out Deadline, as specified in the Notice. (*Id.* ¶ 66.) Valid requests must include information described in the Notice, including a statement that the person sending the request wishes to be excluded from the Class. (*Id.*)

Any settlement class member who does not request to be excluded may object to the Revised Settlement, class counsel's fee application, and/or the requests for service awards. (*Id.* ¶ 67.) To be considered, an objection must either be mailed to the Class Action Clerk or filed

with the Court, and must be in writing, personally signed by the objector, and include the information prescribed by the Notice. (*Id.*)

III. THE REVISED SETTLEMENT IS DESIGNED TO ADDRESS THE COURT’S REASONS FOR REJECTING THE PRIOR SETTLEMENT

In negotiating the Revised Settlement, the parties sought to address the Court’s expressed concerns with the prior settlement.

First, to address the “fundamental” conflict identified by the Court between class members whose payment cards were used during the Malware Period and those whose cards were not (Dkt. 194 at 8), the parties agreed to narrow the settlement class to exclude individuals whose cards were not used during the Malware Period, which had the effect of reducing the size of the settlement class by approximately half. (Revised Settlement Agreement ¶ 40.) This change represented a significant concession on Defendant’s part, since it was now agreeing to pay the same amount of money for a release from only half as many persons, some of whom (*e.g.*, Plaintiffs Farnoush and Frank) had sued Defendant. The parties took care to avoid causing prejudice to individuals who were in the previous putative class but are no longer in the revised settlement class by (i) agreeing that such individuals would receive notice of the Revised Settlement according to the same procedures used to provide notice to Revised Settlement class members, which will inform them that they are no longer members of a putative class or settlement class, and by (ii) agreeing to stipulate that the statutes of limitations on their individual claims against Neiman Marcus are tolled under *American Pipe & Construction v. Utah*, 414 U.S. 538 (1974) and its progeny, and shall continue to be tolled until the deadline for the settlement administrator to provide notice to the Settlement class. (*Id.* ¶ 68.)

Second, to address the Court’s concern that class members whose cards were not used at a time and place the malware was operating (Group 2 Class Members) received only “lackluster non-monetary relief” under the prior settlement (Dkt. 194 at 8), the parties agreed that all members of the narrowed settlement class will be eligible for monetary relief—up to \$100 for Group 1 Class Members (the same amount they stood to recover under the prior settlement) and

up to \$25 for Group 2 Class Members, who were not eligible for a monetary recovery under the prior settlement. (Revised Settlement Agreement ¶ 53(b).)

Third, to ensure that both Group 1 Class Members and Group 2 Class Members were represented by individual class representatives, and thus address the Court's concern that class members whose cards were used only after the Malware Period ended were not represented by class representatives under the prior settlement (Dkt. 194 at 7), the parties confirmed that Plaintiff Hilary Remijas is a Group 1 Class Member, and Plaintiff Joanne Kao is a Group 2 Class Member, and informed Plaintiffs Remijas and Kao of their respective statuses. Both Plaintiff Remijas and Plaintiff Kao signed the Revised Settlement Agreement, and agree that it is fair, reasonable, and adequate for all class members.⁴

Fourth, to address any concerns the Court had about the notice provided to members of the previous class (Dkt. 194 at 10), the parties agreed not only that they would provide an entirely new round of notice to the Revised Settlement class, with a higher reach percentage and frequency than the publication notice provided for the prior settlement, but that they also would honor claims filed under the prior settlement. Accordingly, if approved by the Court, the Revised Settlement notice effort will begin with 17,000 claims already filed (approximately 1.5% of the Settlement Class), with the number sure to rise as new notice is provided to Revised Settlement class members. (Revised Settlement Ex. H ¶ 16.) Although the claim rate is expected to rise, settlements with lower claims rates than that already achieved have been approved by courts in this district. *See Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 223 (N.D. Ill. 2016) (approving class settlement with claims rate of approximately 1.08%).

Fifth, as discussed above, the parties agreed to create a web site where potential claimants could instantaneously input basic information and instantly receive feedback about whether the information submitted is consistent with cards held by Group 1 Class Members, Group 2 Class

⁴ The Court's opinion rejecting the prior settlement noted that it saw "no adequacy problem as between the recovering and non-recovering class members who made their purchases within the malware period." (Dkt. 194 at 7.)

Members, or neither. While not dispositive, this website will give potential claimants a preliminary indication as to whether they may be eligible to receive benefits from this settlement, and the amount of such benefits, which will help individuals make informed choices about whether to file a claim or exclude themselves from the Revised Settlement.

All in all, the parties have designed the Revised Settlement to not only meet the standards for preliminary approval (as discussed below) but also to address the particular concerns raised by the Court in its opinion rejecting the prior settlement. The parties believe that the Revised Settlement delivers better results for the settlement class, and is worthy of approval.

IV. THE REVISED SETTLEMENT MEETS THE STANDARDS FOR PRELIMINARY APPROVAL

Federal courts “naturally favor the settlement of class action litigation.” *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). Any settlement of claims on a classwide basis requires: (i) the Court to preliminarily approve the proposed settlement; (ii) that members of the settlement class receive notice of the proposed settlement; and (iii) that the Court hold a final hearing at which it decides whether the proposed settlement is fair, reasonable, and adequate. *See Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982); Manual for Complex Litigation § 21.632 (4th ed. Supp. 2010).

In considering a motion for preliminary approval of class action settlement, the Court must determine whether the settlement is within the “range of possible approval,” *i.e.*, within the range of what might be found fair, reasonable, and adequate. *In re AT&T Mobility Wireless*, 270 F.R.D. at 346; *Gautreaux*, 690 F.2d at 621 n.3. And Rule 23 requires the Court to give notice of the Revised Settlement if the Court is likely to approve it and certify the Settlement Class for purposes of judgment. Fed. R. Civ. P. 23(e)(1)(B).

However, at the time of preliminary approval, the Court is not required to make a final determination as to the fairness of the Revised Settlement. *In re AT&T Mobility Wireless*, 270

F.R.D. at 346. As a result, Courts have noted that the standard for preliminary approval is less rigorous than the analysis at final approval. *See, e.g., In re Nat'l Collegiate Athletic Assoc. Student-Athlete Concussion Injury Litig.*, 314 F.R.D. 580, 588 (N.D. Ill. 2016) (“At this initial stage, the court is not ‘resolving the merits of the controversy or making a precise determination of the parties’ respective legal rights.’ . . . This is why some courts at this stage perform a summary version of the exhaustive final fairness inquiry.”) (quoting *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir.1985)); *see also In re Bromine Antitrust Litig.*, 203 F.R.D. 403, 416 (S.D. Ind. 2001) (the “bar [for obtaining preliminary approval] is low”); *Butler v. Am. Cable & Tel., LLC*, No. 09 CV 5536, 2011 WL 2708399, at *8 (N.D. Ill. Jul. 12, 2011) (“Although the ‘fair, reasonable, and adequate standard’ and the factors used to measure it are ultimately questions for the fairness hearing, a more summary version of the same inquiry takes place at the preliminary phase.”) (citations omitted). The Supreme Court has cautioned that, in reviewing a proposed class settlement, a court should “not decide the merits of the case or resolve unsettled legal questions.” *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981); *see also Hiram Walker & Sons, Inc.*, 768 F.2d at 889; *Isby*, 75 F.3d at 1196-97.

Here, the Revised Settlement before the Court is fair, reasonable, and adequate, and well within the range of possible approval, because it provides monetary benefits to all settlement class members, avoids the uncertainty and expense of prolonged litigation, and avoids the need to resolve contentious factual and legal issues. The Revised Settlement Agreement further satisfies the factors set forth by the Seventh Circuit in assessing whether a proposed settlement agreement is within the range of fair, reasonable, and adequate.

In deciding whether to preliminarily approve a settlement, courts must consider: (1) the strength of plaintiffs’ case compared to the terms of the proposed settlement; (2) the likely complexity, length and expense of continued litigation; (3) the amount of opposition to settlement among effected parties; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery

completed.

In re AT&T Mobility Wireless, 270 F.R.D. at 346; *see also, e.g., Wong v. Accretive Health, Inc.*, 773 F.3d 859 (7th Cir. 2014) (reiterating “longstanding guidance” of the relevant factors for determining fairness of class action settlement). In weighing these factors, the district court should “recognize[] that the first factor, the relative strength of the plaintiffs’ case on the merits as compared to what the defendants offer by way of settlement, is the most important consideration.” *Isby*, 75 F.3d at 1199. The Seventh Circuit has explained that district courts should “consider the facts in the light most favorable to the settlement.” *Id.* at 1198-99. Further, “[t]he essence of settlement is compromise . . . [t]hus the parties to a settlement will not be heard to complain that the relief afforded is substantially less than what they would have received from a successful resolution after trial.” *EEOC v. Hiram Walker & Sons*, 768 F.2d at 889. Indeed, a district court should not reject a settlement “solely because [the settlement] does not provide a complete victory to the plaintiffs.” *Isby*, 75 F.3d at 1200.

A. The Strength of Settlement Class Representatives’ Case Is Well-Balanced Against the Amount Offered In the Settlement, Which Is More Generous Than Comparable Settlements

The most important settlement-approval factor is “the strength of plaintiff’s case on the merits balanced against the amount offered in the settlement.” *In re AT & T Mobility Wireless*, 270 F.R.D. at 346 (internal citations omitted). “An integral part of the strength of a case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation.” *Id.* at 347; *see also* Fed. R. Civ. P. 23(e)(2)(C) (requiring courts considering class settlements to consider whether “the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal . . .”). While Plaintiffs believe in the

merits of their case, they must acknowledge the risks of continuing litigation.⁵

First, fact-intensive inquiries are pervasive in this action. Plaintiffs' contention that Defendant failed to secure and safeguard payment card information (*e.g.*, Second Amended Complaint ¶¶ 1, 84-85, 98, 107) involve consideration of many facts surrounding the Incident, including the manner in which the information was potentially compromised in the first instance, the length of time the information was potentially compromised, the types of information that were potentially compromised, and whether any of the information actually was improperly accessed or used as a result. As the Seventh Circuit recognized, proving causation in this case presents a significant hurdle. (Dkt. 66 at 10.) Similar difficulties exist for purposes of quantifying settlement class members' damages. Likewise, Plaintiffs' claims regarding Defendant's failure to provide timely and adequate notice to settlement class members after the Incident require a factual inquiry into Defendant's notification program.

In support of its defenses, Plaintiffs expect that Defendant would attempt to present certain materials as evidence and arguments that would seek to demonstrate that: (i) Defendant implemented robust security architecture to protect its systems and customer data, (ii) Plaintiffs' damages were not caused by the Incident or, at least, could have had other causes including other cybersecurity incidents; (iii) Assessments by allegedly independent third parties found that Defendant was in compliance with applicable data security standards before, during, and after the Incident; (iv) the payment card information collected by the malware in the Cybersecurity

⁵ In considering a settlement, a court should take the parties' views into account. *Wong*, 773 F.3d at 863 (reiterating that factors for determining a class settlement's fairness include "the opinion of competent counsel") (quoting *Gautreaux*, 690 F.2d at 631); *In re Cendant Corp. Secs. Litig.*, 109 F. Supp. 2d 235, 255 (D.N.J. 2000) ("Significant weight should be attributed to the belief of experienced counsel that settlement is in the best interest of the class.") (citation and internal quotation marks omitted); *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (holding that in analyzing a class settlement, a trial court may rely on the judgment of experienced counsel and, "absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel").

Incident was not actually exfiltrated; (v) transactions on Defendant's websites and at Defendant's restaurants were not compromised; and (vi) PIN data was not compromised. (Wolfson Decl. ¶ 17.) Defendant also likely would attempt to present evidence establishing that its sent written notice of the Incident to consumers with an offer of free credit monitoring for one year, decreasing damages. (*Id.*)

Second, continued litigation would present risks in establishing liability and damages. If the Settlement is not approved, this action will proceed to intense litigation and possibly trial and appeal. Plaintiffs and Defendant vehemently disagree about the merits of Plaintiffs' claims. Although this Court denied Defendant's Motion to Dismiss based on Fed. Rule Civ. P. 12(b)(6), it did not rule on the merits (Dkt. 85), and Defendant has expressed its position that, should litigation go forward, it will move for a judgment on the pleadings. Regardless of each party's respective position, there is uncertainty about the ultimate outcome of this action.

Third, valuation of Plaintiffs' damages is difficult. Even without any discount for the significant risks of continued litigation, most if not all injuries suffered by settlement class members were relatively small, and establishing a nexus between those injuries and the Cybersecurity Incident may be problematic. Even if economic damages can be proven, the value of any monetary recovery to Plaintiffs erodes over time, and litigation expenses increase.

Fourth, Defendant would oppose class certification if the action were to proceed to that stage. Plaintiffs believe that class certification is appropriate in this action, but are cognizant of the risk that the Court may not certify a class at all, may not certify a class covering all claims asserted in the Second Amended Complaint, or may limit the size of any class. This Court or the Seventh Circuit might ultimately conclude that individualized questions predominate over any common questions. Finally, even if Plaintiffs are successful in gaining certification of their claims, the class certified may ultimately be smaller than the nationwide class to whom the

Revised Settlement will confer its benefits.

Finally, the tremendous amount of time and resources it will take to litigate the case to conclusion counsels in favor of accepting the Revised Settlement now. *See General Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 (7th Cir. 1997); *see also In re AT&T Mobility Wireless*, 270 F.R.D. at 347 (“Even if Plaintiffs were to succeed on the merits at some future date, a future victory is not as valuable as a present victory. Continued litigation carries with it a decrease in the time value of money, for ‘[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now.’”) (citations omitted). Under this Revised Settlement, the settlement class will realize immediate benefits once the Revised Settlement is approved and the claims process is completed.

As a factual matter, it is clear that the Incident occurred. But the legal questions, such as whether Defendant’s conduct gives rise to liability and cognizable damages, remain disputed. And while Plaintiffs strongly believe that they could overcome these legal hurdles, they cannot responsibly ignore the risk that this Court or a reviewing court might not accept some or all of their arguments. As a result, the present value of the monetary component of the Settlement is significant compared to duration and uncertainty of litigation and valuation of damages—indicating the Revised Settlement merits approval.

B. The Complexity, Length, and Expense of Continued Litigation Favors Settlement

The likely complexity, length, and expense of continued litigation are relevant factors in assessing a proposed settlement. *Wong*, 773 F.3d at 863. The Revised Settlement makes a final decision on several disputed factual and legal issues unnecessary. While the parties have conducted informal discovery for settlement purposes, in the event litigation proceeded, the parties would need to engage in further and significant discovery. Both parties would require

experts. Costs of testifying experts regarding the economic harm caused to consumers, discovery, class certification, summary judgment motion practice, as well as other pre-trial and trial expenses, would be substantial. Continued litigation would likely involve, as indicated by the procedural history in this matter, motions to dismiss, motions for summary judgment, a motion for class certification, and one or more interlocutory appeals, all of which would delay final resolution. This factor also weighs in favor of preliminary approval.

C. Settlement Class Representatives Support the Settlement

At the current stage of the litigation, prior to the dissemination of the class notice, no settlement class members, including the named Plaintiffs, have indicated any objections to the proposed Revised Settlement. Class counsel will revisit this issue at the fairness hearing, to the extent necessary.

D. The Settlement Is the Product of Serious, Informed, Non-Collusive Negotiations

A proposed settlement is presumed to be fair and reasonable when it is the result of arms' length negotiations. *See Wong*, 773 F.3d at 864; *Armstrong v. Bd. of School Dirs. of City of Milwaukee*, 616 F.2d 305, 325 (7th Cir. 1980), *overruled on other grounds in Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 375-76 (D.D.C. 2002) (“A ‘presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms-length negotiations’”) (internal quotation omitted); *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 145-46 (E.D.N.Y. 2000) (assessing “the procedural component of the fairness determination” by “focus[ing] on the ‘negotiating process by which the settlement was reached’”) (citation omitted). This presumption is applicable here.

As discussed above, the Revised Settlement is the result of over twelve months of arm's length negotiations following the Court's rejection of the prior settlement, including an in-person mediation, and numerous other telephone conferences with the mediator and directly between experienced counsel who had a comprehensive understanding of the strengths and weaknesses of each party's claims and defenses. The negotiations were mediated and facilitated by a retired judge with substantial judicial and mediation experience in class actions. Moreover, the settlement was reached after Plaintiffs' counsel analyzed information provided by Defendant in informal discovery, conducted interviews of putative class members, and performed other meticulous investigation. Given these facts, the Revised Settlement is shown to be non-collusive.

E. The Parties Engaged in Significant Motion Practice and Informal Discovery

Class Counsel conducted a detailed investigation into the facts and law relating to the matters alleged. Plaintiffs requested, received, and reviewed information from Defendant in connection with mediation and settlement negotiations. Among other facts, Plaintiffs learned that malicious software capable of collecting payment card data operated in Neiman Marcus stores between July 16, 2013 and October 30, 2013. In addition, Plaintiffs learned that (a) this malware never operated in some Neiman Marcus stores, (b) as to those stores where this malware did operate, it did not operate in each of the stores during each day between July 16, 2013 and October 30, 2013, and (c) often, this malware only operated during part of the time that each store was open for business, and the times when this malware operated varied from day to day within each individual store and among the stores where this malware operated. (Revised Settlement Agreement at ¶ 4.) These facts refined Plaintiffs' understanding of the Incident, and Plaintiffs no longer contend that the Cybersecurity Incident continued until January 10, 2014.

The parties also briefed the legal issues at hand extensively, as described above. As a result of this informal discovery and motion practice, Plaintiffs fully understand the merits of this case—weighing in favor of preliminary approval.⁶

V. CLASS ACTION TREATMENT IS APPROPRIATE

A. The Class to Be Certified for Settlement Purposes

Plaintiffs seek certification of the following settlement class for settlement purposes:

All residents of the United States who held a credit card or debit card account that was used in any stores at physical locations operating under the “Neiman Marcus,” “Bergdorf Goodman,” “Cusp,” or “Last Call” names, but excluding all restaurants operating in any such stores, and excluding any website or online store, at any time from July 16, 2013 to October 30, 2013. Excluded from the Settlement Class are the judge presiding over this matter, any members of her judicial staff, the officers and directors of Neiman Marcus, and persons who timely and validly request exclusion from the Settlement Class.

(Revised Settlement Agreement at ¶¶ 4, 24, 40.)

The Court should certify the settlement class because Rules 23(a) and 23(b)(3) are satisfied. “Settlement is relevant to a class certification” and is “a factor in the calculus.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619, 622 (1997). The Supreme Court “has expressly approved the use of the settlement class device.” *Id.* at 618 (“[T]he ‘settlement only’ class has become a stock device.”). Settlement Class Representatives seek conditional certification of the class under Rule 23(b)(3), their appointment as Settlement Class Representatives solely for purposes of the settlement, and appointment of their counsel as class counsel. A class may be certified if it satisfies all of the requirements of Rule 23(a) and one of

⁶ A lack of formal discovery does not preclude preliminary approval “[b]ecause counsel have conducted a significant amount of informal discovery and ‘dedicated a significant amount of time and resources to advancing the underlying lawsuits.’” *In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 350 (N.D. Ill. 2010) (internal citations omitted).

the three subparagraphs of Rule 23(b), but without regard to whether the class would be manageable for trial. *See Amchem*, 521 U.S. at 620.

B. This Action Satisfies the Requirements of Rule 23(a)

Fed. R. Civ. P. 23(a) sets forth the four prerequisites to class certifications: (i) the class is so numerous that joinder of all members is impracticable (“numerosity”); (ii) the claims raise common questions of law or fact (“commonality”); (iii) the claims or defenses of the proposed representatives are typical of those of the class (“typicality”); and (iv) the representative parties can fairly and adequately protect the interests of the class (“adequacy”). The settlement class proposed here satisfies each of these prerequisites.

i. The Class is Numerous

Rule 23(a)(1) provides that a class must be “so numerous that joinder of all members is impracticable.” Here, the nationwide class includes individuals who held approximately 1,144,827 different payment card accounts. Courts in the Seventh Circuit have found that classes with significantly less members than the proposed settlement class satisfy the numerosity requirement. *See, e.g., In re AT&T Mobility Wireless*, 270 F.R.D. at 341 (citing *Swanson v. Am. Consumer Indus., Inc.*, 415 F.2d 1326, 1333 n. 9 (7th Cir.1969) (forty class members satisfy numerosity requirement)). The proposed settlement class is so numerous that joinder would be impracticable.

ii. The Action Presents Common Questions

Rule 23(a)(2) requires that “there are questions of law or fact common to the class.” Commonality focuses on the relationship of common facts and legal issues among class

members. 1 H. Newberg & A. Conte, *Newberg on Class Actions*, § 3:10 at 271 (4th ed. 2002).

“Courts have consistently found a ‘common nucleus of operative fact[s]’ when the defendants are alleged to have directed ‘standardized conduct toward [the putative class] members.’”

Chandler, 162 F.R.D. at 308 (quoting *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir.

1992)); accord *Suchanek v. Sturm Foods, Inc.*, 764 F.3d 750, 756 (7th Cir. 2014). Here,

commonality is satisfied because a determination of whether Defendant put reasonable information technology security in place prior to the Incident, and complied with its statutory

duties following the Incident, will resolve issues “central to the validity” of each class

member’s claims “in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011).

For purposes of Rule 23(a)(2), even a single common question will do. *Id.* at 2556.

iii. Plaintiffs’ Claims Are Typical

Rule 23(a)(3) requires that the settlement class representatives’ claims be typical of other proposed settlement class members’ claims. A “plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to . . . the same legal theory.”

Rosario, 963 F.2d at 1018 (quoting *De La Fuente v. Stokely-VanCamp, Inc.*, 713 F.2d 225, 232

(7th Cir. 1983)). While “the typicality requirement may be satisfied even if there are factual

distinctions between the claims of the named plaintiffs and those of other class members,” the

requirement “primarily directs the district court to focus on whether the named representatives’

claims have the same essential characteristics as the claims of the class at large.” *Muro v.*

Target Corp., 580 F.3d 485, 492 (7th Cir. 2009) (internal quotations omitted); see also *Garner*

v. Healy, 184 F.R.D. 598, 604 (N.D. Ill. 1999) (finding typicality satisfied where plaintiffs, like

the class, “believed that they were getting something more than they ultimately received”).

Typicality is satisfied here because Plaintiffs and the proposed settlement class members have

the same claims arising from the same alleged course of conduct—that Defendant allegedly failed to implement reasonable information technology security and then allegedly failed to respond to the Cybersecurity Incident that followed, adequately and in compliance with state law. Accordingly, the typicality requirement is met.

iv. Plaintiffs and Their Counsel Will Fairly and Adequately Protect the Interests of the Class

Rule 23(a)(4) requires that the named plaintiffs “fairly and adequately protect the interests of the class.” Adequacy is satisfied where the class representative (1) has retained competent counsel, (2) has a sufficient interest in the outcome of the case to ensure vigorous advocacy, and (3) does not have interests antagonistic to those of the class. Moreover, “it is clear that adequacy of representation is established when no collusion is shown between the representative and an opposing party, when the representative does not have or represent an interest adverse to the proposed intervenor, and when the representative has not failed in the fulfillment of his duty.” *Ebersohl v. Bechtel Corp.*, No. 09-1029-GPM, 2010 WL 2266736, at *2 (S.D. Ill. June 7, 2010) (quoting *Wade v. Goldschmidt*, 673 F.2d 182, 186 n.7 (7th Cir. 1982)).

Here, the interests of Plaintiffs and other members of the Settlement Class are fully aligned. Plaintiffs seek the same remedy as all proposed settlement class members: relief to address claims arising from the Cybersecurity Incident, through which certain Payment Card Information of proposed settlement class members may have been compromised. Further, proposed class counsel have extensive experience litigating and settling class actions, including class actions based on data breaches, false advertising, breach of contract, and unlawful business practices claims. They have demonstrated expertise in handling all aspects of complex litigation and class actions, and are well qualified to represent the Class. (Wolfson Decl. ¶ 3 & Ex. A; *see*

generally, Declaration of John Yanchunis, filed concurrently herewith). Plaintiffs and proposed class counsel remain fully committed to advancing the interests of, and obtaining relief for, the proposed settlement class members, as evidenced by the terms of the Revised Settlement Agreement. *See Culver v. City of Milwaukee*, 277 F.3d 908, 913 (7th Cir. 2002) (addressing Rule 23(a)(4)'s adequacy requirement).

In particular, both Group 1 Class Members and Group 2 Class Members are represented by the Settlement Class Representatives: Plaintiff Hilary Remijas is a Group 1 Class Member and Plaintiff Joanne Kao is a Group 2 Class Member. Both have approved the Revised Settlement with a full understanding of the benefits it provides to, and the release it requires from, similarly-situated settlement class members.

Plaintiffs' counsel and Defendant engaged in extended negotiations regarding the claims validation process, and throughout the negotiations, Plaintiffs' counsel sought to simplify the process and lower the burden that claimants must meet. That the parties ultimately agreed to the simple claims validation process described above is further evidence that Plaintiffs and their counsel will fairly and adequately represent absent proposed settlement class members.

C. This Action Satisfies the Requirements of 23(b)(3)

In addition to meeting the requirements of Rule 23(a), the parties seeking class certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b). Here, Fed. R. Civ. P. 23(b)(3) is satisfied because: (i) the questions of law and fact common to members of the class predominate over any questions affecting only individuals; and (ii) the class action mechanism is superior to any other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3).

i. Common Questions of Law and Fact Predominate

Rule 23(b)(3) “does *not* require a plaintiff seeking class certification to prove that each ‘elemen[t] of [her] claim is susceptible to classwide proof.’” *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1196 (2013) (emphasis and alterations in original) (citation omitted). Plaintiffs need only show that “common questions ‘predominate over any questions affecting only individual [class] members.’” *Id.* (quoting Fed. R. Civ. P. 23(b)(3)); *see also Pella Corp. v. Saltzman*, 606 F.3d 391, 394 (7th Cir. 2010) reversed on other grounds by *Eubank v. Pella Corp.*, 753 F.3d 718 (7th Cir. 2014) (predominance requirement may be satisfied when “the central questions in the litigation are the same for all class members”). Class action status is appropriate where common questions represent a significant aspect of a case and they can be resolved in a single action. *See* 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 1778, at 528 (2d ed. 1986). Common questions, however, need not be dispositive of the entire action, because “predominate” does not mean “determinative.” *Id.* at 528-29. The presence of “some factual variation among the class grievances will not defeat a class action.” *Rosario*, 963 F.2d at 1017.

Here, the claims are based upon uniform conduct regarding a single Cybersecurity Incident that affected all proposed settlement class members in similar fashion. The Rule 23(b)(3) predominance requirement is satisfied.

ii. A Class Action Is Superior

A class action is superior to other available methods for the fair and efficient adjudication of this controversy. To determine the issue of “superiority,” Rule 23(b)(3) enumerates the following factors: “(A) [T]he interest of members of the class in individually controlling the

prosecution . . . of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by . . . members of the class; (C) the desirability . . . of concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class action.” Fed. R. Civ. P. 23(b)(3).

Each of these factors supports certifying the proposed settlement class. There is little interest or incentive for proposed settlement class members to individually control the prosecution of separate actions. While the total amount of economic harm caused by this Cybersecurity Incident is significant, the settlement class Members’ individual claims are too small to justify the potential litigation costs that would be incurred by prosecuting these claims individually. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985). Although the injuries resulting from Defendant’s alleged failure to secure and safeguard the Payment Card Information of the settlement class are real, the cost of individually litigating such cases against Defendant would easily exceed the value of any relief that could be obtained by any one consumer. This fact strongly warrants a finding that a class action is a superior method of adjudication. In sum, the proposed settlement class’s claims satisfy Rule 23(b)(3)’s requirements, and should be certified.

D. Plaintiffs’ Counsel Should Be Appointed Class Counsel Under Rule 23(g)

Rule 23(g)(1) states that “a court that certifies a class must appoint class counsel.” As discussed *supra*, and in the Declarations of Tina Wolfson and John Yanchunis, Plaintiffs’ counsel are well-qualified.

E. The Proposed Class Notice Is Adequate

Class notice must be “reasonably calculated, under all the circumstances, to apprise

interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Trust*, 339 U.S. 306, 314 (1950). Notice must clearly and concisely state the following, in plain, easily understood language: (i) the nature of the action; (ii) the class definition; (iii) the class claims; (iv) that a class member may enter an appearance through an attorney; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members. Fed. R. Civ. P. 23(c)(2)(B). Rule 23(e)(B) similarly directs that “[t]he court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.”

Here, the method and form of notice meet all of the requirements of Rule 23. The proposed notice program will include direct notice to all proposed settlement class members for whom Neiman Marcus can ascertain contact information from its records with reasonable effort. (Revised Settlement Agreement ¶¶ 61, 65.) Moreover, the Summary Notice and Long Form Notice are written in clear and concise language and contain the information required by Rule 23(c)(2)(B). (*Id.* Exs. C, F.) The proposed Notice, *inter alia*, describes the nature, history, and status of the action; sets forth the definition of the proposed settlement class; states the proposed settlement class’s claims and relevant issues; informs proposed settlement class members of the right to exclude themselves from the settlement class or object to the Revised Settlement Agreement, as well as the deadline and procedure for doing so; sets out the attorneys’ fees and expenses that class counsel intend to seek in connection with final settlement approval; provides contact information for class counsel; warns of the binding effect of the settlement approval proceedings; and outlines the date, time, and place of the Fairness Hearing.

Notice will be disseminated both directly to proposed settlement class members, as well as through a combination of traditional print publication and internet banner advertisements tailored

to reach the target audience. (*Id.* Ex. G.) The internet campaign will implement multiple targeting layers to ensure that notice is delivered to the persons most likely to be members of the proposed settlement class, including search targeting, demographic targeting, category contextual targeting, keyword contextual targeting, site retargeting, and purchase data targeting. (*Id.* Ex. H, ¶ 29.) The Notice, therefore, is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane*, 339 U.S. at 314 (1950). Accordingly, the forms of notice and plan of dissemination should be approved.

VI. CONCLUSION

For all of the foregoing reasons, Settlement Class Representatives, by their counsel, respectfully ask that the Court (1) preliminarily approve the terms of the Revised Settlement as fair, adequate, and reasonable; (2) provisionally certify the Settlement Class under Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (3) approve the notice program set forth in the Revised Settlement Agreement and exhibits thereto and approve the form and content of the notice; (4) approve the procedures set forth in the Revised Settlement Agreement for settlement class members to exclude themselves from the settlement class or to object to the Revised Settlement; (5) stay all proceedings in this matter unrelated to the Revised Settlement pending final approval of the Revised Settlement; (6) stay and/or enjoin, pending final approval of the Revised Settlement, any actions brought by settlement class members concerning a released claim; and (7) schedule a fairness hearing for the purpose of determining whether the Revised Settlement is fair, reasonable, and adequate and, therefore, deserving of final approval.

Dated: October 28, 2019

Respectfully submitted,

/s/ Tina Wolfson

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REVISED SETTLEMENT AGREEMENT AND RELEASE

This Revised Settlement Agreement and Release is made and entered into on September 26, 2019, by and among (1) Settlement Class Representatives (as identified in Paragraph 43), for themselves and on behalf of the Settlement Class (as defined in Paragraph 40), and (2) The Neiman Marcus Group LLC (“Neiman Marcus”), pertaining to the putative class action lawsuit captioned *Hilary Remijas and Joanne Kao v. The Neiman Marcus Group, LLC*, Case No. 1:14-cv-01735 (N.D. Ill.), subject to preliminary and final Court approval as required by Rule 23 of the Federal Rules of Civil Procedure. Settlement Class Representatives and Neiman Marcus enter into this agreement by and through their respective counsel. Settlement Class Representatives and Neiman Marcus are collectively referred to herein as the “Parties.” This Revised Settlement Agreement and Release and Exhibits “A” to “H,” attached hereto, are collectively referred to herein as the “Agreement” or the “Settlement Agreement.”

I. RECITALS

1. In January 2014, Neiman Marcus announced that it had experienced a cybersecurity intrusion that caused the potential compromise of the Payment Card information of certain of its customers who used Payment Cards (as defined in Paragraph 31) to make purchases at certain stores owned by Neiman Marcus (“the Cybersecurity Incident” or “the Incident”).

2. After Neiman Marcus’s announcement of the Incident, the Action was filed against Neiman Marcus in the United States District Court for the Northern District of Illinois.

3. On June 2, 2014, plaintiffs Hilary Remijas, Melissa Frank, Debbie Farnoush, and Joanne Kao in the Action filed a First Amended Class Action Complaint (Dkt. No. 27) (“FAC”), alleging negligence, breach of implied contract, unjust enrichment, violation of state unfair business practices statutes, invasion of privacy, and violation of state data breach acts.

4. The FAC alleged that the Cybersecurity Incident began in March 2013 and continued until January 10, 2014. However, the time period when the Malware operated in NMG Stores was between July 16, 2013 to and October 30, 2013 (“the Malware Period”). Moreover: (a) the Malware never operated in some NMG Stores and never operated in any restaurants owned by Neiman Marcus; (b) as to the NMG Stores where the Malware did operate, it did not operate in each of the stores during each day of the Malware Period but instead operated on dates that varied from store to store; and (c) often, the Malware only operated during part of the time that each store was open for business, and the times when the Malware operated varied from day to day within each individual store and among the stores where the Malware operated.

5. During the Malware Period, as defined below, approximately 1,144,827 different Payment Card accounts were used at NMG Stores. Out of these approximately 1,144,827 different Payment Card accounts, approximately 370,385 Payment Card accounts were used at an NMG Store during the Malware Period on a date and at a time that the Malware was operating in that store. The remaining approximately 774,442 Payment Card accounts were not exposed to the Malware at any time and could not have been compromised as a result of the Cybersecurity Incident.

6. Between December 2015 and September 2019, the Parties participated in three formal mediation sessions with mediator Judge Wayne R. Andersen (retired) of JAMS, Inc, engaged in numerous telephonic conversations and negotiations with Judge Andersen, and conducted extensive negotiations directly among counsel.

7. On March 17, 2017, Plaintiffs moved for preliminary approval of a class action settlement between Plaintiffs and Neiman Marcus dated February 23, 2017 (the “Initial Settlement”). On June 21, 2017, the Court granted preliminary approval to the Initial Settlement, and the Court-appointed Settlement Administrator disseminated notice to class members regarding that Initial Settlement. On September 17, 2018, the Court denied final approval to the Initial Settlement based on issues described in the Court’s written opinion, issues which the Parties believe they have successfully addressed in this Revised Settlement Agreement.

8. On September __, 2019, Plaintiffs Hilary Remijas, who is a “Group 1 Class Member,” as defined below in Paragraph 20, and Joanne Kao, who is a “Group 2 Class Member” as defined below in Paragraph 21, filed a Second Amended Complaint (the “Complaint”) with the written consent of Neiman Marcus.

9. The Parties now agree to settle the Action in its entirety, without any admission of liability by Neiman Marcus. The Parties intend this Agreement to bind Settlement Class Representatives, Neiman Marcus, and all Settlement Class Members who do not timely and properly exclude themselves from the Settlement pursuant to Paragraph 66.

NOW THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, it is hereby stipulated and agreed by the Parties that the Action be settled, compromised, and dismissed on the merits and with prejudice as to Neiman Marcus, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth in this Agreement.

II. DEFINITIONS

In addition to the terms defined at various points within this Agreement, the following defined terms apply throughout this Agreement:

10. “Action” means the civil action entitled *Hilary Remijas and Joanne Kao v. The Neiman Marcus Group, LLC*, Case No. 1:14-cv-01735 (N.D. Ill.).

11. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court to Class Counsel to compensate Class Counsel for their fees, costs, and expenses in connection with the Action and the Settlement, as described in Paragraphs 78 to 80 of this Agreement.

12. “Claims Deadline” means a date that is 180 days after the date of the Notice Deadline.

13. “Claim Form” or “Claim(s)” means the form that Settlement Class Members must submit by the Claims Deadlines to be eligible for monetary relief under the terms of the Settlement, substantially in the form attached hereto as Exhibit “A,” and which may be modified

by agreement of the Parties to meet the requirements of the Settlement Administrator.

14. “Class Counsel” means Tina Wolfson, Theodore W. Maya, and Robert Ahdoot of Ahdoot & Wolfson, PC and John A. Yanchunis of Morgan & Morgan Complex Litigation Department.

15. “Court” means the United States District Court for the Northern District of Illinois.

16. “Effective Date” means the first business day after which all of the following events have occurred:

a. the Final Order and Final Judgment have been entered; and

b.1. if reconsideration and/or appellate review is not sought from the Final Order and Final Judgment, the expiration of the time for the filing or noticing of any motion for reconsideration, appeal, petition, and/or writ; or

b.2. if reconsideration and/or appellate review is sought from the Final Order and Final Judgment: (A) the date on which the Final Order and Final Judgment are affirmed and are no longer subject to judicial review, or (B) the date on which the motion for reconsideration, appeal, petition, or writ is dismissed or denied and the Final Order and Final Judgment are no longer subject to judicial review.

The Effective Date shall not be altered in the event the Court declines to approve, in whole or in part, the payment of Attorneys’ Fees and Expenses in the amounts that Class Counsel requests (“Fee Request”).

17. “Fairness Hearing” means the hearing that is to take place after the entry of the Preliminary Approval Order and after the Notice Date for purposes of: (a) entering the Final Approval Order and Final Judgment and dismissing the Action with prejudice; (b) determining whether the Settlement should be approved as fair, reasonable, and adequate; (c) ruling upon an application for Service Awards by the Plaintiffs; (d) ruling upon an application by Class Counsel for Attorneys’ Fees and Expenses; and (e) entering any final order awarding Attorneys’ Fees and Expenses and Service Awards. The Parties shall request that the Court schedule the Fairness Hearing for a date that is in compliance with the provisions of 28 U.S.C. § 1715(d).

18. “Final Approval” means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Awards (as defined in Paragraphs 77-78). In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

19. “Final Order and Final Judgment” means the Court’s order and judgment that the Court enters upon Final Approval, substantially in the form attached hereto as Exhibit “B.”

20. “Group 1 Class Members” means Settlement Class Members who held at least one of the approximately 370,385 Payment Card accounts that were used at an NMG Store on a date and at a time that the Malware was actually operating in that store during the Malware Period.

21. “Group 2 Class Members” means Settlement Class Members who are not Group 1 Class Members.

22. “Long Form Notice” means the long form notice of settlement, substantially in the form of the document attached to this Agreement as Exhibit “C.”

23. “Malware” means the malicious software that was capable of collecting Payment Card data and that a hacker or hackers successfully inserted into Neiman Marcus’s system.

24. “NMG Stores” means stores at physical locations operating under the “Neiman Marcus,” “Bergdorf Goodman,” “Cusp,” and “Last Call” names, but excluding all restaurants operating in any such stores, and excluding any website or online store.

25. “Notice” means the Long Form Notice and Summary Notice that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.

26. “Notice Date” means the first date upon which the Notice is disseminated.

27. “Notice Deadline” means the date that is 30 days after the Preliminary Approval Order is issued by the Court.

28. “Notice Program” means the plans and methods for the dissemination of the Notice provided for and agreed to in this Agreement in Section VIII.

29. “Objection Deadline” means 45 days after the Notice Deadline.

30. “Opt-Out Deadline” means 45 days after the Notice Deadline.

31. “Payment Card” means a credit card or a debit card.

32. “Personal Information” means Payment Card data including Payment Card account numbers, expiration dates, card verification values, and cardholder names.

33. “Plaintiffs” means the plaintiffs named in the Complaint: Hilary Remijas and Joanne Kao.

34. “Preliminary Approval Order” means the order preliminarily approving the Settlement and proposed Notice and Notice Program, substantially in the form of the document attached to this Agreement as Exhibit “D.”

35. “Publication Notice” means the online and print notices of settlement

substantially in the form of the documents attached to this Agreement as Exhibit “E.”

36. “Releasing Parties” means the Settlement Class Representatives and all Settlement Class Members who do not timely and properly exclude themselves from the Settlement, and each of their respective heirs, assigns, beneficiaries, and successors.

37. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement including the exhibits hereto.

38. “Settlement Administrator” means the qualified third party administrator and agent agreed to by the Parties and approved and appointed by the Court in the Preliminary Approval Order to administer the Settlement, including providing the Notice. The Parties agree to recommend that the Court appoint Angeion Group as Settlement Administrator to: (a) design, consult on, and implement the Notice Program and related requirements of this Agreement; and (b) implement the Notice Program, the Settlement Website, the submission and review of Claim Forms, and related requirements of this Agreement, subject to the Court’s approval. Class Counsel and Neiman Marcus may, by agreement, substitute a different Settlement Administrator, subject to approval by the Court. In the absence of agreement, either Class Counsel or Neiman Marcus may move the Court to substitute a different Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

39. “Settlement Administration Charges” means all charges or costs, including those arising from implementation of the Notice Program, purchasing the advertisements described in the Notice Program, dissemination of the Notice, and administration of the claims and Settlement, invoiced or charged by the Settlement Administrator that the Parties agree were reasonably incurred by the Settlement Administrator in carrying out the duties described in the Settlement Agreement, and such agreement shall not be unreasonably withheld.

40. “Settlement Class” means all residents of the United States who held a credit card or debit card account that was used in any NMG Store during the Malware Period. Excluded from the Settlement Class are the judge presiding over this matter, any members of his judicial staff, the officers and directors of Neiman Marcus, and persons who timely and validly request exclusion from the Settlement Class, pursuant to Paragraph 66.

41. “Settlement Class Members” means all persons who fall within the Settlement Class.

42. “Settlement Class Period” means July 16, 2013 to October 30, 2013.

43. “Settlement Class Representatives” means Hilary Remijas and Joanne Kao.

44. “Settlement Fund” means the amount of up to \$1,600,000 that Neiman Marcus will pay, pursuant to Paragraphs 49-51 of this Agreement, as part of the consideration for the release of all claims as provided in this Agreement.

45. “Settlement Website” means the Internet website that the Settlement Administrator will establish as soon as practicable following Preliminary Approval, but prior to the commencement of the Notice Program, as a means for Settlement Class Members to obtain notice of and information about the Settlement. The URL of the Settlement Website shall be www.NMSettlement.com.

46. “Summary Notice” means the summary form notice of settlement, substantially in the form of the document attached to this Agreement as Exhibit “F.”

III. SETTLEMENT CLASS

47. For settlement purposes only, the Parties agree that the Court should certify the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3).

48. For settlement purposes only, Class Counsel shall seek and Neiman Marcus shall not oppose the appointment of Class Counsel as settlement class counsel and appointment of the Settlement Class Representatives. The Settlement Class Representatives will move for certification of the Settlement Class contemporaneously with their motion for preliminary approval of the Settlement. Neiman Marcus agrees not to contest certification of the Settlement Class pursuant to the terms of this Settlement Agreement.

IV. SETTLEMENT PAYMENTS

49. In consideration for the Release contained in this Agreement, and without admitting liability for any of the alleged acts or omissions alleged in the Complaint, and in the interests of minimizing the costs inherent in any litigation, Neiman Marcus will pay up to \$1,600,000 to create the two components of the Settlement Fund, as set forth in this Section IV.

50. The first component of the Settlement Fund, the “Settlement Administration Fund,” will be used to pay Settlement Administration Charges, which the Parties expect will amount to \$400,000.

a. Following the entry of the Preliminary Approval Order as contemplated by Paragraph 54, Neiman Marcus shall pay Settlement Administration Charges (the “Periodic Payment(s)”) within thirty (30) calendar days after the submission of an invoice by the Settlement Administrator. Any such payments by Neiman Marcus constitute the Settlement Administration Fund.

b. In the event that the Settlement Administration Charges amount to less than \$400,000, Neiman Marcus will retain the difference between such Settlement Administration Charges and \$400,000.

c. In the event the Settlement Administration Charges exceed \$400,000, those charges above that amount (the “Excess Notice and Administration Costs”) will be paid as follows:

i. First, any Excess Notice and Administration Costs will be paid from any Residual Settlement Payments Fund (as defined below), pursuant to Paragraph 53(c)(i).

ii. Second, Neiman Marcus will pay any Excess Notice and Administration Costs that the Residual Settlement Payments Fund has insufficient funds to pay.

d. Under no circumstances (including if this Agreement is terminated, the Settlement is not approved, or the Effective Date does not occur) will the Plaintiffs, Plaintiffs' attorneys, and / or Class Counsel be obligated to pay any Settlement Administration Charge.

51. The second component of the Settlement Fund, the "Settlement Payments Fund," will be used to pay Settlement Class Members who submit valid and timely Claims, Service Awards, Attorneys' Fees and Expenses, and any taxes due on the Settlement Payments Fund, and will amount to \$1,200,000.

a. To create the Settlement Payments Fund, within fifteen (15) calendar days of the Effective Date, Neiman Marcus shall pay and deposit \$1,200,000 (the "Settlement Payments Fund Deposit") into an escrow bank account ("Escrow Account"), to be created and administered by the Settlement Administrator.

b. The Settlement Administrator shall timely furnish to Neiman Marcus any required account information, wiring instructions, or necessary forms before a payment is made. The Settlement Payments Fund shall be a Qualified Settlement Fund (pursuant to Treas. Reg. § 1.468B-1) in interest bearing bank account deposits with commercial banks with excess capital exceeding \$100,000,000, with a rating of "A" or higher by S&P and insured by the FDIC. All funds in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed and / or further order of the Court. Interest earned on deposits in the Escrow Account, less any taxes owed thereon (if any), will be added to the Settlement Payments Fund for the benefit of the Class. The Settlement Administrator shall be responsible for all administrative, accounting and tax compliance activities in connection with the Escrow Account and the Settlement Payments Fund and the monies deposited into the Escrow Account, including any filing necessary to obtain Qualified Settlement Fund status pursuant to Treas. Reg. § 1.468B-1. Neiman Marcus shall provide to the Settlement Administrator any documentation necessary to facilitate obtaining Qualified Settlement Fund status for the Settlement Payments Fund pursuant to Treas. Reg. § 1.468B-1. All taxes on interest income generated by the funds in the Settlement Payments Fund, if any, shall be paid out of the Settlement Payments Fund.

52. Business Practice Changes. Neiman Marcus represents that from January 2014, the month when it learned preliminary information about the Cybersecurity Incident and when the initial lawsuit was filed, on January 13, 2014, against Neiman Marcus relating to the Cybersecurity Incident, to the date of this agreement, Neiman Marcus has taken numerous measures to further enhance the security of its customers' data, including the measures set out below. The Parties agree that Neiman Marcus has taken the following measures and that such measures remain in effect as of the date of this Settlement Agreement:

a. Chief Information Security Officer. Neiman Marcus created and filled the

position of Chief Information Security Officer (CISO), an executive position with responsibility to coordinate and be responsible for Neiman Marcus's program(s) to protect the security of customers' Personal Information.

b. *Information Security Organization.* Neiman Marcus created a new organizational unit responsible for information security and has hired employees to fill the organization, including a Director of Security Operations and a Director of Security, Risk Management and Compliance.

c. *Senior Leadership Reporting.* Neiman Marcus increased the frequency and depth of reporting to its executive team and members of its board of directors about its cybersecurity efforts and the cybersecurity threat landscape.

d. *Chip-Based Payment Card Infrastructure.* Neiman Marcus equipped all of its Stores with devices that allow customers to pay for purchases using payment cards containing embedded computer chips.

e. *Employee Education.* Neiman Marcus expanded its program to educate and train its workforce on methods to protect the privacy and security of its customers' information.

f. *Log Analysis Tool.* Neiman Marcus invested in a new tool to automatically collect and analyze logs generated by Neiman Marcus systems for potential security threats.

g. *Information Sharing.* Neiman Marcus joined several public-private partnerships that facilitate information sharing concerning cybersecurity and threat awareness.

This Paragraph 52 recites only some of the business practice changes that Neiman Marcus has implemented following the Cybersecurity Incident and the filing of the initial lawsuit relating to the Cybersecurity Incident. The recitation of these business practices is intended to provide information to Class Members and the Court about some of Neiman Marcus's cybersecurity actions following the Cybersecurity Incident and the filing of the initial lawsuit relating to the Cybersecurity Incident and does not create any rights or obligation. Neiman Marcus may, in its discretion, amend the business practices described in this Paragraph 52 or adopt other or alternate cybersecurity business practices in the future.

V. DISTRIBUTION PLAN

53. The funds in the Settlement Payments Fund shall be distributed as follows:

a. *Step 1:* Within three (3) business days after Neiman Marcus's payment / deposit of the Settlement Payments Fund Deposit in to the Escrow Account pursuant to Paragraph 51 herein, the Settlement Administrator will use the funds in the Settlement Payments Fund to pay (i) any taxes due on the Settlement Payments Fund, (ii) any Service Awards approved by the Court, and (iii) the Attorneys' Fees and Expenses approved by the Court. The balance of the Settlement Payments Fund after these payments are made is the "Net Settlement Payments Fund Amount."

b. Step 2: Within sixty (60) calendar days after the Effective Date, the Settlement Administrator will pay, from the Settlement Payments Fund, an amount of up to \$100.00 to each Group 1 Class Member who submitted a valid and timely Claim to the Settlement Administrator pursuant to the Settlement Administration Protocol attached hereto as Exhibit “G” (“Group 1 Valid Claimants”), and an amount of up to \$25.00 to each Group 2 Class Member who submitted a valid and timely Claim to the Settlement Administrator pursuant to the Settlement Administration Protocol attached hereto as Exhibit “G” (“Group 2 Valid Claimants” and, collectively with Group 1 Valid Claimants, “Valid Claimants”). If the Net Settlement Payments Fund Amount is insufficient to pay all Valid Claimants in full, then the amounts payable shall be reduced in the order below, until the amount payable to Valid Claimants equals the Net Settlement Payments Fund Amount.

i. First, the cash payment to be provided to each Group 2 Valid Claimant shall be reduced on a *pro rata* basis, with a minimum of \$5.00.

ii. Second, the cash payment to be provided to each Group 1 Valid Claimant shall be reduced on a *pro rata* basis, with a minimum of \$10.00.

iii. Third, the cash payment to be provided to each Group 2 Valid Claimant shall be further reduced on a *pro rata* basis, with no minimum.

iv. Fourth, the cash payment to be provide to each Group 1 Valid Claimant shall be further reduced on a *pro rata* basis.

v. The Settlement Administrator shall calculate any such *pro rata* reduction and distribute the Net Settlement Payments Fund Amount, on that *pro rata* basis, to the Valid Claimants.

c. Step 3: Any funds remaining in the Settlement Payments Fund after Steps 1 and 2 (the “Residual Settlement Payments Fund”) shall be distributed as follows:

i. First, any Excess Notice and Administration Costs as defined in Paragraph 50(c) will be paid.

ii. Second, if any funds remain in the Residual Settlement Payments Fund after payments made under Paragraph 53(c)(i), the Settlement Administrator will estimate the cost of sending a check to each Group 1 Class Member for whom Neiman Marcus has a mailing address, and who did not previously submit a valid and timely Claim pursuant to Paragraph 53(b) (“Non-Claiming Group 1 Class Members”). After subtracting this estimated cost from the funds remaining in the Residual Settlement Payments Fund, any remaining amounts will be distributed to the Non-Claiming Group 1 Class Members on a *pro rata* basis, provided that the amount sent to each Non-Claiming Group 1 Class Member would exceed \$5.00. If the amount sent to each Non-Claiming Group 1 Class Member would not exceed \$5.00, then the Settlement Administrator will not send checks to the Non-Claiming Group 1 Class Member, and the funds will be distributed pursuant to Paragraph 53(c)(iii).

iii. Third, if any funds remain in the Settlement Payments Fund, including any funds that remain in the Settlement Payments Fund as a result of the expiration of

checks not cashed by Class Members within one hundred eighty one (181) days after issuance, the remaining funds will be donated to an Internal Revenue Code Section 501(c)(3) charitable organization chosen jointly by the Parties.

VI. PRELIMINARY APPROVAL

54. Upon execution of this Agreement by the Parties, Class Counsel shall promptly move the Court to enter an Order substantially in the form of the Preliminary Approval Order. The motion for preliminary approval shall request, among other things set forth in the Preliminary Approval Order, that the Court: (i) preliminarily approve the terms of the Settlement as within the range of fair, adequate, and reasonable; (ii) provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (iii) approve the Notice Program set forth herein and approve the form and content of the Notice; (iv) approve the procedures set forth in Section VIII for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (v) stay all proceedings in this matter unrelated to the Settlement pending Final Approval of the Settlement; (vi) stay and/or enjoin, pending Final Approval of the Settlement, any actions brought by Settlement Class Members concerning a Released Claim; and (vii) schedule a Fairness Hearing for a time and date convenient for the Court.

55. Within 10 days of the filing of the motion for preliminary approval, Neiman Marcus, at its own expense, shall serve or cause to be served through the Settlement Administrator a notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b).

VII. SETTLEMENT ADMINISTRATOR

56. The Settlement Administrator shall perform the functions specified for the Settlement Administrator in this Agreement and in the Declaration of the Settlement Administrator attached hereto as Exhibit "H," including, but not limited to, overseeing administration of the Settlement Fund; providing E-mail Notice and Mail Notice to Settlement Class Members as described in Section VIII; effecting the Notice Plan; establishing and operating the Settlement Website and a toll-free number; administering the Claims processes; and distributing cash payments according to the processes and criteria set forth herein and in the Settlement Administration Protocol attached hereto as Exhibit "G."

57. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, include:

- a. Obtaining from Neiman Marcus and securely maintaining the name, mailing address, and/or e-mail address information of Settlement Class Members for the purpose of sending E-Mail Notice and U.S. Mail Notice to Settlement Class Members;
- b. Obtaining from Neiman Marcus information necessary to carry out the claim validation procedure set forth in the Settlement Administration Protocol attached hereto as Exhibit "G";

- c. Effecting the Notice Program and performing the duties ascribed to the Settlement Administrator in this Agreement;
- d. Establishing and maintaining a post office box for mailed written notifications of exclusion from the Settlement Class;
- 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;
- g. Responding to any mailed Settlement Class Member inquiries;
- h. Processing all written notifications of exclusion from the Settlement Class;
- i. Providing weekly reports and, no later than ten days after the Opt-Out Deadline, a final report to Class Counsel and Neiman Marcus, that summarize the number of written notifications of exclusion received that week, the total number of written notifications of exclusion received to date, and other pertinent information as requested by Class Counsel and Neiman Marcus's counsel;
- j. In advance of the Fairness Hearing, preparing a declaration to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly provided written notification of exclusion from the Settlement Class;
- k. Reviewing, determining the validity of, and responding to all Claims submitted by Settlement Class Members, pursuant to criteria set forth in the Settlement Administration Protocol attached hereto as Exhibit "G;"
- l. After the Effective Date, processing and transmitting distributions to Settlement Class Members, Class Representatives, Class Counsel, and the Settlement Administrator, as required by and in accordance with Section V;
- m. Providing weekly reports and a final report to Class Counsel and Neiman Marcus that summarize the number of Claims since the prior reporting period, the total number of Claims received to date, the number of any Claims approved and denied since the prior reporting period, the total number of Claims approved and denied to date, and other pertinent information as requested by Class Counsel and Neiman Marcus's counsel; and
- n. Performing any function related to Settlement administration at the agreed-upon instruction of both Class Counsel and Neiman Marcus, including, but not limited to, verifying that cash payments have been distributed in accordance with Section V.

VIII. NOTICE, OPT-OUTS, AND OBJECTIONS

58. Upon entry of the Preliminary Approval Order, the Settlement Administrator will implement the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order.

59. Notice of the Settlement to the Settlement Class Members shall comply with the Federal Rules of Civil Procedure and any other applicable statute, law, or rule, including but not limited to, the Due Process Clause of the United States Constitution.

60. Notice of the Settlement shall be provided to members of the settlement class described in the Initial Settlement, which included all residents of the United States who held a credit card or debit card account that was used in any NMG Store at any time from July 16, 2013 to January 10, 2014 (“Initial Settlement Class Members”), regardless of whether such persons are Settlement Class Members, pursuant to the methods ordered by the Court and set forth herein.

61. *Class Member Information:*

a. No later than three (3) business days after entry of the Preliminary Approval Order, Neiman Marcus shall provide the Settlement Administrator with the name, address, e-mail, and other contact information that Neiman Marcus has in its possession for each Initial Settlement Class Member for which it has such information, and to the extent possible will indicate whether each such person is a Settlement Class Member;

b. For each Settlement Class Member, Neiman Marcus will provide the Settlement Administrator with (i) the last four (4) digits of all credit and / or debit cards used by all Settlement Class Members at NMG Stores during the Malware Period, and (ii) the corresponding date(s) and location(s) of all purchases made by Settlement Class Members at NMG Stores during the Malware Period.

c. To the extent possible, Neiman Marcus shall match the information required by Paragraph 61(b) to the name or identity of the Settlement Class Member.

d. Neiman Marcus warrants and represents that it is in possession of the information required by Paragraph 61(b) for all Settlement Class Members.

e. Neiman Marcus warrants and represents that when it provides the information required by this Paragraph 61, it will provide information that is current as of no more than one month prior to the execution of this Settlement Agreement. Neiman Marcus shall not be required to update any such information after providing it. The information required by this Paragraph 61 shall mean and collectively be referred to as “Class Member Information.”

62. *Settlement Website:* Prior to the Notice Date, the Settlement Administrator shall establish the Settlement Website at www.NMSettlement.com that will inform Settlement Class Members of the terms of this Agreement, their rights, dates and deadlines and related information, including periodic updates, a list of important dates, hyperlinked access to this Agreement, the Long Form Notice and Summary Notice, any motion seeking Final Approval of

this Agreement, any motion for an award of Attorneys' Fees and Expenses and Service Awards, the order preliminarily approving this Settlement, the Claim Form, the Complaint and such other documents as Class Counsel and Neiman Marcus agree to post or that the Court orders posted on the website. The Settlement Website shall not include any advertising and shall remain operational until at least 30 days after the Claims Deadline. The Settlement Website shall provide Settlement Class Members with the ability to complete and submit the Claim Form electronically. The Settlement Website shall also make the Claim Form available for download. Advertisements on the Internet, if any, shall direct Class Members to the website.

63. *The Long Form Notice:* The Long Form Notice shall be in a form substantially similar to the document attached to this Agreement as Exhibit "C" and shall comport with the following:

a. General Terms: The Long Form Notice shall contain a plain and concise description of the nature of the Action and the proposed Settlement, including information on the definition of the Settlement Class, the identity of Settlement Class Members, how the proposed Settlement would provide relief to Settlement Class Members, the date upon which the Fairness Hearing will occur, the address of the Settlement Website at which Settlement Class Members may access this Agreement and other related documents and information, what claims are released under the proposed Settlement, and other relevant information.

b. Opt-Out Rights: The Long Form Notice shall inform Settlement Class Members that they have the right to opt out of the Settlement. The Long Form Notice shall provide the deadlines and procedures for exercising this right.

c. Objection to Settlement: The Long Form Notice shall inform Settlement Class Members of their right to object to the proposed Settlement and appear at the Fairness Hearing. The Long Form Notice shall provide the deadlines and procedures for exercising these rights.

d. Fees and Expenses: The Long Form Notice shall inform Settlement Class Members of the maximum amounts to be sought by Class Counsel as Attorneys' Fees and Expenses and individual Service Awards to Plaintiffs, and shall explain that the fees and expenses awarded to Class Counsel, Service Awards to Plaintiffs, and certain Settlement Administration Charges, in addition to amounts being made available for relief to Settlement Class Members, will be deducted from the Settlement Payments Fund and be paid out of the Settlement Payments Fund.

e. Claim Form: The Long Form Notice shall describe the Claim Form and shall inform the Settlement Class Member: (i) the criteria to be used to determine whether the Settlement Class Member is a Group 1 Class Member or Group 2 Class Member; and (ii) that in order to claim any payment pursuant to the Settlement, the Settlement Class Member must fully complete and timely submit the Claim Form prior to the Claim Deadline.

64. *Toll Free Telephone Number:* Prior to the Notice Date, the Settlement Administrator shall establish a toll-free telephone number, through which Settlement Class Members may obtain information about the Action and the Settlement and request a mailed copy

of the Long Form Notice and/or the Claim Form, pursuant to the terms and conditions of this Agreement.

65. As set forth in the Declaration of the Settlement Administrator attached hereto as Exhibit “H,” the Notice Program has four components: (1) E-Mail of the Summary Notice; (2) dissemination of the Summary Notice by U.S. Mail; (3) Publication Notice; and (4) Notice on the Settlement Website by posting the Long Form Notice, the Summary Notice, and relevant documents and information. Within ten (10) days after the entry of the Preliminary Approval Order and to be substantially completed no later than the Notice Deadline, and subject to the requirements of this Agreement and the Preliminary Approval Order, the Parties shall coordinate with the Settlement Administrator to provide Notice pursuant to the Notice Program as follows:

a. The Settlement Administrator shall send the Summary Notice via E-mail to all Initial Settlement Class Members for whom Neiman Marcus can ascertain an e-mail address from its records with reasonable effort;

b. In the event an e-mail address for a Initial Settlement Class Member cannot be ascertained by Neiman Marcus, or the Settlement Administrator learns (through an email “bounce-back” or otherwise) that the e-mail address in Neiman Marcus’s records is invalid, the Settlement Administrator shall send the Summary Notice *via* U.S. Mail Notice to all such Settlement Class Members for whom Neiman Marcus can ascertain a mailing address from its records with reasonable effort. For any Mail Notices that are returned undeliverable with forwarding address information, the Settlement Administrator shall re-mail the Summary Notice to the updated address as indicated. For any U.S. Mailed Summary Notices that are returned undeliverable without forwarding address information, the Settlement Administrator shall use reasonable efforts to identify updated mailing addresses (such as running the mailing address through the National Change of Address Database) and re-mail the Summary Notice to the extent updated addresses are identified. The Settlement Administrator need only make one attempt to re-mail any Summary Notices that are returned as undeliverable;

c. Publishing the Publication Notice as set forth in the Declaration of the Settlement Administrator, attached hereto as Exhibit “H;”

d. Publishing, on or before the Notice Date, the Long Form Notice on the Settlement Website, as specified in the Preliminary Approval Order and as set forth in the Declaration of the Settlement Administrator, attached hereto as Exhibit “H;” and

e. Providing the Internet URL address of the Settlement Website (www.NMSettlement.com) in the Long Form Notice and the Summary Notice.

66. Settlement Class Members may elect to opt out of the Settlement, relinquishing their rights to benefits hereunder. The Notice shall include a procedure for Settlement Class Members to exclude themselves from the Settlement Class by notifying the Settlement Administrator in writing of the intent to exclude himself or herself from the Settlement Class. Settlement Class Members who opt out of the Settlement will not release their claims pursuant to this Agreement. Such written notification must be postmarked no later than the Opt-Out Deadline, as specified in the Notice. The written notification must include the individual’s name

and address; a statement that he or she wants to be excluded from the Action; and the individual's signature. The Settlement Administrator shall provide the Parties with copies of all opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Class Counsel may move to file under seal with the Court no later than 10 days prior to the Fairness Hearing. Any Settlement Class Member who does not timely and validly exclude himself or herself shall be bound by the terms of the Settlement.

67. The Notice shall also include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for Attorneys' Fees and Expenses. Any written objection to the Settlement must (i) be submitted to the Court by filing the written objection through the Court's Case Management/Electronic Case Files ("CM/ECF") system, or by mailing the written objection to the Class Action Clerk for United States District Court for the Northern District of Illinois, or by filing the written objection in person at any location of the United States District Court for the Northern District of Illinois; (ii) be filed or postmarked on or before the objection deadline provided in the Court's Preliminary Approval Order; and (iii) be mailed first class postage prepaid to Class Counsel and Neiman Marcus's counsel and postmarked by no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the case name and number of the Action;
- b. the objector's full name, address, email address, and telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection;
- e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement, the fee application, or the application for Service Awards;
- f. the identity of all counsel representing the objector who will appear at the Fairness Hearing;
- g. any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between objector or objector's counsel and any other person or entity;
- h. a list of any persons who will be called to testify at the Fairness Hearing in support of the objection;
- i. a statement confirming whether the objector intends to personally appear and/or testify at the Fairness Hearing; and

j. the objector's signature on the written objection (an attorney's signature is not sufficient).

68. The Notice shall also state that Initial Settlement Class Members who are not Settlement Class Members are not eligible for benefits under this Settlement, and will release no claims under this Settlement. The Notice also shall state that Neiman Marcus stipulates that *American Pipe & Construction v. Utah*, 414 U.S. 538 (1974), and its progeny apply to claims of such persons, and have done so since the initial filing of this litigation on January 14, 2014. It shall further state that the claims of such persons tolled under *American Pipe* and its progeny shall continue to be tolled between (i) the time that the Complaint was filed and (ii) the Notice Deadline.

69. Claims filed pursuant to the Initial Settlement will be honored and treated as though filed under this Settlement, unless the person who filed such a claim timely notifies the Settlement Administrator in writing that he or she intends to exclude himself or herself from the Settlement Class, in which case that claimant's prior claim shall not be honored and the claimant will be treated the same as any other Class Member who opted out of this Settlement.

70. Within seven (7) days after the Notice Deadline, the Settlement Administrator shall provide Class Counsel and Neiman Marcus with one or more affidavits confirming that the Notice Program was completed in accordance with the terms of this Agreement, the Parties' instructions, and the Court's approval. Class Counsel shall file such affidavit(s) with the Court as an exhibit to or in conjunction with Settlement Class Representatives' motion for final approval of the Settlement.

IX. FAIRNESS HEARING, FINAL APPROVAL ORDER AND JUDGMENT

71. Settlement Class Representatives' motion for preliminary approval of the Settlement will include a request to the Court for a scheduled date on which the Fairness Hearing will occur. The Fairness Hearing shall be scheduled no earlier than 90 days after the CAFA notices are mailed to ensure compliance with 28 U.S.C § 1715. By no later than 14 days prior to the Objection Deadline, Plaintiffs shall file a motion for final approval of the Settlement and a motion for Attorneys' Fees and Expenses and for Service Awards. By no later than 7 days prior to the Fairness Hearing, the Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or Class Counsel's application for Attorneys' Fees and Expenses and for Service Awards. At the Fairness Hearing, the Court will consider Settlement Class Representatives' motion for final approval of the Settlement, and Class Counsel's application for Attorneys' Fees and Expenses and for Service Awards. In the Court's discretion, the Court also may hear argument at the Fairness Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the application for Attorneys' Fees and Expenses and for Service Awards, provided the objectors filed timely objections that meet all of the requirements listed in Paragraph 67.

72. At or following the Fairness Hearing, the Court will determine whether to enter the Final Order and Judgment granting final approval of the Settlement, and whether to approve Class Counsel's request for Attorneys' Fees and Expenses, and the Service Awards. The proposed Final Order and Judgment, in a form agreed upon by the Parties, shall, among other

things:

- a. Determine that the Settlement is fair, adequate, and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfied Due Process requirements;
- d. Dismiss the Action with prejudice;
- e. Bar and enjoin the Releasing Parties from asserting any of the Released Claims, as set forth in Section X, including during the pendency of any appeal from the Final Approval Order;
- f. Release Neiman Marcus and the Released Parties from the Released Claims, as set forth in Section X; and
- g. Reserve the Court's continuing and exclusive jurisdiction over Neiman Marcus and all Settlement Class Members (including all objectors) to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

X. RELEASES

73. As of the Effective Date, the Releasing Parties, each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have fully and irrevocably released and forever discharged Neiman Marcus and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, and the present and former directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them (collectively the "Released Parties"), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the Incident that were or could have been alleged in the Action, including, without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of (1) the theft, exposure or disclosure of Settlement Class Members' Personal Information; (2) Neiman Marcus's maintenance and storage of Settlement Class Members' Personal Information; (3) Neiman Marcus's information security policies and practices; and (4) Neiman Marcus's notice of the Incident to Settlement Class Members (the "Released Claims").

74. For the avoidance of doubt, the Released Claims include any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States (including, without limitation, any causes of action under the California Business & Professions Code § 17200 *et seq.*, California Civil

Code § 1750 *et seq.*, California Civil Code § 1798.80 *et seq.*, California Civil Code § 56.10 *et seq.*, Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 501/1 *et seq.*, the Illinois Personal Information Protection Act, 815 ILCS 530/1 *et seq.*, New York General Business Law § 349, 15 U.S.C. § 1681 *et seq.*, and any similar statutes or data breach notification statutes in effect in the United States or in any states in the United States); causes of action under the common or civil laws of any state in the United States, including but not limited to: unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, invasion of privacy, public disclosure of private facts, and misappropriation of likeness and identity; any causes of action based on privacy rights provided for under the constitutions of the United States or of any states in the United States; and also including, but not limited to, any and all claims in any state or federal court of the United States, for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit or financial account monitoring services, identity theft insurance, the creation of a fund for future damages, statutory penalties, restitution, the appointment of a receiver, and any other form of relief. The Released Claims do not include any claims arising from or relating to any conduct by Neiman Marcus after the date the Agreement is executed.

75. As of the Effective Date, the Released Parties will be deemed to have completely released and forever discharged the Releasing Parties and Class Counsel from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the Action.

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

XI. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS

77. Service Awards. Class Counsel will ask the Court to approve, and Neiman Marcus will not oppose, service awards not to exceed \$2,500 for each of the two Settlement Class Representatives, which are intended to compensate such individuals for their efforts in the litigation and commitment on behalf of the Settlement Class ("Service Award(s)"). Any Service Award approved will be paid from the Settlement Payments Fund pursuant to Paragraph 53(a). Neither Class Counsel's application for, nor any individual's entitlement to, a Service Award shall be conditioned in any way upon such individual's support for this Agreement. The application for the Service Awards will be filed at least 14 days prior to the Objection Deadline.

78. Attorneys' Fees and Expenses. Class Counsel will make their application for Attorneys' Fees and Expenses at least 14 days before the Objection Deadline. Class Counsel agree not to seek an award of Attorneys' Fees and Expenses in excess of \$530,000, and in no event will Neiman Marcus be required to pay Class Counsel more than \$530,000. Neiman Marcus reserves the right to object to Class Counsel's request for Attorneys' Fees and Expenses; however, Neiman Marcus agrees not to appeal the award if the amount awarded by the Court in Attorneys' Fees and Expenses does not exceed \$530,000.

79. The payment of the Attorneys' Fees and Expenses pursuant to Paragraph 78 shall be made through a wired deposit by Settlement Administrator from the Escrow Account into the attorney client trust account to be designated by Class Counsel. After the Attorneys' Fees and Expenses have been deposited into this account, Class Counsel shall be solely responsible for allocating such Attorneys' Fees and Expenses and distributing each participating firm's allocated share of such Attorneys' Fees and Expenses to that firm, and Neiman Marcus and the Settlement Administrator shall have no responsibility for distribution of Attorneys' Fees and Expenses among participating firms.

80. In the event the Court declines to approve, in whole or in part, the payment of Attorneys' Fees and Expenses or Service Awards in the amounts that Class Counsel requests, the remaining provisions of this Agreement shall remain in full force and effect. The finality or effectiveness of the Settlement will not be dependent on the Court awarding Class Counsel any particular amount on their fee request, or Class Representatives the Service Award(s), and shall not alter the Effective Date. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of Attorneys' Fees and Expenses or Service Awards shall constitute grounds for cancellation of, termination of, or withdrawal from this Agreement.

XII. TERMINATION

81. Neiman Marcus shall have the sole discretion to terminate the Settlement Agreement if 5,000 or more Settlement Class Members submit valid requests to opt out.

82. If any of the following events occur, this Settlement may be terminated by either Settlement Class Representatives or Neiman Marcus by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 14 days (or such longer time as may be agreed between Class Counsel and Neiman Marcus), provided, however, that no decision by any court declining to approve, in whole or in part, the payment of Attorneys' Fees and Expenses in the amounts that Class Counsel requests, or to reduce the same, constitutes grounds for termination:

a. Class Counsel and Neiman Marcus agree to termination before the Effective Date;

b. The Court or any reviewing appellate court rejects, incorporates material terms or provisions into, deletes or strikes material terms or provisions from, or materially modifies, amends, or changes, the Preliminary Approval Order, the Notice Program (including by requiring that the Notice Program reach a higher percentage of the Settlement Class than is set

forth in the Declaration of the Settlement Administrator, attached as Exhibit “H”), the proposed Final Order and Judgment, or the Settlement other than by declining to approve, in whole or in part, the payment of Attorneys’ Fees and Expenses in the amounts that Class Counsel requests;

c. The Court declines to preliminarily or finally approve the Settlement;

d. An appellate court reverses the Final Order and Judgment, and the Settlement is not reinstated and finally approved without material change by the Court on remand, provided that the Court’s declining to approve, in whole or in part, the payment of Attorneys’ Fees and Expenses in the amounts that Class Counsel requests does not constitute grounds for termination; or

e. The Effective Date does not occur.

83. In the event of a termination as provided in Paragraphs 81-82, this Agreement shall be considered null and void; all of the Parties’ obligations under the Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties’ respective pre-Settlement claims and defenses will be preserved.

XIII. NO ADMISSION OF LIABILITY

84. Neiman Marcus disputes the claims alleged in the Action and does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. Neiman Marcus has agreed to enter into this Agreement solely 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 have been asserted in the Action.

85. Class Counsel and Settlement Class Representatives believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the likelihood that class members would not pursue individual litigation to protect their privacy interests and to seek redress for violations of their interests, particularly considering the costs of pursuing such litigation, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, including certification of a class and upholding certification on appeal, the delay in providing benefits to the class in the event that this litigation was not settled, and the likelihood of success on the merits of the Action. Class Counsel and Settlement Class Representatives have concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

86. 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.

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

XIV. MISCELLANEOUS

88. Recitals. The Parties agree that the recitals are contractual in nature and form a material part of this Agreement.

89. 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.

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

91. Tolling. Neiman Marcus stipulates that *American Pipe & Construction v. Utah*, 414 U.S. 538 (1974), and its progeny apply to claims of Initial Class Members who are not Settlement Class Members, and have done so since the initial filing of this litigation on January 14, 2014. Neiman Marcus stipulates that claims of such persons tolled under *American Pipe* and its progeny shall continue to be tolled between (i) the time that the Complaint was filed and (ii) the Notice Deadline

92. 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.

93. 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.

94. Extensions of Time. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

95. Integration. This Agreement (along with any Exhibits attached hereto) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

96. 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.

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

98. 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 by facsimile or through email of an Adobe PDF shall be deemed an original.

99. 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 Program 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.

100. Notices. All notices to Class Counsel provided for herein, shall be sent by overnight mail to:

Robert Ahdoot
Tina Wolfson
Theodore W. Maya
Ahdoot & Wolfson, P.C.
10728 Lindbrook Drive
Los Angeles, California 90024
rahdoot@ahdootwolfson.com
twolfson@ahdootwolfson.com
tmaya@ahdootwolfson.com

John A. Yanchunis
Morgan & Morgan Complex Litigation Group
201 North Franklin Street , 7th Floor
Tampa, Florida 33602
jyanchunis@forthepeople.com

All notices to Neiman Marcus provided for herein shall be sent by overnight mail and email to:

David H. Hoffman
Geeta Malhotra
Daniel C. Craig

Sidley Austin LLP
One South Dearborn
Chicago, IL 60603
david.hoffman@sidley.com
gmalhotra@sidley.com
dcraig@sidley.com

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

101. 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.

102. No Construction Against Drafter. This Agreement shall be deemed to have been drafted by the Parties and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

103. Headings. The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this document.

104. The Parties believe that this Agreement is a fair, adequate, and reasonable settlement of the Action, and they have arrived at this Settlement through arms'-length negotiations, taking into account all relevant factors, present and potential.

IN WITNESS WHEREOF, the Parties hereto, by and through their respective attorneys, and intending to be legally bound hereby, have duly executed this Agreement as of the date first set forth above.

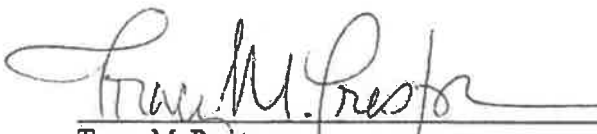
[signature pages follow]

SETTLEMENT CLASS REPRESENTATIVES


Hilary Remijas
Plaintiff

Joanne Kao
Plaintiff

NEIMAN MARCUS


Tracy M. Preston
Senior Vice President & General Counsel
The Neiman Marcus Group LLC

CLASS COUNSEL

Tina Wolfson
Ahdoot & Wolfson, PC

John A. Yanchunis
Morgan & Morgan
Complex Litigation Department

NEIMAN MARCUS COUNSEL


David H. Hoffman

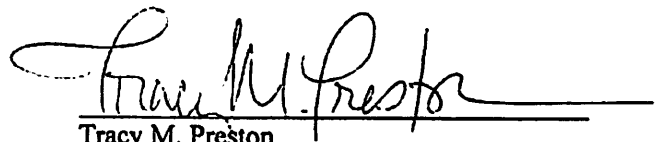
SETTLEMENT CLASS REPRESENTATIVES

Hilary Remijas
Plaintiff



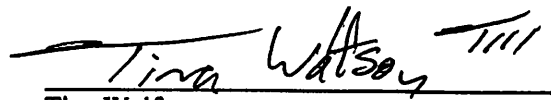
Joanne Kao
Plaintiff

NEIMAN MARCUS

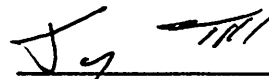


Tracy M. Preston
Senior Vice President & General Counsel
The Neiman Marcus Group LLC

CLASS COUNSEL



Tina Wolfson
Ahdoot & Wolfson, PC



John A. Yanchunis
Morgan & Morgan
Complex Litigation Department

NEIMAN MARCUS COUNSEL



David H. Hoffman

Your claim must be
submitted or
postmarked by:
[Month] [Day], 2019

Remijas et al. v. The Neiman Marcus Group,
LLC,
Case No. 1:14-CV-01735 (N.D. Ill.).

NMS

CLAIM FORM

Full Name: _____ Claim Number: _____
(First) (Last)

Mailing Address: _____

City: _____ State: _____ Zip: _____

Telephone Number: (____) _____ - _____ E-mail: _____

We will use the information that you provide to communicate with you about your claim, which we will do primarily by email if you provide an email address. The information you provide will not be used for other purposes, including but not limited to marketing purposes. The information you provide will not be sold, nor will it be provided to others, except insofar as is necessary to efficiently process claims submitted in connection with this matter.

CLAIM VALIDATION QUESTIONS

QUESTION ONE

Was your credit or debit card used at a Neiman Marcus, Bergdorf Goodman, Cusp, or Last Call store, not including any restaurant in any such store and not including any online store or web site, between July 16, 2013 and October 30, 2013?

- ☐ Yes (Proceed to Question Two)
- ☐ No (You are not eligible to submit a claim)

QUESTION TWO

Provide all of the information requested by one of the following two options. You may submit all of the information requested by both of the following two options if you wish.

IMPORTANT NOTE: To receive a payment, you must submit information sufficient to establish that your credit or debit card was used at a Neiman Marcus, Bergdorf Goodman, Cusp, or Last Call store between July 16, 2013 and October 30, 2013. **The only way to be certain that you have submitted information sufficient to determine whether or not you are entitled to a payment is to submit the information requested in Question 2, Option A.**

If you choose instead to submit the information requested in Question 2, Option B (but not Question 2, Option A), **your claim may be denied** even if your credit or debit card was used at a Neiman Marcus, Bergdorf Goodman, Cusp, or Last Call store between July 16, 2013 and October 30, 2013 because there may not be records sufficient to establish that it was used at that time and place.

Please continue on reverse side

Option A

Provide the last four digits of the credit or debit card number of the credit or debit card used at a Neiman Marcus, Bergdorf Goodman, Cusp, or Last Call store, not including any restaurant in any such store and not including any online store or web site, between July 16, 2013 and October 30, 2013:

--	--	--	--

AND

Provide the date(s) and location(s) of all purchases made at a Neiman Marcus, Bergdorf Goodman, Cusp, or Last Call store, not including any restaurant in any such store and not including any online store or web site, between July 16, 2013 and October 30, 2013 using the credit or debit card:

Date of Purchase	Location of Purchase

If the credit or debit card was used to make more than three purchases at a Neiman Marcus, Bergdorf Goodman, Cusp, or Last Call store, not including any restaurant in any such store and not including any online store or web site, between July 16, 2013 and October 30, 2013, then only provide the dates and locations of three such purchases.

Option B

Provide the full name of the cardholder of the credit or debit card used at a Neiman Marcus, Bergdorf Goodman, Cusp, or Last Call store, not including any restaurant in any such store and not including any online store or web site, between July 16, 2013 and October 30, 2013, as the name appeared on the credit or debit card at the time(s) of such purchase(s) (*check box or provide cardholder name*):

☐ Same as Above, or

Full Name of Cardholder: _____

AND

Provide the billing address for the credit or debit card used at a Neiman Marcus, Bergdorf Goodman, Cusp, or Last Call store, not including any restaurant in any such store and not including any online store or web site, between July 16, 2013 and October 30, 2013, as of the time(s) of such purchase(s):

☐ Same as Above, or

Mailing Address: _____

City: _____ State: _____ ZIP: _____

ATTESTATION AND SIGNATURE

I certify under penalty of perjury that the information I am providing in this claim form is true and correct, and that I am the cardholder of the card identified in my response to Question Two, above.

Name: _____ Signature: _____

Date: _____

**If you have questions, please contact the Settlement Administrator at 1- 8xx-xxx-xxxx or visit
www.NMSettlement.com.**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HILARY REMIJAS and JOANNE KAO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

V.

THE NEIMAN MARCUS GROUP, LLC, a
Delaware limited liability company,

Defendant.

Case No. 1:14-cv-01735

Hon. Sharon Johnson Coleman

[PROPOSED] FINAL ORDER

A Final Approval Hearing was held before this Court on _____, 2020 to consider, among other things, whether the Revised Settlement Agreement and Release dated September 26, 2019 (the “Settlement Agreement”) (ECF No. ____), including the exhibits attached thereto, between Settlement Class Representatives Hilary Remijas and Joanne Kao, on behalf of themselves and the Settlement Class, and Defendant The Neiman Marcus Group, LLC (“Neiman Marcus”), represents a fair, reasonable, and adequate settlement of this case (“the Action”), as well as the amount to be paid to Class Counsel as fees and costs for prosecuting the Action, and the amount to be paid to the Settlement Class Representatives as Service Awards.

Based on the Settlement Agreement, the Settlement Class Representatives’ Motion for Final Approval of Class Action Settlement (ECF No. ____), the Settlement Class Representatives’ Motion for an Award of Attorneys’ Fees and Expenses and Service Awards for Settlement Class Representatives (ECF No. ____), the submissions of the Settlement Class Representatives and Neiman Marcus in support of final approval of the settlement, and good cause appearing based on the record, the Court **ORDERS, ADJUDGES AND DECREES** as follows:

1. The Court, for purposes of this Final Order adopts the defined terms as set forth in the Settlement Agreement for any term not otherwise defined herein.
2. The Court has jurisdiction over the subject matter of the Action and personal jurisdiction over the Parties and Settlement Class Members.
3. On _____, 2019, the Court entered a Preliminary Approval Order, ECF No. ____ , that certified the Settlement Class, preliminarily approved the Settlement Agreement, directed notice of the proposed settlement to the Settlement Class, and established a hearing date to consider the final approval of the Settlement Agreement, the request for Service Awards to the

Settlement Class Representatives (the “Service Awards Request”), and the motion for attorneys’ fees, costs and expenses (the “Fee Request”).

4. In the Preliminary Approval Order, the Court approved the Notice Program, the Notice, and the Claim Form, and found that the form, content and method of giving notice to the Class constitute the best practicable notice to the Class and are reasonable. A declaration confirming that the Notice has been emailed, mailed, published and distributed pursuant to the Notice Program and the Preliminary Approval Order has been filed with the Court. *See* Declaration of _____. The Court finds that the distribution of the Notice has been achieved in accordance with the Preliminary Approval Order and the Settlement Agreement.

5. The Notice and the Notice Program provided the best notice practicable under the circumstances to the Settlement Class Members and fully satisfied the requirements of due process under the United States Constitution and Federal Rule of Civil Procedure 23. Based on the evidence and information supplied to the Court in connection with the Final Approval Hearing held on _____, 2020, the Court finds that the Notice was adequate and reasonable. The Court further finds that through the Notice, the Settlement Class Members have been apprised of the nature and pendency of the Action, the terms of the Settlement Agreement, as well as their rights to request exclusion, object, and/or appear at the final approval hearing.

6. The Court finds that Neiman Marcus has complied with the requirements of 28 U.S.C. § 1715.

7. The Court finds that the Settlement Class Representatives are similarly situated to absent Settlement Class Members, are typical of the Class, and are adequate Settlement Class Representatives, and that Class Counsel and the Settlement Class Representatives have fairly and

adequately represented the Settlement Class. The Court grants final approval to its appointment of Class Counsel and Settlement Class Representatives as provided in the Preliminary Approval Order at ¶ ____ (ECF No. ____), appointing Tina Wolfson, Theodore W. Maya, and Robert Ahdoot of Ahdoot & Wolfson, PC, and John A. Yanchunis of Morgan & Morgan Complex Litigation Department, as Class Counsel, and appointing as Settlement Class Representatives Hilary Remijas and Joanne Kao.

8. The Court certifies the following Settlement Class under Fed. R. Civ. P. 23(a) and 23(b)(3):

All residents of the United States who held a credit card or debit card account that was used in any NMG Store at any time from July 16, 2013 to October 30, 2013.

Excluded from the Settlement Class are the judge presiding over this matter, any members of his judicial staff, the officers and directors of Neiman Marcus, and persons who timely and validly request exclusion from the Settlement Class,

9. Excluded from the Settlement Class are those persons identified in Dkt. ____, who submitted timely and valid requests for exclusion from the Class (“Opt-Outs”). Opt-Outs shall not receive any benefits of the Settlement Agreement and shall not be bound by this Final Order and the Final Judgment.

10. The Court finds that the Settlement Class defined above satisfies the requirements of Fed. R. Civ. P. 23(a) and (b)(3) in that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact that are common to the Settlement Class; (c) the claims of the Settlement Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Settlement Class Representatives and Class Counsel have fairly and adequately protected the interests of the Settlement Class, as the Settlement Class Representatives have no interest antagonistic to or in conflict with the Settlement Class and have

retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement are superior to other methods available for a fair and efficient resolution of this controversy.

11. The Court approves the settlement of the Action as set forth in the Settlement Agreement and finds that the settlement is in all respects fair, reasonable, adequate and is in the best interests of the Settlement Class Members. The Court further finds that the Settlement Agreement was the product of an arm's-length negotiation conducted in good faith by the Parties and their experienced counsel. The Court directs the Parties to perform in accordance with the terms of the Settlement Agreement and the Orders of this Court.

12. The Court approves the Settlement Administration Protocol attached as Exhibit G to the Settlement Agreement and orders the Settlement Administrator to distribute the Settlement Payments Fund to Settlement Class Members in accordance with the terms of the Settlement Agreement and Settlement Administration Protocol. As provided in the Settlement Agreement, to the extent that these payments do not exhaust the Settlement Payments Fund, and are not used to pay Excess Notice and Administration Costs, all remaining funds are to be donated to an Internal Revenue Code Section 501(c)(3) charitable organization to be chosen jointly by the Parties.

13. The Court finds that the Parties face significant risks, expenses, delays, and uncertainties, including as to the outcome of continued litigation, in this Court or on appeal, of this complex matter, which further supports the Court's finding that the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as

the expense associated with it, weigh in favor of approval of the settlement reflected in the Settlement Agreement.

14. The Court has reviewed all objections to the Settlement Agreement, the Fee Request, or the Service Awards Request filed with the Court or submitted by Class Counsel with the Motion for Final Approval. These objections are hereby found to be without merit and are overruled.

15. As of the Effective Date, the Releasing Parties, each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties, of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the Incident that were or could have been alleged in the Action, including, without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of (1) the theft, exposure or disclosure of Settlement Class Members' Personal Information; (2) Neiman Marcus's maintenance and storage of Settlement Class Members' Personal Information; (3) Neiman Marcus's information security policies and practices; and (4) Neiman Marcus's notice of the Incident to Settlement Class Members.

16. For the avoidance of doubt, the Released Claims include any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, (i) those arising under state or federal law of the United States (including, without limitation, any causes of action under the California Business & Professions Code § 17200 *et seq.*, California

Civil Code § 1750 *et seq.*, California Civil Code § 1798.80 *et seq.*, California Civil Code § 56.10 *et seq.*, Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 501/1 *et seq.*, the Illinois Personal Information Protection Act, 815 ILCS 530/1 *et seq.*, New York General Business Law § 349, 15 U.S.C. § 1681 *et seq.*, and any similar statutes or data breach notification statutes in effect in the United States or in any states in the United States); (ii) any causes of action under the common or civil laws of any state in the United States, including but not limited to unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, invasion of privacy, public disclosure of private facts, and misappropriation of likeness and identity; (iii) any causes of action based on privacy rights provided for under the constitutions of either the United States or any states in the United States; and (iv) any claims in any state or federal court of the United States, for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit or financial account monitoring services, identity theft insurance, the creation of a fund for future damages, statutory penalties, restitution, the appointment of a receiver, and any other form of relief. The Released Claims do not include any claims arising from or relating to any conduct by Neiman Marcus after the date the Agreement was executed.

17. As of the Effective Date, the Released Parties will be deemed to have completely released and forever discharged the Releasing Parties and Class Counsel from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected,

whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the Action.

18. The Releasing Parties shall be enjoined from prosecuting any claim they have released in the Settlement Agreement and as set forth in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by the Settlement Agreement or by the Final Judgment. It is further agreed that the settlement may be pleaded as a complete defense to any proceeding subject to the releases set forth in the Settlement Agreement and this Final Judgment.

19. This Final Order and the Final Judgment shall not be: (a) used as an admission of, or evidence of, the validity of any claim made by Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) used as an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.

20. The Settlement Agreement shall not constitute, and will not under any circumstances be deemed to constitute, an admission of wrongdoing or liability by any Party, such wrongdoing and liability being expressly denied and no final adjudication having been made. The Parties have entered into the Settlement Agreement solely as a compromise of all claims for the purpose of concluding the disputes between them, and the Settlement Agreement may not be used by any third party against any Party. Per Federal Rule of Evidence 408, the entering into and carrying out of the Settlement Agreement, and any negotiations or proceedings related to it, shall not be construed as, or deemed evidence of, an admission or concession by any of the Parties, and shall not be offered or received into evidence in any action or proceeding

against any Party in any court, administrative agency or other tribunal for any purpose whatsoever.

21. Notwithstanding the foregoing, nothing in this Final Order or the Final Judgment shall be interpreted to prohibit the use of the Final Judgment in a proceeding to consummate or enforce the Settlement Agreement or Final Judgment, or to defend against the assertion of Released Claims in any other proceeding, or as otherwise required by law.

22. Class Counsel have moved for an award for attorneys' fees and reimbursement of expenses. Pursuant to Rules 23(h)(3) and 54(d) of the Federal Rules of Civil Procedure, and having reviewed the Fee Request, supporting memorandum and associated papers and having considered the factors for assessing the reasonableness of a class action fee request, the Court makes the following findings of fact and conclusions of law:

a. The Settlement confers monetary and non-monetary benefits on the Settlement Class that are substantial when assessed in light of the risk of establishing liability and damages in this case;

b. There were ___ objections by Settlement Class Members to the requested fee award, and such objections are overruled for the reasons explained at the Final Approval Hearing;

c. Class Counsel have reasonably expended over ____ hours and incurred substantial out-of-pocket expenses in prosecuting this action, with no guarantee of recovery;

d. The Settlement was achieved for the benefit of the Settlement Class as a direct result of Class Counsel's advocacy and work on behalf of the Settlement Class;

e. The Settlement was reached following negotiations held in good faith, in the absence of collusion and under the supervision of a highly skilled mediator and former U.S. District Judge, the Honorable Wayne R. Andersen (retired);

f. Settlement Class Members were advised in the Notice, which Notice was approved by this Court, that Class Counsel intended to move for an award of attorneys' fees, costs and expenses in an amount up to \$530,000 to be paid by Neiman Marcus;

g. Class Counsel has moved for an award of attorneys' fees, costs and expenses in the amount of \$_____, which motion has been on the docket and publicly available since _____; and

h. Under the Settlement Agreement, the finality of the settlement is not dependent upon an award of attorneys' fees and expenses.

23. Accordingly, Class Counsel are hereby awarded attorneys' fees, costs and expenses in the amount of \$_____. The Court finds this award to be fair and reasonable. The awarded fees and expenses shall be paid to Class Counsel in accordance with the terms of the Settlement Agreement.

24. Class Counsel have also requested that Service Awards be approved and paid to Settlement Class Representatives in recognition of their services provided for the benefit of the Settlement Class. The Court, having reviewed the Service Awards Request, as well as the supporting memorandum and associated papers, hereby finds that an award of \$_____ to each of the two Settlement Class Representatives is fair, reasonable and appropriate in light of the service each Class Representative has provided on behalf of and for the benefit of the Settlement Class, and an award in that amount is hereby approved. The Settlement Administrator is directed

to make such service award payments to the Settlement Class Representatives in accordance with the terms of the Settlement Agreement, this Final Order, and the Final Judgment.

25. The Court hereby dismisses the Action on the merits and with prejudice, without fees or costs to any Party except as provided in this Final Order and the Final Judgment.

IT IS SO ORDERED.

Date: _____.

Hon. Sharon Johnson Coleman
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HILARY REMIJAS and JOANNE KAO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

V.

THE NEIMAN MARCUS GROUP, LLC, a
Delaware limited liability company,

Defendant.

Case No. 1:14-cv-01735

Hon. Sharon Johnson Coleman

[PROPOSED] FINAL JUDGMENT

1. The Court, for purposes of this Final Judgment adopts the defined terms as set forth in the Revised Settlement Agreement and Release dated September 26, 2019 (the “Settlement Agreement”) (ECF No. ____).

2. All Parties to this Action, and all Settlement Class Members, are bound by the Settlement and by this Judgment. Excluded Persons identified in Dkt. ____, who submitted timely and valid requests for exclusion from the Class (“Opt-Outs”) are no longer parties to this Action, are not members of the Settlement Class, and are not bound by the Settlement or by this Judgment.

3. Judgment shall be, and hereby is, entered dismissing the Action with prejudice, on the merits, without costs to any party except as provided in the Final Approval Order.

4. As of the Effective Date, the Releasing Parties, each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties, of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the Incident that were or could have been alleged in the Action, including, without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of (1) the theft, exposure or disclosure of Settlement Class Members’ Personal Information; (2) Neiman Marcus’s maintenance and storage of Settlement Class Members’ Personal Information; (3) Neiman Marcus’s information security policies and practices; and (4) Neiman Marcus’s notice of the Incident to Settlement Class Members.

5. For the reasons set forth in the Final Order, Class Counsel are awarded attorneys' fees, costs and expenses in the amount of \$_____, and each of the two Settlement Class Representatives is awarded \$_____ as a Service Award.

6. At any time after entry of this Final Judgment, the Settlement Agreement may, with approval of the Court, be modified by written agreement of Neiman Marcus's counsel and Class Counsel in their discretion without giving any additional notice to the Settlement Class, provided that such modifications do not limit the rights of the Settlement Class Members under the Settlement Agreement.

7. Consistent with paragraphs 82(e) and 83 of the Settlement Agreement, if the Effective Date, as defined in the Settlement Agreement, does not occur for any reason, this Final Judgment and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever; the Settlement Agreement shall be considered null and void; all of the Parties' obligations under the Settlement Agreement, the Preliminary Approval Order, and this Final Judgment 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 the Settlement Agreement. In such an event, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

8. Pursuant to the All Writs Act, 28 U.S.C. § 1651, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court.

9. Without affecting the finality of this Final Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement Agreement for all purposes, including enforcement of any of its terms at the request of any Party and resolution of any disputes that may arise relating in any

way to, or arising from, the implementation of the Settlement Agreement or the implementation of this Final Judgment.

10. This Final Judgment shall constitute a judgment for purposes of Rule 58 of the Federal Rules of Civil Procedure.

11. Pursuant to Federal Rule of Civil Procedure 54(b), the Court determines that there is no just reason for delay and expressly DIRECTS that this Final Judgment be, and hereby is, entered as a final and appealable order.

Date: _____.

Hon. Sharon Johnson Coleman
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

HILARY REMIJAS and JOANNE KAO,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

THE NEIMAN MARCUS GROUP, LLC, a
Delaware limited liability company,

Defendant.

Case No. 1:14-cv-01735

NOTICE OF CLASS ACTION SETTLEMENT

If you used a credit or debit card at a Neiman Marcus Group Store between July 16, 2013 and January 10, 2014, you may be entitled to up to \$100 from, and your rights may be affected by, a class action settlement.

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

- A proposed Settlement has been reached in a class action lawsuit involving Neiman Marcus Group LLC (“Neiman Marcus” or “NMG”). The Settlement resolves litigation over a cybersecurity incident involving malware that was successfully inserted into Neiman Marcus’s system by hacker(s) (the “Cybersecurity Incident”). Malware means the malicious software that was capable of collecting Payment Card data from Neiman Marcus’s system.
- The Parties now agree to settle the Action in its entirety, without any admission of liability by NMG.
- The Settlement Class means all residents of the United States who held a credit card or debit card account that was used in any NMG Store at any time from July 16, 2013 to October 30, 2013 (the “Malware Period”).
- The Settlement Class does not include any United States residents who held a credit or debit card account used in a Neiman Marcus store only between October 31, 2013 and January 10, 2014. Such persons were included in a prior proposed settlement that was not approved. Neiman Marcus has stipulated that *American Pipe & Construction v. Utah*, 414 U.S. 538 (1974), and its progeny apply to claims of such persons, and have done so since the initial filing of this litigation on January 14, 2014. The claims of such persons tolled under *American Pipe* and its progeny shall continue to be tolled between January 14, 2014 and [NOTICE DATE].
- If you are a Settlement Class Member, your rights are affected whether you act or do not act. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	If you submit a Claim Form, you will give up the right to sue NMG in a separate lawsuit about the claims this Settlement resolves. The deadline to submit a Claim Form is [DATE] . Claims filed under the prior proposed settlement of this action that was not approved will be honored and treated as though filed under this Settlement.
ASK TO BE EXCLUDED (OPT-OUT)	If you decide to exclude yourself, you will keep the right to sue NMG in your own separate lawsuit about the claims this Settlement resolves, but you give up the right to receive the benefits this Settlement provides. The deadline to request exclusion from the Settlement is [DATE] .
OBJECT TO THE SETTLEMENT	If you do not exclude yourself from the Settlement, you may object to it by following the procedures below and submitting your specific objection in writing. The deadline to object to the Settlement is [DATE] .
DO NOTHING	If you are a member of the Settlement Class, you are automatically part of the Settlement. If you do nothing, you may not receive the benefits that this Settlement provides and you will give up the right to sue NMG in a separate lawsuit about the claims this Settlement resolves.

1. Why is there a Notice?

A Federal Court authorized this Notice because 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, the Settlement, your legal rights, what benefits are available, and who is eligible to receive them.

Judge Sharon Johnson Coleman of the United States District Court for the Northern District of Illinois is overseeing this class action. The case is known as *Hilary Remijas and Joanne Kao v. The Neiman Marcus Group, LLC*, Case No. 1:14-CV-01735 (N.D. Ill.).

2. What is this lawsuit about?

In January 2014, Neiman Marcus announced that it experienced a cybersecurity intrusion that caused the potential compromise of the Payment Card (debit card or credit card) information of certain of its customers who used Payment Cards to make purchases at certain stores owned by Neiman Marcus.

QUESTIONS? CALL 1-844-412-4027 TOLL-FREE,
VISIT www.NMSettlement.com or email NMSettlement@AdministratorClassAction.com

The Action was filed after Neiman Marcus's announcement of the Cybersecurity Incident. In the Action, Plaintiffs allege negligence, breach of implied contract, unjust enrichment, violation of state unfair business practices statutes, invasion of privacy, and violation of state data breach acts.

The Malware operated in some (but not all) Neiman Marcus stores at physical locations, including stores operating under the "Neiman Marcus," "Bergdorf Goodman," "Cusp," and "Last Call" names between July 16, 2013 and October 30, 2013 ("the Malware Period"). The Malware never operated in any restaurants owned by Neiman Marcus and never operated on Neiman Marcus websites or online stores. Also the Malware did not operate in affected stores during each day of the Malware Period, but instead operated on dates that varied from store to store, and often only operated during part of the time that each store was open for business.

From July 16, 2013 to October 30, 2013, approximately 1,144,827 different Payment Card accounts were used at NMG Stores. Out of these approximately 1,144,827 different Payment Card accounts, approximately 370,385 Payment Card accounts were used at an NMG Store during a time when the Malware was operating in that store. The remaining approximately 774,442 Payment Card accounts were not exposed to the Malware at any time and were not compromised as a result of the Cybersecurity Incident.

The Parties now agree to settle the Action in its entirety, without any admission of liability by Neiman Marcus. The Parties intend this Settlement Agreement to bind Settlement Class Representatives, Neiman Marcus, and all Settlement Class Members who do not timely and properly exclude themselves from the Settlement.

3. What is a class action?

In a class action, one or more people called Plaintiffs or Class Representatives (in this case, Hilary Remijas and Joanne Kao) sue on behalf of other people who have similar claims. The people included in the class action are called a Settlement Class or Settlement Class Members. One court resolves the issues for all Class Members, except for those who timely exclude themselves from the Settlement Class.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or NMG. Instead, both sides agreed to this Settlement, in order to avoid the cost and burden of further litigation and so the Class Members can receive benefits. The Class Representatives and their attorneys believe the Settlement is a fair and reasonable resolution of the claims asserted in this lawsuit.

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

You are part of the Settlement Class if you are a United States resident who held a credit card or debit card account that was used in any NMG Store at any time from July 16, 2013 to October 30, 2013. NMG Store means stores at physical locations that operate under the "Neiman Marcus", "Bergdorf Goodman", "Cusp", and "Last Call" names, but do not include restaurants operating in any of these stores or any of the stores' websites or online stores.

Excluded from the Settlement Class are the judge presiding over this matter, any members of his judicial

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VISIT www.NMSettlement.com or email NMSettlement@AdministratorClassAction.com

staff, the officers and directors of Neiman Marcus, and persons who timely and validly request exclusion from the Settlement Class.

The Settlement Administrator has created a website where you can enter the last four digits and last name associated with a payment card that you believe was used in a NMG Store between July 16, 2013 and October 30, 2013. If you choose to enter this information, the website will tell you whether the information you submitted is (i) consistent with a payment card used at a NMG Store at a time the Malware was operating in that store, (ii) consistent with a payment card used at a NMG Store between July 16, 2013 and October 30, 2013, but not at a time the Malware was operating in that store, or (iii) not consistent with a payment card used at a NMG Store between July 16, 2013 and October 30, 2013. This website can therefore provide you with a preliminary (but not definitive) indication about whether or not you are part of the Settlement Class and the amount of the benefits to which you may be entitled if you file a valid claim and the Settlement is approved. If you are a Settlement Class member, the only way to determine for certain the amount of benefits to which you may be entitled is to file a claim.

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

If you are not sure whether you are included in the Settlement Class, you can call toll-free 1-844-412-4027, visit the Settlement Website: www.NMSettlement.com, or send an email to the Settlement Administrator at NMSettlement@AdministratorClassAction.com.

7. How do I know if I am eligible for monetary Settlement benefits?

All Settlement Class Members who submit valid and timely Claims are eligible to receive monetary benefits. To read more about submitting a Claim Form, see section 9 below.

8. What are the Settlement benefits?

The Settlement creates a Settlement Fund in the total amount of up to \$1,600,000.00. The Settlement Fund will be comprised of two components:

(1) **Settlement Administration Fund.** Up to \$400,000 to pay the Settlement Administration Charges (described more fully in the Settlement Agreement, which can be viewed at www.NMSettlement.com); and

(2) **Settlement Payments Fund.** \$1,200,000 to pay Settlement Class Members who submit valid and timely Claims, taxes due on the Settlement Fund (if any), Attorneys' Fees and Expenses awarded by the Court, and Service Awards for Class Representatives awarded by the Court.

Each Settlement Class Member who submits a valid and timely Claim will receive a payment of up to \$100 if their card was at a store on a date and at a time the Malware was operating. Other Settlement Class Members who submit valid and timely Claims will receive a payment of up to \$25.

If after subtracting any taxes due on the Settlement Fund, any Service Awards approved by the Court, and Attorneys' Fees and Expenses approved by the Court, the remaining amount is insufficient to pay all Settlement Class Members who submit valid and timely claims, the full amounts described above will be reduced on a *pro rata* basis based on the number of Settlement Class Members who have submitted a valid

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and timely Claim.

Any funds remaining in the Settlement Fund after the above payments shall be distributed as follows:

- i. Pay any Excess Notice and Administration Costs as defined in the Settlement Agreement;
- ii. Issue payments on a *pro rata* basis to Settlement Class Members for whom NMG has a mailing address and who did not previously submit a valid and timely Claim Form, provided the amount of these payments would exceed \$5.00 after deducting the estimated costs of sending the checks. If the payments to Settlement Class Members would not exceed \$5.00, the funds will not be distributed;
- iii. Any remaining funds, including any funds that remain as a result of uncashed checks, shall be donated to an Internal Revenue Code Section 501(c)(3) charitable organization chosen jointly by the Parties.

Business Practice Changes

In addition to the Settlement benefits described above, Neiman Marcus has taken numerous measures to further enhance the security of its customers' data, including the measures set out below. These measures remain in effect as of the date of the Settlement Agreement:

- i. Chief Information Security Officer. NMG created and filled the position of Chief Information Security Officer (CISO), an executive position with responsibility to coordinate and be responsible for NMG's program(s) to protect the security of customers' Personal Information.
- ii. Information Security Organization. NMG created a new organizational unit responsible for information security and has hired employees to fill the organization, including a Director of Security Operations and a Director of Security, Risk Management, and Compliance.
- iii. Senior Leadership Reporting. NMG increased the frequency and depth of reporting to its executive team and members of its board of directors about its cybersecurity efforts and the cybersecurity threat landscape.
- iv. Chip-Based Payment Card Infrastructure. NMG equipped all of its Stores with devices that allow customers to pay for purchases using payment cards containing embedded computer chips.
- v. Employee Education. NMG expanded its program to educate and train its workforce on methods to protect the privacy and security of its customers' information.
- vi. Log Analysis Tool. NMG invested in a new tool to automatically collect and analyze logs generated by Neiman Marcus systems for potential security threats.
- vii. Information Sharing. NMG joined several public-private partnerships that facilitate information sharing concerning cybersecurity and threat awareness.

The business practices described above represent some of the business practice changes that Neiman Marcus has implemented following the Cybersecurity Incident and the filing of the initial lawsuit relating to the Cybersecurity Incident. The recitation of these business practices is intended to provide information to Class Members and the Court about some of Neiman Marcus's cybersecurity actions following the Cybersecurity Incident and the filing of the initial lawsuit relating to the Cybersecurity Incident and does not create any rights or obligation. Neiman Marcus may, in its discretion, amend the business practices described above or adopt other or alternate cybersecurity business practices in the future.

QUESTIONS? CALL 1-844-412-4027 TOLL-FREE,
VISIT www.NMSettlement.com or email NMSettlement@AdministratorClassAction.com

9. How do I get benefits and what is the Claim Period?

In order to receive monetary benefits under this Settlement, Settlement Class Members should submit a Claim Form to the Settlement Administrator. The deadline for submitting Claim Forms is [DATE] if submitted online via the Settlement Website www.NMSettlement.com, or must be postmarked by [DATE] if submitted by U.S mail to the Settlement Administrator at:

NM Settlement Administrator
1801 Market Street, Suite 660
Philadelphia, PA 19103

Claim Forms can also be downloaded from www.NMSettlement.com, by calling toll-free 1-844-412-4027, emailing the Settlement Administrator at NMSettlement@AdministratorClassAction.com, or by mailing a request to the Settlement Administrator at the address set forth above.

To receive a payment, you must submit a timely Claim Form with information sufficient to establish that your credit or debit card was used at a Neiman Marcus, Bergdorf Goodman, Cusp, or Last Call store between July 16, 2013 and October 30, 2013, and comply with the instructions set forth in the Claim Form.

Claims filed under the prior proposed settlement of this action that was not approved will be honored and treated as though filed under this Settlement. If you are a member of the Settlement Class, and filed a claim under the prior proposed settlement, you need not file another claim now.

10. What rights am I giving up to receive benefits and stay in the Settlement Class?

Unless you timely exclude yourself, you will remain in the Settlement Class. If the Settlement is approved and becomes final, you will not be able to sue NMG regarding the legal claims that were litigated in this case, but you will be able to submit a Claim Form to receive benefits from this Settlement. The specific rights you are giving up are called Released Claims.

11. What are the Released Claims?

Upon the Effective Date of the Settlement, the Settlement Class Representatives and all Settlement Class Members who do not timely and properly exclude themselves from the Settlement, and each of their respective heirs, assigns, beneficiaries, and successors (“Releasing Parties”) shall automatically be deemed to have fully and irrevocably released and forever discharged Neiman Marcus and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, and the present and former directors, offices, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them (collectively the “Released Parties”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the Incident that were or could have been alleged in the Action, including, without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of (1) the theft, exposure, or disclosure of Settlement Class Members’ Personal Information; (2) Neiman Marcus’s maintenance and storage of Settlement Class Members’ Personal Information; (3) Neiman Marcus’s information security policies and

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VISIT www.NMSettlement.com or email NMSettlement@AdministratorClassAction.com

practices; and (4) Neiman Marcus's notice of the Incident to Settlement Class Members (the "Released Claims").

For the avoidance of doubt, the Released Claims include any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States (including, without limitation, any causes of action under the California Business & Professions Code § 17200 *et seq.*, California Civil Code § 1750 *et seq.*, California Civil Code § 1798.80 *et seq.*, California Civil Code § 56.10 *et seq.*, Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 501/1 *et seq.*, the Illinois Personal Information Protection Act, 815 ILCS 530/1 *et seq.*, New York General Business Law § 349, 15 U.S.C. § 1681 *et seq.*, and any similar statutes or data breach notification statutes in effect in the United States or in any states in the United States); causes of action under the common or civil laws of any state in the United States, including but not limited to: unjust enrichment, negligence, bailment, conversion, negligence per se, breach of contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, invasion of privacy, public disclosure of private facts, and misappropriation of likeness and identity; any causes of action based on privacy rights provided for under the constitutions of the United States or of any states in the United States; and also including, but not limited to, any and all claims in any state or federal court of the United States, for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit or financial account monitoring services, identity theft insurance, the creation of a fund for future damages, statutory penalties, restitution, the appointment of a receiver, and any other form of relief. The Released Claims do not include any claims arising from or relating to any conduct by Neiman Marcus after the date the Agreement is executed.

The Settlement Agreement, available at www.NMSettlement.com contains additional information about Released Claims.

12. How do I exclude myself from the Settlement?

Settlement Class Members have the right to request exclusion from (*i.e.*, opt out of) the Settlement Class by sending a written request for exclusion to the Settlement Administrator postmarked by **[DATE]**. Requests for Exclusion must be mailed to:

NMS Settlement Administrator
ATTN: Exclusion Requests
1801 Market Street, Suite 660
Philadelphia, PA 19103

Requests for Exclusion must: (a) Include the individual's name and address; (b) Contain a statement that he/she wants to be excluded from this Action; and (c) Must be signed personally by the Settlement Class Member who is requesting exclusion.

No request for Exclusion will be valid unless it complies with these requirements. If a timely and valid request for exclusion is made by a Settlement Class Member, then that person will no longer be a member of the Settlement Class and shall not be affected by or bound by the Settlement, and shall receive no benefits from the Settlement.

QUESTIONS? CALL 1-844-412-4027 TOLL-FREE,
VISIT www.NMSettlement.com or email NMSettlement@AdministratorClassAction.com

13. How do I object to the Settlement?

Settlement Class Members have the right to object to the Settlement and/or to Class Counsel's application for Attorneys' Fees, Costs, and Expenses.

Any written objection to the Settlement must: (i) be submitted to the Court by filing the written objection through the Court's Case Management/Electronic Case Files ("CM/ECF") system, or by mailing the written objection to the Class Action Clerk for United States District Court for the Northern District of Illinois, or by filing the written objection in person at any location of the United States District Court for the Northern District of Illinois; (ii) be filed or postmarked on or before **[DATE]**; and (iii) be mailed first class postage prepaid to Class Counsel and Neiman Marcus's counsel and postmarked by no later than **[DATE]**.

For an objection to be considered by the Court, the objection must also set forth:

- (a) The case name and number of the Action;
- (b) The objector's full name, address, email address, and telephone number;
- (c) An explanation of the basis upon which the objector claims to be a Settlement Class Member;
- (d) All grounds for the objection, accompanied by any legal support for the objection;
- (e) The identity of all counsel who represent the objector; including any former or current counsel who may be entitled to compensation for any reason related to the objection of the Settlement, the fee application, or the application for Service Awards;
- (f) The identity of all counsel representing the objector who will appear at the Fairness Hearing;
- (g) Any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between objector and objector's counsel and any other person or entity;
- (h) A list of any persons who will be called to testify at the Fairness Hearing in support of the objection;
- (i) A statement confirming whether the objector intends to personally appear and/or testify at the Fairness Hearing; and
- (j) The objector's signature on the written objection (an attorney's signature is not sufficient).

COURT	CLASS COUNSEL	NEIMAN MARCUS' COUNSEL
Class Action Clerk Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street Chicago, IL 60604	Tina Wolfson Ahdoot & Wolfson, PC c/o NMS Settlement Administrator 1801 Market Street, Suite 660 Philadelphia, PA 19103 John A. Yanchunis Morgan & Morgan Complex Litigation Department c/o NMS Settlement Administrator 1801 Market Street, Suite 660 Philadelphia, PA 19103	David H. Hoffman Sidley Austin LLP One South Dearborn Chicago, IL 60603

QUESTIONS? CALL 1-844-412-4027 TOLL-FREE,
VISIT www.NMSettlement.com or email NMSettlement@AdministratorClassAction.com

14. Who are the attorneys appointed to represent the Settlement Class?

The Court has appointed the following lawyers to represent you and the other Settlement Class Members:

Tina Wolfson Theodore W. Maya Robert Ahdoot Ahdoot & Wolfson, PC c/o NM Settlement Administrator 1801 Market Street, Suite 660 Philadelphia, PA 19103	John A. Yanchunis Morgan & Morgan Complex Litigation Department c/o NM Settlement Administrator 1801 Market Street, Suite 660 Philadelphia, PA 19103
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You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will the lawyers be paid?

Class Counsel (set forth in the preceding section) will seek an award of no more than \$530,000 in attorneys' fees, costs, and expenses.

Class Counsel will also request the Court to award \$2,500 service awards to each of the two Settlement Class Representatives as compensation for their efforts in the litigation and commitment on behalf of the Settlement Class. If approved, these amounts will be deducted from the Settlement Fund as described in Section 8 above.

16. When will the Court decide final approval of the Settlement?

The Court will hold a hearing at [TIME] on [DATE], at the United States District Court for the Northern District of Illinois, located at 219 South Dearborn Street, Chicago, IL 60604, to decide whether to grant final approval of the Settlement. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and will also consider Class Counsel's application for an award of attorneys' fees and expenses, and the proposed service awards. Settlement Class Members are welcome to attend the Final Approval Hearing but it is not necessary for them to attend to receive their benefits under the Settlement. The Settlement will not become final until the Court grants final approval of the Settlement and any appeals have been resolved.

17. How do I get more information?

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement, which is available at www.NMSettlement.com. You may also call toll-free 1-844-412-4027, or write to the Settlement Administrator by mail or email:

NM Settlement Administrator
1801 Market Street, Suite 660
Philadelphia, PA 19103

QUESTIONS? CALL 1-844-412-4027 TOLL-FREE,
VISIT www.NMSettlement.com or email NMSettlement@AdministratorClassAction.com

Email: NMSettlement@AdministratorClassAction.com

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HILARY REMIJAS and JOANNE KAO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

THE NEIMAN MARCUS GROUP, LLC, a
Delaware limited liability company,

Defendant.

) Case No. 1:14-cv-01735
)
) Hon. Sharon Johnson Coleman
)
)
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)

**[PROPOSED] ORDER CERTIFYING A SETTLEMENT CLASS, PRELIMINARILY
APPROVING CLASS ACTION SETTLEMENT AND DIRECTING NOTICE TO THE
SETTLEMENT CLASS**

This matter came before the Court on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class.

Plaintiffs filed their Second Amended Complaint (ECF No. 213) on October 15, 2019 ("Complaint"). In their Complaint, Plaintiffs allege various claims against Defendant The Neiman Marcus Group, LLC ("Neiman Marcus") arising out of the cybersecurity intrusion that caused potential compromise of payment card information of certain of Neiman Marcus's customers that Neiman Marcus announced in January 2014, including claims alleging violations of state consumer laws and state data breach statutes, negligence, breach of implied contract, unjust enrichment, and invasion of privacy.

Plaintiffs, by their counsel, and Neiman Marcus, by its counsel, have entered into a Revised Settlement Agreement and Release dated September 26, 2019 (the "Settlement Agreement") following good faith, arm's-length negotiations and mediation overseen by the Honorable Wayne R. Andersen (retired) of JAMS, in which the Parties have agreed to settle this case (the "Action") subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the Settlement Agreement which, if approved, will result in dismissal of the Action with prejudice.

The Court, having reviewed the Settlement Agreement, including the exhibits attached thereto, and good cause appearing based on the record,

IT IS HEREBY ORDERED:

1. **Class Certification for Settlement Purposes Only.** The Settlement Agreement provides for a Settlement Class defined as follows:

All residents of the United States who held a credit card or debit card account that was used in any NMG Store at any time from July 16, 2013 to October 30, 2013.

Excluded from the Settlement Class are the judge presiding over this matter, any members of his judicial staff, the officers and directors of Neiman Marcus, and persons who timely and validly request exclusion from the Settlement Class.

(Revised Settlement, ¶¶ 4, 40.)

The Action is provisionally certified as a class action for settlement purposes only, in accordance with Federal Rule of Civil Procedure 23(b)(3) and (e). The Court finds for settlement purposes that: (a) the Settlement Class is so numerous that joinder of all Settlement Class members would be impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims of the Settlement Class Representatives are typical of and arise from the same operative facts as the claims of the Settlement Class members; (d) the Settlement Class Representatives and Settlement Class counsel will fairly and adequately protect the interests of the Settlement Class, as the Settlement Class Representatives have no interests antagonistic to or in conflict with those of the Settlement Class, and the Settlement Class Representatives have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy. In accordance with Federal Rule of Civil Procedure 23(e)(1)(B), the Court finds that it will likely certify the Settlement Class for purposes of judgment at the Final Approval Hearing.

2. **Settlement Class Representatives and Settlement Class Counsel.**

Plaintiffs Hilary Remijas and Joanne Kao are designated and appointed as Settlement Class Representatives. The Court finds that the Settlement Class Representatives are similarly situated to absent Class Members, are typical of the Class, and that they will be adequate Settlement Class Representatives.

The Court finds that the following counsel are experienced and adequate counsel and are hereby designated as Settlement Class Counsel pursuant to Fed. R. Civ. P. 23(g): Tina Wolfson, Theodore W. Maya, and Robert Ahdoot of Ahdoot & Wolfson, PC, and John A. Yanchunis of Morgan & Morgan Complex Litigation Department.

3. **Preliminary Settlement Approval**. Upon preliminary review, the Court finds that the proposed Settlement within the range of possible approval as fair, reasonable and adequate, and thus warrants providing notice of the Settlement to the Settlement Class. Accordingly, the Settlement is preliminarily approved. In accordance with Federal Rule of Civil Procedure 23(e)(1), the Court finds that it will likely be able to approve the Settlement at the Final Approval Hearing.

4. **Jurisdiction**. The Court has subject matter jurisdiction under 28 U.S. C. § 1332(d)(2), and personal jurisdiction over the Parties before it. Additionally, venue is proper in this District under 28 U.S.C. § 1391.

5. **Final Approval Hearing**. A Final Approval Hearing shall be held on _____, at _____, in Courtroom 1241, 219 South Dearborn Street, Chicago, Illinois, 60604, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes under Fed. R. Civ. P. 23(b)(3) and (e); (b) the Settlement should be finally approved as fair, reasonable, and adequate, and finally approved under Fed. R. Civ. P. 23(e); (c) the Action should be dismissed with prejudice in accordance with the terms of the Settlement Agreement; (d) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the application of Settlement Class Counsel for an award of attorneys' fees, costs, and expenses (the "Fee Request") should be approved

under Fed. R. Civ. P. 23(h); and (f) the application of Settlement Class Representatives for Service Awards (the “Service Awards Request”) should be approved.

Plaintiffs’ motion for final approval of the Settlement, Service Awards Request, and Fee Request shall be filed with the Court at least 14 days prior to the deadline for submission of objections specified in the Notice. By no later than 7 days prior to the Final Approval Hearing, the Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or the Service Awards Request and Fee Request.

6. **Administration.** The Court appoints Angeion Group LLC as the Settlement Administrator, with responsibility for class notice and claims administration.

7. **Notice to the Class.** The proposed Notice Program set forth in the Settlement Agreement, the Claim Form, Long Form Notice, Publication Notice, Summary Notice, and Declaration of Settlement Administrator attached to the Settlement Agreement as Exhibits A, C, E, F, and H satisfy the requirements of Fed. R. Civ. P. 23(c)(2)(B) and (e)(1) and are hereby approved. Non-material modifications to these Exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement, including but not limited to sections VII and VIII thereof.

No later than 30 days after this Preliminary Approval Order is issued by the Court (the “Notice Deadline”), the Settlement Administrator shall complete the Notice Program in the manner set forth in sections VII and VIII of the Settlement Agreement and in the Declaration of Settlement Administrator attached as Exhibit H thereto.

Within 7 days after the Notice Deadline, the Settlement Administrator shall provide Settlement Class Counsel and Neiman Marcus with one or more affidavits confirming that the

Notice Program was completed in accordance with the Settlement Agreement, the Parties' instructions, and the Court's approval. Settlement Class Counsel shall file such affidavit(s) with the Court as an exhibit to or in conjunction with Settlement Class Representatives' motion for final approval of the Settlement.

8. **Findings Concerning Notice.** The Court finds that the form, content and method of giving notice to the Class as described in Paragraph 7 of this Order and the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

9. **Class Action Fairness Act Notice.** Within 10 days after the filing of the motion for preliminary approval, Neiman Marcus shall serve or cause to be served a notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b).

10. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of such intent to exclude

himself or herself from the Settlement Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than 45 days after the Notice Deadline (the “Opt-Out Deadline”). The written notification must include the individual’s name and address; a statement that he or she wants to be excluded from the Action; and the individual’s signature.

The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Settlement Class Counsel may move to file under seal with the Court no later than 10 days prior to the Final Approval Hearing.

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

11. **Objections and Appearances.** A Settlement Class Member who complies with the requirements of this paragraph may object to the Settlement, the Service Awards Request, or the Fee Request.

12. No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and

considered by the Court, unless the objection is (a) electronically filed with the Court within 45 days after the Notice Deadline (the “Objection Deadline”); (b) filed in person at any location of the U.S. District Court for the Northern District of Illinois before the Objection Deadline; or (c) mailed to the Class Action Clerk for U.S. District Court for the Northern District of Illinois. All such objections must be: (ii) be filed or postmarked on or before the Objection Deadline; and (iii) mailed first class postage prepaid to Class Counsel and Neiman Marcus’s counsel and postmarked by no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the case name and number of the Action;
- b. the objector’s full name, address, email address, and telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection;
- e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement, the fee application, or the application for Service Awards;
- f. the identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- g. any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between objector or objector’s counsel and any other person or entity;

h. a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection;

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

j. the objector's signature on the written objection (an attorney's signature is not sufficient).

Any Settlement Class Member filing an objection may be required to sit for a deposition regarding matters concerning the objection. Any Settlement Class Member who fails to comply with the provisions in this Paragraph may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the Release in the Settlement Agreement if Final Judgment is entered.

Any Settlement Class Member, including a Settlement Class Member who files and serves a written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Awards Request, or the Fee Request.

If Final Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in the Action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the Service Awards Request, or the Fee Request.

13. **Claims Process and Settlement Administration Protocol.** Settlement Class Representatives and Neiman Marcus have created a process for assessing and determining the validity of claims and a payment methodology to Settlement Class Members who submit a timely, valid claim form. The Court preliminarily approves the Settlement Administration Protocol substantially in the form attached to the Settlement Agreement as Exhibit G, and directs that the Settlement Administrator effectuate the Settlement Administration Protocol according to the terms of the Settlement Agreement.

Settlement Class Members who qualify for and wish to submit a claim form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If Final Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the claim form shall be forever barred from receiving any such benefit, except as provided in Paragraph 53(c)(ii) of the Settlement Agreement, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Agreement, and the Final Judgment.

14. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is not finally approved by the Court or is terminated in accordance with section XII of the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

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

16. **Stay of Proceedings.** Except as necessary to effectuate this Order, the Action and all deadlines set by the Court or by rule in the Action are stayed and suspended pending the Final Approval Hearing and issuance of the Final Judgment, or until further Order of this Court.

17. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

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

Notice Deadline: 30 calendar days after the issuance of this Preliminary Approval Order

Motion for Final Approval: 14 calendar days prior to the Objection Deadline

Motion for Service Awards, Attorneys' Fees and Costs: 14 calendar days prior to the Objection Deadline

Opt-Out and Objection Deadlines: 45 calendar days after the Notice Deadline

Replies in Support of Final Approval, Service Awards and Fee Requests: 7 calendar days prior to the Final Approval Hearing

Claims Deadline: 180 days after the Notice Deadline

Final Approval Hearing: _____, 2020 [No earlier than 100 days after the filing of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class]

IT IS SO ORDERED.

Date: _____.

Hon. Sharon Johnson Coleman
United States District Judge

LEGAL NOTICE

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

If You Used A Credit Or Debit Card At A Neiman Marcus Group Store Between July 16, 2013 And January 10, 2014, You May Be Entitled To Up To \$100 From, And Your Rights May Be Affected By, A Class Action Settlement.

A proposed Settlement has been reached in a class action lawsuit (the "Action") involving Neiman Marcus Group, LLC ("Neiman Marcus"). You may be entitled to a payment of up to \$100. The Settlement resolves litigation over an alleged Cybersecurity Incident involving malware that was successfully inserted into Neiman Marcus's system by hacker(s). Malware means the malicious software that was capable of collecting credit or debit data from Neiman Marcus' computer system. The Parties have agreed to settle the Action in its entirety, without any admission of liability by Neiman Marcus. The case is known as *Hilary Remijas and Joanne Kao v. The Neiman Marcus Group, LLC*, Case No. 1:14-CV-01735 (N.D. Ill.).

Who's included in the Settlement Class? The proposed Settlement Class includes all United States residents who held a credit or debit card account that was used in a Neiman Marcus Store at any time from July 16, 2013 to October 30, 2013. Neiman Marcus Store means stores at physical locations operating under the "Neiman Marcus", "Bergdorf Goodman", "Cusp", and "Last Call" names, but excluding all restaurants operating in any such stores, and excluding any website or online store.

Who's excluded from the Settlement Class? The Settlement Class does not include United States residents who held a credit or debit card account used in a Neiman Marcus store only between October 31, 2013 and January 10, 2014. Such persons were included in a prior proposed settlement that was not approved. Neiman Marcus has stipulated that *American Pipe & Construction v. Utah*, 414 U.S. 538 (1974), and its progeny apply to claims of such persons, and have done so since the initial filing of this litigation on January 14, 2014. The claims of such persons tolled under American Pipe and its progeny shall continue to be tolled between January 14, 2014 and [NOTICE DATE].

What benefits does the Settlement provide? The Settlement provides for a Settlement Fund in the amount of up to \$1,600,000 to pay the Claims of Settlement Class Members who submit valid and timely Claims, the costs to administer and give notice of the Settlement, taxes due on interest accrued on the Settlement Fund (if any), and any attorneys' fees and expenses and Class Representative Service Awards approved by the Court.

Each Settlement Class Member who submits a valid and timely Claim will receive a payment up to \$100 if their credit or debit card was used at a Neiman Marcus Store on a date and at a time that the Malware was operating in that store. Other Settlement

Class members who submit valid and timely claims will receive a payment up to \$25.00. If the remaining amount is insufficient to pay all claimants in full, the payments will be reduced on a pro rata basis.

How do I receive Settlement benefits? In order to receive monetary benefits under this Settlement, Settlement Class Members should complete and submit a Claim Form to the Settlement Administrator. The deadline for submitting Claim Forms is [DATE] if submitted online via the Settlement Website www.NMSettlement.com, or must be postmarked by [DATE] if submitted by U.S. mail to the Settlement Administrator at: NM Settlement Administrator, 1801 Market Street, Suite 660, Philadelphia, PA 19103. Claim Forms can also be downloaded from www.NMSettlement.com, by calling toll-free 1-844-412-4027, emailing the Settlement Administrator at NMSettlement@AdministratorClassAction.com, or by mailing a request to the Settlement Administrator.

Who represents me? The Court appointed the law firms of Ahdoot & Wolfson, PC and Morgan & Morgan as Class Counsel to represent the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

Your options. If you are included in the Settlement Class and do not submit a Claim Form, your rights will be affected and you may not receive any benefits from this Settlement. If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement by [DATE], by following the instructions in the detailed Long Form Notice available at www.NMSettlement.com or you won't be able to sue, or continue to sue, Neiman Marcus about the legal claims in this case. If you do not exclude yourself, you may object to the Settlement by submitting a written objection by [DATE], following the instructions in the detailed Long Form Notice available at www.NMSettlement.com. The Settlement Agreement, Long Form Notice, and other documents relevant to this case are available at the settlement website, www.NMSettlement.com.

The Final Approval Hearing. The Court will hold a hearing on [DATE], at [TIME] to consider whether to approve the Settlement, award Class Counsel Attorneys' Fees and Expenses up to \$530,000, and award the two Class Representatives up to \$2,500 each for their service. If approved, these amounts will be

deducted from the Settlement Fund. Please check www.NMSettlement.com for updates as the Court may continue the date of the hearing.

Want More Information? Call toll-free 1-844-412-4027, visit www.NMSettlement.com, or write to **NM Settlement**

Administrator, 1801 Market Street, Suite 660, Philadelphia, PA 19103. PLEASE DO NOT CONTACT THE COURT.

Call Toll-Free 1-844-412-4027
www.NMSettlement.com

**IF YOU USED A CREDIT CARD OR DEBIT
CARD AT A NEIMAN MARCUS GROUP* STORE
BETWEEN JULY 16, 2013 AND
JANUARY 10, 2014**, you may be entitled to
up to \$100 from, and your rights may be
affected by, a class action settlement.

* INCLUDING NEIMAN MARCUS, BERGDORF GOODMAN,
CUSEP, AND LAST CALL STORES

**[CLICK HERE](#)
for more information.**

**IF YOU USED A CREDIT
CARD OR DEBIT CARD
AT A NEIMAN MARCUS
GROUP* STORE BETWEEN
JULY 16, 2013 AND
JANUARY 10, 2014,**

you may be entitled to up to
\$100 from, and your rights
may be affected by,
a class action settlement.

***INCLUDING NEIMAN MARCUS,
BERGDORF GOODMAN, CUSP,
AND LAST CALL STORES**

**[CLICK HERE](#)
for more information.**

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IF YOU USED A CREDIT CARD OR DEBIT CARD AT A NEWMAN MARCUS GROUP STORE BETWEEN JULY 16, 2013 AND JANUARY 10, 2014, you may be entitled to up to \$100 from, and your rights may be affected by, a class action settlement.

*INCLUDING NEWMAN MARCUS, BERGDOFF GOODMAN, CUSP, AND LAST CALL STORES

[CLICK HERE](#)
for more information.

IF YOU USED A CREDIT CARD OR DEBIT CARD AT A NEIMAN MARCUS GROUP STORE BETWEEN JULY 16, 2013 AND JANUARY 10, 2014, you may be entitled to up to \$100 from, and your rights may be affected by, a class action settlement.

*INCLUDING NEIMAN MARCUS, BERGDORF GOODMAN, CUSP, AND LAST CALL STORES

[CLICK HERE](#)
for more information.

IF YOU USED A CREDIT CARD OR DEBIT CARD AT A WEINHAUS STORE BETWEEN JULY 16, 2013 AND JANUARY 10, 2014, you may be entitled to up to \$100 from, and your rights may be affected by, a class action settlement.

*INCLUDING WEINHAUS MARFELS, BEFSORF GOODMAN, CUSP, AND LAST CALL STORES

[CLICK HERE](#)
for more information.

**IF YOU USED A
CREDIT CARD
OR DEBIT CARD AT A
NEIMAN MARCUS
GROUP* STORE
BETWEEN
JULY 16, 2013 AND
JANUARY 10, 2014,**
you may be entitled
to up to \$100 from,
and your rights may
be affected by,
a class action
settlement.

***INCLUDING
NEIMAN MARCUS,
BERGDORF GOODMAN,
CUSP, AND LAST
CALL STORES**

**CLICK HERE
for more
information.**

NOTICE ID:	NM123456
CONFIRMATION CODE:	12345678

LEGAL NOTICE

If You Used A Credit Or Debit Card At A Neiman Marcus Group Store Between July 16, 2013 And January 10, 2014, You May Be Entitled To Up To \$100 From, And Your Rights May Be Affected By, A Class Action Settlement.

To File a Claim, click [here](#).

Read this notice carefully, as it affects your rights.
For more information, visit www.NMSettlement.com or call 1-844-412-4027

A proposed Settlement has been reached in a class action lawsuit involving Neiman Marcus Group LLC ("Neiman Marcus"). You may be entitled to a payment of up to \$100. The Settlement resolves litigation over an alleged Cybersecurity Incident involving malware that was successfully inserted into Neiman Marcus's system by hacker(s). Malware means the malicious software that was capable of collecting credit or debit card data from Neiman Marcus's computer system. The Parties have agreed to settle the Action in its entirety, without any admission of liability by Neiman Marcus. The case is known as *Hilary Remijas and Joanne Kao v. The Neiman Marcus Group, LLC*, Case No. 1:14-CV-01735 (N.D. Ill.).

Who's included in the Settlement Class? The proposed Settlement Class includes all United States residents who held a credit or debit card account that was used in a Neiman Marcus Store at any time from July 16, 2013 to October 30, 2013. Neiman Marcus Store means stores at physical locations operating under the "Neiman Marcus", "Bergdorf Goodman", "Cusp", and "Last Call" names, but excluding all restaurants operating in any such stores, and excluding any website or online store.

Who's excluded from the Settlement Class? The Settlement Class does not include United States residents who held a credit or debit card account used in a Neiman Marcus store only between October 31, 2013 and January 10, 2014. Such persons were included in a prior proposed settlement that was not approved. Neiman Marcus has stipulated that *American Pipe & Construction v. Utah*, 414 U.S. 538 (1974), and its progeny apply to claims of such persons, and have done so since the initial filing of this litigation on January 14, 2014. The claims of such persons tolled under *American Pipe* and its progeny shall continue to be tolled between January 14, 2014 and [NOTICE DATE].

What benefits does the Settlement provide? The Settlement provides for a Settlement Fund in the amount of up to \$1,600,000 to pay the Claims of Settlement Class Members who submit valid and timely Claims, the costs to administer and give notice of the Settlement, taxes due on interest

accrued on the Settlement Fund (if any), and any attorneys' fees and expenses and Class Representative Service Awards approved by the Court.

Each Settlement Class Member who submits a valid and timely Claim will receive a payment up to \$100 if their credit or debit card was used at a Neiman Marcus Store on a date and at a time that the Malware was operating in that store. Other Settlement Class members who submit valid and timely claims will receive a payment up to \$25.00.

If the remaining amount is insufficient to pay all claimants in full, the payments will be reduced on a *pro rata* basis.

How do I receive Settlement benefits? In order to receive monetary benefits under this Settlement, Settlement Class Members should complete and submit a Claim Form to the Settlement Administrator. To submit a Claim Form online, please [Click Here](#). The deadline for submitting Claim Forms is **[DATE]** if submitted online, or it must be postmarked by **[DATE]** if submitted by U.S mail to the Settlement Administrator at:

NM Settlement Administrator
1801 Market Street, Suite 660
Philadelphia, PA 19103.

Claim Forms can also be downloaded by [Clicking Here](#), by calling toll-free 1-844-412-4027, emailing the Settlement Administrator at NMSettlement@AdministratorClassAction.com, or by mailing a request to the Settlement Administrator.

Who represents me? The Court appointed the law firms of Ahdoot & Wolfson, PC and Morgan & Morgan as Class Counsel to represent the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

Your options. If you are included in the Settlement Class and do not submit a Claim Form, your rights will be affected and you may not receive any benefits from this Settlement. If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement by **[DATE]**, by following the instructions in the detailed Long Form Notice available by [Clicking Here](#) or you won't be able to sue, or continue to sue, Neiman Marcus about the legal claims in this case. If you do not exclude yourself from the Settlement, you may object to it by **[DATE]**, by following the instructions in the detailed Long Form Notice available by [Clicking Here](#). The Settlement Agreement and other documents relevant to this case are available at the Settlement Website, www.NMSettlement.com.

The Final Approval Hearing. The Court will hold a hearing on **[DATE]**, at **[TIME]** to consider whether to approve the Settlement, award Class Counsel Attorneys' Fees and Expenses up to \$530,000, and award the two Class Representatives up to \$2,500 each for their service. If approved, these amounts will be deducted from the Settlement Fund. Please check www.NMSettlement.com for updates as the Court may continue the date of the hearing.

Want More Information? Call toll-free 1-844-412-4027, visit www.NMSettlement.com, or write to NM Settlement Administrator, 1801 Market Street, Suite 660, Philadelphia, PA 19103.

PLEASE DO NOT CONTACT THE COURT.

Call Toll-Free 1-844-412-4027
www.NMSettlement.com

A proposed Settlement has been reached in a class action lawsuit involving Neiman Marcus Group LLC ("Neiman Marcus"). The Settlement resolves litigation over an alleged Cybersecurity Incident involving malware that was successfully inserted into Neiman Marcus's system by hacker(s). Malware means malicious software that was capable of collecting credit or debit card data. The parties have agreed to settle the Action without any admission of liability by Neiman Marcus. The case is known as Hilary Remijas and Joanne Kao v. The Neiman Marcus Group, LLC, Case No. 1:14-CV-01735 (N.D. Ill.).

Who's included in the Settlement Class? The Settlement Class includes all United States residents who held a credit or debit card account that was used in a Neiman Marcus Store at any time from July 16 to October 30, 2013. Neiman Marcus Store means stores at physical locations operating under the "Neiman Marcus", "Bergdorf Goodman", "Cusp", and "Last Call" names, but excluding all restaurants operating in any such stores, and excluding any website or online store.

Who's excluded from the Settlement Class? The Settlement Class does not include U.S. residents who held a credit or debit card account used in a Neiman Marcus store only between October 31, 2013 and January 10, 2014. Such persons were part of a prior proposed settlement that was not approved. The statute of limitations for certain claims of such persons has been tolled between January 14, 2014 and [DATE].

What benefits does the Settlement provide? The Settlement provides for a Settlement Fund in the amount of up to \$1,600,000 to pay Settlement Class Members, the costs to administer and give notice of the Settlement, taxes due on interest accrued on the Settlement Fund, and any attorneys' fees and expenses and Class Representative Service Awards approved by the Court. Each Settlement Class Member who submits a valid and timely Claim will receive a payment up to \$100 if their credit or debit card was used at a Neiman Marcus Store on a date and at a time that the Malware was operating in that store. Other Settlement Class members who submit valid and timely claims will receive a payment up to \$25.00. If the Settlement Fund is insufficient to pay all claimants in full, the payments will be reduced.

How do I receive Settlement benefits? In order to receive benefits under this Settlement, Settlement Class Members should complete and submit a Claim Form to the Settlement Administrator. The deadline for submitting Claim Forms is [DATE] if submitted online via www.NMSettlement.com, or must be postmarked by [DATE] if submitted by U.S. mail to the Settlement Administrator. Claim Forms can be obtained from www.NMSettlement.com, by calling toll-free 1-844-412-4027, emailing the Settlement Administrator at NMSettlement@AdministratorClassAction.com, or by mailing a request to the Settlement Administrator.

Who represents me? The Court appointed the law firms of Ahdoot & Wolfson, P.C. and Morgan & Morgan to represent the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

Your options. If you are a Settlement Class Member and do nothing, your rights will be affected and you may not receive any benefits from this Settlement. If you are a Settlement Class Member and do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement by [DATE], by following the instructions in the detailed Long Form Notice available at www.NMSettlement.com or you won't be able to sue Neiman Marcus about the legal claims in this case. If you do not exclude yourself, you may object to the Settlement by submitting a written objection by [DATE], following the instructions in the Long Form Notice available at www.NMSettlement.com. The Settlement Agreement and relevant documents are available at www.NMSettlement.com.

Final Approval Hearing. The Court will hold a hearing on [DATE], at [TIME], to consider whether to approve the Settlement, award Class Counsel attorneys' fees and expenses up to \$530,000, and award each Class Representative up to \$2,500. If approved, these amounts will be paid from the Settlement Fund. Please check www.NMSettlement.com for updates as the Court may reschedule the hearing.

Want More Information? Call toll-free 1-844-412-4027, visit www.NMSettlement.com, or write to NM Settlement Administrator, 1801 Market Street, Suite 660, Philadelphia, PA 19103.

NM Settlement
1801 Market Street, Ste 660
Philadelphia, PA 19103
1(844) 412-4027

LEGAL NOTICE

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

For more information on the proposed settlement, how to file a claim or an objection, or how to exclude yourself, visit www.NMsettlement.com, or contact the Claims Administrator

Do not contact the Court, Neiman Marcus, or Neiman Marcus' Counsel about this notice or for information about the settlement *Hilary Remijas and Joanne Kao v. The Neiman Marcus Group, LLC*, Case No. 1:14-CV-01735 (N.D. Ill.).

NOTICE ID: NM123456
CONFIRMATION CODE: 12345678

[BAR CODE CLAIM NUMBER]
[NAME]
[STREET]
[CITY STATE ZIP]
[POSTAL BAR CODE]

Settlement Administration Protocol

This Settlement Administration Protocol (the “Protocol”) is a part of the Revised Settlement Agreement and Release (“Revised Settlement Agreement” or “Agreement”) and shall be used by the Settlement Administrator to review, address, implement, and process those Claim Forms submitted pursuant to the Revised Settlement Agreement, and otherwise to implement the terms of the Claims process and Notice procedure in the Revised Settlement Agreement. All capitalized terms used in this Protocol shall have the same meaning given to them in the Revised Settlement Agreement. To the extent there is any conflict between the Revised Settlement Agreement and this Protocol, the Revised Settlement Agreement shall govern.

1. Settlement Administrator’s General Responsibilities and Duties

(a) The Settlement Administrator must consent, in writing, to serve and shall abide by the obligations of the Revised Settlement Agreement, this Protocol, and the Orders issued by the Court.

(b) The Settlement Administrator shall be reimbursed pursuant to the terms and conditions of the Revised Settlement Agreement and any agreement (i) that the parties jointly enter into with the Settlement Administrator with respect to its services pertaining to this Settlement or (ii) that Neiman Marcus enters into with respect to its services pertaining to this Settlement. Under no circumstances will the Plaintiffs, Plaintiffs’ attorneys, and/or Class Counsel be obligated to pay any Settlement Administration Charge. In the event of any conflict between the terms and conditions of any such agreement and the terms and conditions of the Revised Settlement Agreement, this Protocol, or any order of the Court, the terms and conditions of the Revised Settlement Agreement, this Protocol, or any order of the Court shall control.

(c) The Settlement Administrator warrants that it knows of no reason why it cannot fairly and impartially administer the Notice or Claims processes set forth in the Revised Settlement Agreement.

(d) The Settlement Administrator shall perform other functions reasonably related to administration of the Settlement at the agreed-upon written instructions of both Class Counsel and Defense Counsel.

(e) Within seven (7) days after the Notice Deadline, the Settlement Administrator shall provide Class Counsel and Defense Counsel with one or more affidavits that attest to the implementation of the Notice Program in accordance with the Preliminary Approval Order. Class Counsel shall file such affidavit(s) with the Court as an exhibit to or in conjunction with Settlement Class Representatives’ motion for final approval of the Settlement.

(f) The Settlement Administrator shall keep a clear and careful record of all communications with potential Revised Settlement Class Members, all Claim Forms, all expenses, and all tasks performed in administering the Claims process.

(g) The Settlement Administrator shall provide weekly reports to Class Counsel and Defense Counsel that summarize the number of Claims and written notifications of

exclusion received that week, the total number of claims and written notifications of exclusion received to date, the number of any Claims approved and denied that week, the total number of Claims approved and denied to date, and other pertinent information as requested by Class Counsel and Defense Counsel. No later than ten (10) days after the Opt-Out Deadline, the Settlement Administrator shall provide to Class Counsel and Defense Counsel a complete exclusion list together with copies of the exclusion requests.

(h) The Settlement Administrator shall take all reasonable efforts to administer the Notice and Claims process efficiently and to avoid unnecessary fees and expenses. As soon as work commences, the Settlement Administrator shall provide a detailed written accounting of all fees and expenses on a regular basis to Class Counsel and Defense Counsel, and shall respond promptly to inquiries by Class Counsel and Defense Counsel concerning the Settlement Administration Charges.

(i) The Parties are entitled to observe and monitor the performance of the Settlement Administrator to ensure compliance with the Revised Settlement Agreement and this Protocol. The Settlement Administrator shall promptly provide a complete response and/or any and all materials in its possession following an inquiry and request for such information made by Neiman Marcus, Defense Counsel, or Class Counsel.

2. Settlement Administrator's Duties Regarding Settlement Class Notice

(a) As directed by Defense Counsel, within ten (10) days of the filing of the motion for preliminary approval, the Settlement Administrator shall serve a notice of the proposed Settlement on appropriate state officials in accordance with the requirements under the Class Action Fairness Act ("CAFA").

(b) No later than fourteen (14) days after entry of the Preliminary Approval Order, the Settlement Administrator shall obtain from Neiman Marcus the Class Member Information for the purpose of sending e-mail Notice and mail Notice.

(c) The Settlement Administrator shall send the Summary Notice via e-mail to all Prior Settlement Class Members for whom Neiman Marcus can ascertain an e-mail address from its records.

(d) In the event that an e-mail address for a Prior Settlement Class Member cannot be ascertained by Neiman Marcus, or the Settlement Administrator learns that the e-mail address in Neiman Marcus' records is invalid, the Settlement Administrator shall send the Summary Notice via U.S. Mail to all Prior Settlement Class Members for whom a mailing address is included in the Class Member Information.

(e) For any Mail Notices that are returned undeliverable with forwarding address information, the Settlement Administrator shall re-mail the Summary Notice to the updated addresses as indicated. For any U.S. Mailed Summary Notices that are returned undeliverable without forwarding address information, the Settlement Administrator shall use reasonable efforts to identify updated mailing addresses (such as running the mailing address through the National Change of Address Database) and re-mail the Summary Notice to the extent

updated addresses are identified. The Settlement Administrator shall only make one attempt to re-mail any Summary Notices that are returned as undeliverable.

(f) The Settlement Administrator shall establish and maintain the Settlement Website, and, on or before the Notice Date, publish the Long Form Notice on the Settlement Website.

(g) The Settlement Administrator shall create a page on the Settlement Website where individuals can enter the last four digits and last name associated with a payment card that they believe was used at a NMG Store between July 16, 2013 and October 30, 2013. If an individual chooses to enter this information, the website will tell them whether the information they submitted is (i) consistent with a payment card used at a NMG Store at a time the Malware was operating in that store, (ii) consistent with a payment card used at a NMG Store between July 16, 2013 and October 30, 2013, but not at a time the Malware was operating in that store, or (iii) not consistent with a payment card used at a NMG Store between July 16, 2013 and October 30, 2013. This website can therefore provide individuals with a preliminary (but not definitive) indication about whether or not they are part of the Settlement Class, and the maximum amount of benefits to which they may be entitled if they file a valid claim and the Revised Settlement is approved. Attached hereto as Exhibit 1 is a copy of the language the parties anticipate using on this page of the Settlement Website.

(h) The Settlement Administrator shall establish and maintain an interactive voice response toll-free telephone line for individuals to call with Settlement-related inquiries in order to answer such questions. Individuals can also request a mailed copy of the Long Form Notice and/or the Claim Form, pursuant to the terms and conditions of the Revised Settlement Agreement.

(i) The Settlement Administrator shall establish and maintain a post office box for mailed written notifications of exclusion from the Revised Settlement Class.

(j) The Settlement Administrator shall respond to any mailed inquiries.

(k) The Settlement Administrator shall process all written notifications of exclusion from the Revised Settlement Class.

3. Locating, Obtaining, and Submitting Claim Forms

(a) As soon as practicable following Preliminary Approval, but prior to the Notice date, the Settlement Administrator shall maintain and update an Internet website, www.NMSettlement.com (the "Settlement Website"), that shall be easily accessible through commonly used Internet Service Providers for the download and submission of Claim Forms. The website will inform Settlement Class Members of the terms of this Agreement, their rights, dates and deadlines, and related information, through and including periodic updates. The Long Form Notice, Claim Form, Revised Settlement Agreement and its exhibits, the Second Amended Consolidated Class Action Complaint, and any Motion for Preliminary Approval of the Settlement, for Final Approval of the Settlement, and for Award of Attorneys' Fees, Costs, and Expenses and Incentive Awards (including supporting declarations and exhibits), and any other

documents that Class Counsel and Defense Counsel agree to post or that the Court orders posted, shall be available on the Internet website via a hyperlink. The Settlement Website shall be designed to permit Revised Settlement Class Members to readily and easily submit the Claim Form and obtain information about their rights and options under the Revised Settlement Agreement. The Settlement Administrator shall keep the Settlement Website operational until at least thirty (30) days after the Claims Deadline, and shall then transfer ownership of the URL to Neiman Marcus. The Settlement Administrator shall be solely responsible for receiving and processing the Claim Forms and for promptly delivering blank Claim Forms to the individuals who request them.

(b) The Claim Form, which shall be substantially similar to the form attached as Exhibit A to the Revised Settlement Agreement, shall be available as part of the Notice on the Settlement Website at www.NMSettlement.com, and also through contacting by telephone or by mail or other similar service the Settlement Administrator and requesting that a copy of the Claim Form be sent. The Claim Form on the Settlement Website and the hard copy Claim Form shall be consistent in all substantive respects.

(c) Claims may be submitted by completing the Claim Form in hard copy and sending them by mail or other similar delivery service or online through a web-based Claim Form at the Settlement Website, www.NMSettlement.com.

(d) Claims filed under the prior proposed settlement of this action that was not approved will be honored and treated as though filed under the Revised Settlement, unless the claimant (i) timely serves a request to be excluded from the Revised Settlement, in which case the claimant will be excluded from the Revised Settlement, and the claim filed under the prior proposed settlement will not be paid, or (ii) timely submits a new claim form under the Revised Settlement, in which case the newly-submitted form will supersede the claim form submitted under the prior proposed settlement.

4. Claim Form Review and Processing

(a) The Settlement Administrator shall obtain from Neiman Marcus information necessary to carry out the procedure described in the Revised Settlement Agreement and this Settlement Administration Protocol to determine whether or not submitted claims are valid.

(b) For a Claim Form to be complete, a Claimant must answer two questions and provide one certification:

- (i) Question One: A claimant must state whether his or her credit or debit card was used at a NMG Store between July 16, 2013 and October 30, 2013.
- (ii) Question Two: Claimants who answer Question One in the affirmative must provide at least one of two additional sets of information:

- (A) Option A: Claimants may provide (i) the last four digits of the payment card used at a Neiman Marcus store between July 16, 2013 and October 30, 2013 and (ii) all of the dates and locations that that card was used at a Neiman Marcus store between these dates up to a total of three date and location pairs; or
 - (B) Option B: Claimants may provide the full name and billing address associated with the payment card.
 - (iii) Verification: A claimant must certify under penalty of perjury that the information provided in the claim form is true and correct, and that the claimant is the cardholder of the card identified in the claimant's response to Question Two, described above.
- (c) For a Claim Form to be valid, all of the following conditions must be true:
- (i) The Claimant has answered Question One in the affirmative.
 - (ii) The information provided by the Claimant in response to Question Two matches the information provided by Neiman Marcus regarding payment cards used at a time and place that the malware was operating. Specifically:
 - (A) If the Claimant provided information in response to Option A, then (i) the four digits provided by the Claimant must match the four digits provided by Neiman Marcus as belonging to a payment card used during the Malware Period, AND (ii) the dates and locations that the card was used provided by the Claimant must match precisely the dates and locations that a card with the same four digits was used, according to the records provided by Neiman Marcus. If the Claimant submits a date and/or location (within the Malware Period) that does not correspond with a date and/or location that the card with the same four digits was used during the relevant period, then the claim is not valid. If the Claimant submits fewer than three dates and locations where the payment card was used, and the records provided by Neiman Marcus indicate that the payment card was used three or more times during the Malware Period, then the claim is not valid.
 - (B) If the Claimant provided information in response to Option B, then the name and address provided by the Claimant must match precisely the name and billing address of a cardholder whose payment card was used at a NMG Store during the Malware Period.
 - (iii) The claimant has signed and dated the verification set forth in the Claim Form.

(d) Where a good faith basis exists, the Settlement Administrator shall reject a Claim Form for, among other reasons, the following:

- (i) The submitted Claim Form is not fully completed and signed;
- (ii) The submitted Claim Form is illegible;
- (iii) The Claimant is not a United States resident, as indicated by the address provided by the Claimant in the Claim Form;
- (iv) The information submitted in the Claim Form does not establish that the claim is valid;
- (v) The person submitting the Claim Form is not a Revised Settlement Class Member;
- (vi) The Claim Form is fraudulent;
- (vii) The Claim Form is duplicative of another Claim Form;
- (viii) The person submitting the Claim Form requests that the Settlement consideration be given to a person or entity that is not the Revised Settlement Class Member by whom the Claim Form is submitted;
- (ix) The Claim Form was submitted after the Claims Deadline; and/or
- (x) The Claim Form otherwise does not meet the requirements of the Revised Settlement Agreement.

(e) Each Claim Form shall be submitted to and reviewed by the Settlement Administrator, who shall determine, in accordance with the terms and conditions of the Revised Settlement Agreement and this Settlement Administration Protocol, whether the Claim Form is valid.

(f) The Claim Form will be deemed to have been submitted when posted, if received with a postmark or equivalent mark by a courier company indicated on the envelope or mailer with the instructions set out in the Claim Form. In all other cases, the Claim Form shall be deemed to have been submitted when it is actually received by the Settlement Administrator.

(g) No individual may submit more than one Claim Form pertaining to a single payment card. The Settlement Administrator shall identify any Claim Forms that appear on behalf of the same individual ("Duplicative Claim Forms"). The Settlement Administrator shall determine whether there is any duplication of Claim Forms, if necessary by contacting the individual or their counsel. The Settlement Administrator shall reject any such Duplicative Claim Form.

(h) The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and

abuse in the Claims process. The Settlement Administrator may, in its discretion, deny in whole or in part any Claim to prevent actual or possible fraud or abuse.

(i) By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate to further the purposes of the Revised Settlement Agreement if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of Claim Forms, including, but not limited to, rejecting a Claim Form to prevent actual or possible fraud or abuse.

(j) Any decision to reject a Claim Form by the Settlement Administrator is subject to the reversal by the unanimous decision of Class Counsel and Neiman Marcus.

(k) The Settlement Administrator's rejection of a Claim Form is final (subject to the terms of paragraph 4(j) above), but either of the Parties and/or Settlement Class Members who submitted a rejected Claim Form may submit any disputed issues to the Court or a referee appointed by the Court for summary and non-appealable resolution.

(l) Should any Settlement Class Member complete the procedures to object to the Revised Settlement Agreement, the Settlement Administrator shall provide copies of all such objections to Class Counsel and Defense Counsel within three (3) business days of receipt.

Exhibit 1

TEXT FOR PORTAL LANDING PAGE

- This tool will allow you to learn whether information about your credit or debit card is consistent with information about credit or debit cards held by persons who may be eligible for cash payments under the proposed settlement in *Hilary Remijas and Joanne Kao v. The Neiman Marcus Group, LLC, Case No. 1:14-CV-01735 (N.D. Ill.)*.
- To use the tool, you will need to enter the last four digits of your credit or debit card that you believe was used at a Neiman Marcus store between July 16, 2013 and October 30, 2013, along with the last name of the cardholder as it appears on the card.
- The tool will then tell you whether that information is consistent with information about credit or debit card cards in the following categories:
 1. Cards used at a Neiman Marcus store at a time that card-scraping malware was operating in that store. Holders of cards in this category may be entitled to up to \$100 under the terms of the proposed settlement, if they file valid claims and the proposed settlement is approved.
 2. Cards used at a Neiman Marcus store between July 16, 2013 and October 30, 2013, but not at a time that the card-scraping malware was operating in that store. Holders of cards in this category may be entitled to up to \$25 under the terms of the proposed settlement, if they file valid claims and the proposed settlement is approved.
 3. Cards not used at a Neiman Marcus store between July 16, 2013 and October 30, 2013. Holders of these cards are not entitled to benefits under the proposed settlement, and are not members of the settlement class.
- Please note the following important points:
 - **TO RECEIVE ANY BENEFITS UNDER THE PROPOSED SETTLEMENT YOU MUST FILE A CLAIM.** Use of this tool will not result in any benefits being paid to you. To obtain any benefits, you must file a separate claim by [DATE]. To file a claim, [click here](#).
 - **A POSITIVE RESULT FROM THIS TOOL DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR ARE ENTITLED TO BENEFITS UNDER THE PROPOSED SETTLEMENT.** This tool can only tell you whether the information you submit is consistent with information about persons who have valid claims. It is intended to provide a preliminary indication about whether you may be entitled to benefits, and how much. It cannot provide a definite statement that you are entitled to benefits. Only by filing a claim can you determine for certain whether you are entitled to benefits under this proposed settlement.

- This tool cannot provide definite proof that someone is a class member or entitled to benefits because many people have similar last names and credit or debit card numbers. For example, if someone named Jane Smith submits the last name “Smith” as the cardholder name and “1-2-3-4” as the last four digits of her payment card, she may be told that that information is consistent with information about a card used at a store while the card-scraping malware was active in that store. However, it is possible that the card used while the malware was active was held by someone named John Smith who happens to have 1-2-3-4 as the last four digits of his card.
- **YOU MAY FILE A CLAIM EVEN IF YOU RECEIVE A NEGATIVE RESULT FROM THIS TOOL.** Use of this tool is not a requirement to filing a claim, and you may file a claim even if this tool indicates that the information you submitted would not entitle you to any benefits under the proposed settlement.
- If you have any questions about this tool or the proposed settlement, please call the settlement administrator toll-free at 1-844-412-4027, email the settlement administrator at NMSettlement@AdministratorClassAction.com, or mail a request to the settlement administrator at:

NM Settlement Administrator
1801 Market Street, Suite 660
Philadelphia, PA 19103

- Enter the last four digits of the credit or debit card you believe was used at a Neiman Marcus store between July 16, 2013 and October 30, 2013 here:

- Enter the last name of the cardholder as it appears on the card here:

TEXT FOR GROUP 1 RESULTS PAGE

- The information that you submitted is consistent with information known about a credit or debit card that was used at a Neiman Marcus store at a time that the card-scraping malware was operating in that store.
- Accordingly, the information that you submitted indicates that you may be entitled to up to \$100 under the terms of the proposed settlement if you file a valid claim and the proposed settlement is approved.
- To obtain any benefits, you must file a claim by [DATE]. To file a claim, click here.
- Please note the following important points:
 - **TO RECEIVE ANY BENEFITS UNDER THE PROPOSED SETTLEMENT YOU MUST FILE A CLAIM.** Use of this tool will not result in any benefits being paid to you. To obtain any benefits, you must file a separate claim by [DATE]. To file a claim, click here.
 - **A POSITIVE RESULT FROM THIS TOOL DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR ARE ENTITLED TO BENEFITS UNDER THE PROPOSED SETTLEMENT.** This tool can only tell you whether the information you submit is consistent with information about persons who have valid claims. It is intended to provide a preliminary indication about whether you may be entitled to benefits, and how much. It cannot provide a definite statement that you are entitled to benefits. Only by filing a claim can you determine for certain whether you are entitled to benefits under this proposed settlement.
 - This tool cannot provide definite proof that someone is a class member or entitled to benefits because many people have similar last names and credit or debit card numbers. For example, if someone named Jane Smith submits the last name “Smith” as the cardholder name and “1-2-3-4” as the last four digits of her payment card, she may be told that that information is consistent with information about a card used at a store while the card-scraping malware was active in that store. However, that does not prove that Jane’s card was actually the card that was used while the malware was active – it is possible that the card used while the malware was active was held by someone named John Smith who happens to have 1-2-3-4 as the last four digits of his card.
- If you have any questions about this tool or the proposed settlement, please call the settlement administrator toll-free at 1-844-412-4027, email the settlement administrator at NMSettlement@AdministratorClassAction.com, or mail a request to the settlement administrator at:

NM Settlement Administrator

1801 Market Street, Suite 660
Philadelphia, PA 19103

TEXT FOR GROUP 2 RESULTS PAGE

- The information that you submitted is consistent with information known about a credit or debit card that was used at a Neiman Marcus store between July 16, 2013 and October 30, 2013, but not at a time that the card-scraping malware was operating in that store.
- Accordingly, the information you submitted indicates that you may be entitled to up to \$25 under the terms of the proposed settlement if you file a valid claim and the proposed settlement is approved.
- To obtain any benefits, you must file a claim by [DATE]. To file a claim, click here.
- Please note the following important points:
 - **TO RECEIVE ANY BENEFITS UNDER THE PROPOSED SETTLEMENT YOU MUST FILE A CLAIM.** Use of this tool will not result in any benefits being paid to you. To obtain any benefits, you must file a separate claim by [DATE]. To file a claim, click here.
 - **A POSITIVE RESULT FROM THIS TOOL DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR ARE ENTITLED TO BENEFITS UNDER THE PROPOSED SETTLEMENT.** This tool can only tell you whether the information you submit is consistent with information about persons who have valid claims. It is intended to provide a preliminary indication about whether you may be entitled to benefits, and how much. It cannot provide a definite statement that you are entitled to benefits. Only by filing a claim can you determine for certain whether you are entitled to benefits under this proposed settlement.
 - This tool cannot provide definite proof that someone is a class member or entitled to benefits because many people have similar last names and credit or debit card numbers. For example, if someone named Jane Smith submits the last name “Smith” as the cardholder name and “1-2-3-4” as the last four digits of her payment card, she may be told that that information is consistent with information about a card used at a store while the card-scraping malware was active in that store. However, that does not prove that Jane’s card was actually the card that was used while the malware was active – it is possible that the card used while the malware was active was held by someone named John Smith who happens to have 1-2-3-4 as the last four digits of his card.
- If you have any questions about this tool or the proposed settlement, please call the settlement administrator toll-free at 1-844-412-4027, email the settlement administrator at NMSettlement@AdministratorClassAction.com, or mail a request to the settlement administrator at:

NM Settlement Administrator

1801 Market Street, Suite 660
Philadelphia, PA 19103

TEXT FOR NEGATIVE RESULTS PAGE

- The information that you submitted is not consistent with information known about any credit or debit card that was used at a Neiman Marcus store between July 16, 2013 and October 30, 2013.
- Accordingly, the information you submitted indicates that you may not be a member of the settlement class and are not entitled to any benefits under the settlement.
- You may submit information about other credit or debit cards that you held to determine whether such information is consistent with information known about cards used at a Neiman Marcus store between July 16, 2013 and October 30, 2013.
- Please note the following important points:
 - **TO RECEIVE ANY BENEFITS UNDER THE PROPOSED SETTLEMENT YOU MUST FILE A CLAIM.** Use of this tool will not result in any benefits being paid to you. To obtain any benefits, you must file a separate claim by [DATE]. To file a claim, click here.
 - **YOU MAY FILE A CLAIM EVEN IF YOU RECEIVE A NEGATIVE RESULT FROM THIS TOOL.** Use of this tool is not a requirement to filing a claim, and you may file a claim even if this tool indicates that the information you submitted would not entitle you to any benefits under the proposed settlement.
- If you have any questions about this tool or the proposed settlement, please call the settlement administrator toll-free at 1-844-412-4027, email the settlement administrator at NMSettlement@AdministratorClassAction.com, or mail a request to the settlement administrator at:

NM Settlement Administrator
1801 Market Street, Suite 660
Philadelphia, PA 19103

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

HILARY REMIJAS and JOANNE KAO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

THE NEIMAN MARCUS GROUP, LLC, a
Delaware limited liability company,

Defendant.

Case No. 1:14-cv-01735

**DECLARATION OF STEVEN
WEISBROT, ESQ. OF ANGEION
GROUP, LLC, THE PROPOSED
SETTLEMENT ADMINISTRATOR**

I, Steven Weisbrot, Esq., declare under penalty of perjury as follows:

1. I am a partner at the class action notice and Settlement Administration firm, Angeion Group, LLC (“Angeion”). I am fully familiar with the facts contained herein based upon my personal knowledge.

2. I have been responsible in whole or in part for the design and implementation of hundreds of court-approved notice and administration programs including some of the largest and most complex notice plans in recent history. I have taught numerous accredited Continuing Legal Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital Media in Due Process Notice Programs, as well as Claims Administration, generally. I am the author of multiple articles on Class Action Notice, Claims Administration, and Notice Design in publications such as Bloomberg, BNA Class Action Litigation Report, Law360, the ABA Class Action and Derivative Section Newsletter, and I am a frequent speaker on notice issues at conferences throughout the United States and internationally.

3. I was certified as a professional in digital media sales by the Interactive Advertising Bureau

(“IAB”) and I am co-author of the Digital Media section of Duke Law’s Guidelines and Best Practices—Implementing 2018 Amendments to Rule 23.

4. I have given public comment and written testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, broadcast media, digital media and print publication, in effecting Due Process notice, and I have met with representatives of the Federal Judicial Center to discuss the 2018 amendments to Rule 23 and suggest an educational curriculum for the judiciary concerning notice procedures.

5. Prior to joining Angeion’s executive team, I was employed as Director of Class Action services at Kurtzman Carson Consultants, an experienced notice and settlement administrator. Prior to my notice and claims administration experience, I was employed in private law practice.

6. My notice work comprises a wide range of settlements that include product defect, mass disasters, false advertising, employment, antitrust, tobacco, banking, firearm, insurance, and bankruptcy cases. I have been at the forefront of infusing digital media, as well as big data and advanced targeting, into class action notice programs. For example, the Honorable Sarah Vance stated in her December 31, 2014 Order in *In Re: Pool Products Distribution Market Antitrust Litigation*, MDL No. 2328:

To make up for the lack of individual notice to the remainder of the class, the parties propose a print and web-based plan for publicizing notice. The Court welcomes the inclusion of web-based forms of communication in the plan.... The Court finds that the proposed method of notice satisfies the requirements of Rule 23(c)(2)(B) and due process.

The direct emailing of notice to those potential class members for whom Hayward and Zodiac have a valid email address, along with publication of notice in print and on the web, is reasonably calculated to apprise class members of the settlement.

As detailed below, courts have repeatedly recognized my work in the design of class action notice programs:

(a) On February 24, 2017, The Honorable Ronald B. Rubin in *James Roy et al. v. Titeflex Corporation et al.*, No. 384003V (Md. Cir. Ct.), noted when granting preliminary approval to the settlement:

What is impressive to me about this settlement is in addition to all the usual recitation of road racing litanies is that there is going to be a) public notice of a real nature and b) about a matter concerning not just money but public safety and then folks will have the knowledge to decide for themselves whether to take steps to protect themselves or not. And that's probably the best thing a government can do is to arm their citizens with knowledge and then the citizens can make a decision. To me that is a key piece of this deal. ***I think the notice provisions are exquisite.*** (Emphasis added).

(b) Likewise, on July 21, 2017, The Honorable John A. Ross in *In Re Ashley Madison Customer Data Security Breach Litigation*, MDL No. 2669 (E.D. Mo.), stated in the Court's Order granting preliminary approval of the settlement:

The Court further finds that the method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot, Esq. on Adequacy of Notice Program, dated July 13, 2017, and the Parties' Stipulation—including an extensive and targeted publication campaign composed of both consumer magazine publications in *People* and *Sports Illustrated*, as well as serving 11,484,000 highly targeted digital banner ads to reach the prospective class members that will deliver approximately 75.3% reach with an average frequency of 3.04 —***is the best method of notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and all Constitutional requirements including those of due process.*** (Emphasis added).

The Court further finds that the Notice fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process; provided, that the Parties, by agreement, may revise the Notice, the Claim Form, and other exhibits to the Stipulation, in ways that are not material or ways that are appropriate to update those documents for purposes of accuracy.

(c) In the *In Re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Products Liability Litigation*, Case No. 17-md-02777-EMC (N.D. Cal.), in the Court's February 11, 2019 Order, the Honorable Edward M. Chen ruled:

[In addition] the Court finds that the language of the class notices (short and long-form) is appropriate and that the means of notice – which includes mail notice, electronic notice, publication notice, and social media “marketing” – is the “best notice . . . practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B); see also Proc. Guidance for Class Action Sett. ¶¶ 3-5, 9 (addressing class notice, opt-outs, and objections). The Court notes that the means of notice has changed somewhat, as explained in the Supplemental Weisbrot Declaration filed on February 8, 2019, so that notice will be more targeted and effective. See generally Docket No. 525 (Supp. Weisbrot Decl.) (addressing, inter alia, press release to be distributed via national newswire service, digital and social media marketing designed to enhance notice, and “reminder” first-class mail notice when AEM becomes available).

(d) On June 26, 2018, in his Order granting preliminary approval of the settlement in *Mayhew v. KAS Direct, LLC, et al.*, Case No. 16-cv-6981 (VB) (S.D.N.Y.), The Honorable Vincent J. Briccetti ruled:

In connection with their motion, plaintiffs provide the declaration of Steven Weisbrot, Esq., a principal at the firm Angeion Group, LLC, which will serve as the notice and settlement administrator in this case. (Doc. #101, Ex. F: Weisbrot Decl.) According to Mr. Weisbrot, he has been responsible for the design and implementation of hundreds of class action administration plans, has taught courses on class action claims administration, and has given testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, and digital media in due process notice. Mr. Weisbrot states that the internet banner advertisement campaign will be responsive to search terms relevant to “baby wipes, baby products, baby care products, detergents, sanitizers, baby lotion, [and] diapers,” and will target users who are currently browsing or recently browsed categories “such as parenting, toddlers, baby care, [and] organic products.” (Weisbrot Decl. ¶ 18). According to Mr. Weisbrot, the internet banner advertising campaign will reach seventy percent of the proposed class members at least three times each. (Id. ¶ 9). Accordingly, the Court approves of the manner of notice proposed by the parties as it is reasonable and the best practicable option for confirming the class members receive notice.

7. By way of background, Angeion is an experienced class action notice and claims administration company formed by a team of executives that have had extensive tenures at five other nationally recognized claims administration companies. Collectively, the management team

at Angeion has overseen more than 2,000 class action settlements and distributed over \$10 billion to class members. The executive profiles as well as the company overview are available at http://www.angeiongroup.com/our_team.htm.

8. This declaration will describe the Notice Program that will be implemented in this matter, subject to this Court's approval, including the considerations that informed the development of the plan and why it will provide Due Process of Law to the members of the proposed class in the revised settlement ("Revised Settlement Class Members"), and to the members of the settlement class in the prior settlement, which the Court did not approve ("Prior Settlement Class Members").¹ All Revised Settlement Class Members are Prior Settlement Class Members, but not all Prior Settlement Class Members are Revised Settlement Class Members. In my professional opinion, the Notice Program described herein is the best practicable notice under the circumstances and fulfills all due process requirements.

SUMMARY OF NOTICE PROGRAM

9. The Notice Program is the best notice that is practicable under the circumstances, fully comports with due process and Fed. R. Civ. P. 23. Specifically, the Notice Program provides for direct notice via email or mail to all Prior Settlement Class Members for whom the Defendant has email or mailing address information. The settlement agreement provides that all Prior Settlement Class Members for whom Defendant's records contain an email address will be sent notice of the Settlement via email. Prior Settlement Class Members for whom Defendant's records contain a mailing address, but no email address, will be sent a postcard notice via the United States Postal Service. Further, any Prior Settlement Class Members for whom Defendant's records contain an email address and mailing address, but whose email notice cannot be delivered, will be sent a postcard notice, to ensure that notice is sent to all Prior Settlement Class Members for whom the Defendant has email or mailing address information.

¹ The Parties agreed that notice should be provided to Prior Settlement Class Members who are not Revised Settlement Class Members because Prior Settlement Class Members are not included in the Revised Settlement's class definition, and their legal rights (including any right to bring an individual action) may therefore be affected by the Revised Settlement.

10. In addition to the direct notice campaign outlined above, the Notice Program includes a robust media notice plan consisting of state of the art internet advertising coupled with print publication in a national consumer magazine, and is further augmented by a custom, targeted Facebook social media campaign to reach Class Members. The Notice Program also includes an informational website and toll-free telephone line where individuals can learn more about their rights and responsibilities in the litigation. In short, the Notice Program described herein is the best notice that is practicable under the circumstances and exceeds many notice campaigns approved in other, similar settlements and is further designed to stimulate claims activity.

11. The comprehensive media Notice Program is designed to deliver an approximate 79.18% reach with an average frequency of 3.00 times. What this means in practice, is that 79.18% of our Target Audience (discussed in greater detail below) will see an advertisement concerning the Revised Settlement, on average 3.0 times each. The reach percentage contemplated here is an *increase* from the 71.48% that was previously achieved in the prior media campaign. The calculations for the reach and frequency were completed using syndicated data from GfK MRI² and comScore³ to identify the best vehicles to deliver messaging to the Target Audience.

12. The Federal Judicial Center states that a publication notice plan that reaches 70% of class members is one that reaches a “high percentage” and is within the “norm.” Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, “Managing Class Action Litigation: A Pocket Guide for Judges,” at 27 (3d Ed. 2010). Here, the media plan alone will reach approximately 79.18% of the Target Audience, which does not account individuals notified by the robust direct notice campaign, which utilizes Defendant’s data to email or mail notice to each Prior Settlement Class Member for whom they possess email or mailing addresses.

² GfK Mediamark Research and Intelligence LLC provides demographic, brand preference, and media-use habits and captures in-depth information on consumer media choices, attitudes, and consumption of products and services in nearly 600 categories.

³ comScore, Inc. is a leading cross-platform measurement and analytics company that precisely measures audiences, brands and consumer behavior everywhere, capturing 1.9 trillion global interactions monthly. comScore’s proprietary digital audience measurement methodology allows marketers to calculate audience reach in a manner not affected by variables such as cookie deletion and cookie blocking/rejection, allowing these audiences to be reached more effectively. comScore operates in more than 75 countries, serving over 3,200 clients worldwide.

CLASS DEFINITION

13. The “Settlement Class” means all residents of the United States who held a credit card or debit card account that was used in any NMG Store during the Malware Period. Excluded from the Settlement Class are the judge presiding over this matter, any members of her judicial staff, the officers and directors of Neiman Marcus, and persons who timely and validly request exclusion from the Settlement Class. The Settlement Class does not include United States residents who held a credit or debit card account used in a Neiman Marcus store only between October 31, 2013 and January 10, 2014. Such persons were included in a prior proposed settlement that was not approved.

14. Angeion has been informed that there are approximately 1.1 million Revised Settlement Class Members and approximately 2.2 million Prior Settlement Class Members. The parties determined that notice of the Revised Settlement should be directed to the Prior Settlement Class Members, whether or not they are members of the Revised Settlement class, to inform them of how their legal rights may be affected by the Revised Settlement. However, the decision to provide notice to the Prior Settlement Class Members did not affect the notice plan described herein, because the same methodology would have been used, the same Target Audience identified, and the same reach percentage obtained, even if the parties had only sought to give notice to Revised Settlement Class Members. It is important to note that the Target Audience size, which is based from objective syndicated sources relied on by media planners as further explained within, consists of an audience size of 2,514,000. To be clear, the stated reach percentage is keyed to the Target Audience and not the class size, so in addition to those Prior Settlement Class Members who are being reached via direct notice, we will reach approximately 79.18% of the overinclusive Target Audience via the media Notice Program (on average 3 times each).

DIRECT NOTICE

15. The direct notice effort in this matter will consist of (1) emailing notice of the Settlement to each Prior Settlement Class Member for whom an email address is available in the Defendant's records, (2) sending postcard notice to each Prior Settlement Class Member for whom an email address is not provided and a mailing address is contained in the Defendant's records, and (3) sending postcard notice to any Prior Settlement Class Members for whom Defendant's records contain an email address and mailing address, but whose email notice is returned as undeliverable.

16. In addition, approximately 17,000 individuals filed claims in the previous settlement. Each of these individuals will also be provided direct notice via mail or email (in the same manner as described above) to ensure they are properly notified of the new settlement.

Email Notice

17. Angeion anticipates that Defendant's records contain email addresses for approximately 770,000 Prior Settlement Class Members. Angeion will email notice of the Settlement to each such Prior Settlement Class Member.

18. Below I have outlined some of Angeion's practices to increase deliverability and readability of email notice. Specifically, Angeion will employ the following best practices regarding the email notice.

19. Angeion designs the email notice to avoid common "red flags" that might otherwise cause the recipient's spam filter to block the email notice or identify it as spam. For example, Angeion will not include the long form notice as an attachment to the email notice because attachments are often interpreted by various Internet Service Providers ("ISP") as spam. Rather, in accordance with industry best practices, Angeion will include electronic links to all operative documents so that recipients can easily access this information.

20. Angeion also accounts for the reality that some emails will inevitably be unsuccessful

during the initial delivery attempt. Therefore, after the initial email noticing campaign is complete, Angeion, after an approximate 24-72-hour rest period, which allows any temporary block at the ISP level to expire, will direct a second round of email notice to any email addresses that were previously identified as “soft-bounces.” In Angeion’s experience, this minimizes the number of emails that may have erroneously been blocked by sensitive servers.

Mail Notice

21. Angeion anticipates that Defendant’s records contain mailing addresses for approximately 55,000 individuals for whom Defendant’s records do not contain email addresses. Angeion will send these Prior Settlement Class Members postcard notice of the Settlement via United States Postal Service (“USPS”) first-class mail, postage prepaid. As referenced in paragraph 15 above, postcard notice will also be sent to Prior Settlement Class Members whose email notice could not be delivered, but whose mailing addresses are contained in Defendant’s records.

22. To obtain the most current mailing addresses for Prior Settlement Class Members whose contact information is provided to Angeion, the addresses provided will be processed through the USPS National Change of Address (“NCOA”) database. This process provides updated addresses for individuals who have moved within the past four years and who filed a change of address card with the USPS.

23. Similarly, in an effort to deliver notices to the intended recipients, the Notice Program provides for the following: (a) notices that are returned as undeliverable by the USPS and have a forwarding address will be re-mailed to that forwarding address; and (b) notices that are returned as undeliverable by the USPS without a forwarding address will be subject to address verification searches (“skip tracing”), utilizing a wide variety of data sources, including public records, real estate records, electronic directory assistance listings, etc., to locate updated addresses. Notices will then be re-mailed by Angeion to the updated addresses located through skip tracing.

MEDIA NOTICE TARGET AUDIENCE

24. Above and beyond the direct notice campaign described above, this matter contemplates a robust publication campaign to reach Prior Settlement Class Members. The Prior Settlement Class (defined above) was used as the starting point to create the media notice campaign. To develop the media notice campaign and to verify its effectiveness, our media team analyzed data from 2019 comSCORE//Gfk MRI Media + Fusion to profile the class and arrive at the Target Audience. Specifically, the following target definition was used to profile the Prior Settlement Class Members and create an appropriate Target Audience:

- Personally Ordered Anything Last 12 Months by Catalog (Phone/Mail) [Neiman Marcus] or
- Personally Ordered Anything Last 12 Months by Site/App (Internet) [Neiman Marcus] or
- Department, Clothing, Shoes & Specialty Stores Shopped Last 3 Months [Neiman Marcus] and
- Credit/Debit Cards-Any [Any Credit/Debit Card You Have in Own Name]

25. Based on the target definition, the potential audience size is estimated at 2,514,000. The Target Audience is intentionally overinclusive and, based on objective syndicated data, will allow the parties to report the reach and frequency to the court, with the confidence that the reach within the Target Audience and the number of exposure opportunities complies with due process and exceeds the Federal Judicial Center's threshold as to reasonableness in notification programs.

26. Understanding the socio-economic characteristics, interests and practices of a target group aids in the proper selection of media to reach that target. Here, the Target Audience has the following characteristics:

- Adults between the ages of 25-54, with an average age of 46
- 68.02% are female
- Just over half are married (51.91%)
- 57.12% earned a degree
- 57.72% live in households with total income under \$75K
- 67.06% are employed, with most working full time (54.46%)

27. To identify the best vehicles to deliver messaging to the Target Audience, Angeion also

reviewed the media quintiles, which measure the degree to which an audience uses media relative to the general population. Here, the objective syndicated data shows that members of the Target Audience are “heavy” internet users, utilizing the internet approximately 21 hours per week. Target Audience members are also “heavy” magazine readers, averaging 6 magazine issues per month.

28. Given the strength of digital as well as our Target Audience’s known heavy internet use and magazine readership, we recommend utilizing a robust internet advertising campaign combined with print publication in a widely read national consumer magazine to reach Prior Settlement Class Members. This media schedule will allow us to deliver an effective reach level and a vigorous frequency, which will provide due and proper notice to the class.

ONLINE NOTICE

29. We utilize a programmatic approach when purchasing digital media. This approach allows us to focus squarely on the reaching the prototypical individual Prior Settlement Class Member, rather than allocating resources to determine which particular websites would be most appropriate based on a demographic profile. Programmatic media purchasing relies on advanced targeting, machine learning, and a known and verifiable Target Audience profile to ensure we are reaching members of our Target Audience online. In fact, purchasing display and mobile inventory programmatically provides the highest reach, allows for multiple advanced targeting layers, and offers the most cost-efficient rates to reach potential Prior Settlement Class Members. Here, multiple targeting layers will be implemented to help ensure delivery of our advertisements to the most appropriate users. This includes the use of search targeting, category contextual targeting, keyword contextual targeting, and site retargeting. Advertisements will run on desktop and mobile devices to reach the most qualified audience where they surf, shop and play. Search terms will be relevant to *Neiman Marcus*. Moreover, targeting users who are currently browsing or have

recently browsed content in categories such as department stores and clothing stores will also help qualify impressions to ensure messaging is served to the most relevant audience.

30. The internet banner notice portion of the Notice Program will be implemented using an 8-week desktop and mobile campaign, utilizing standard IAB sizes (160x600, 300x250, 728x90, 300x600, 320x50 and 300x50). This 8-week banner ad campaign is double the length of the prior internet notice program that was implemented in the previous settlement. A 3x frequency cap will be imposed to maximize reach. The banner notice portion here is designed to result in serving approximately 5,661,000 impressions, an additional approximate 1,400,000 impressions from the prior campaign.

31. To combat the possibility of non-human viewership of the digital advertisements and to verify effective unique placements, Angeion utilizes Integral Ad Science (“IAS”), the leading ad verification company to prevent fraudulent activity⁴. IAS has received the Media Rating Council “MRC”⁵ accreditation for Sophisticated Invalid Traffic (SIVT) detection for desktop and mobile web traffic.

32. To track campaign success, we will implement conversion pixels throughout the case filing website to better understand audience behavior and identify those members of the Target Audience who are most likely to convert. The programmatic algorithm will change based on success and failure to generate conversions throughout the process. Successful conversion on the Claim

⁴ Integral Ad Science (IAS) is a global technology and data company that builds verification, optimization, and analytics solutions to empower the advertising industry to effectively influence consumers everywhere, on every device. They solve the most pressing problems for brands, agencies, publishers, and technology companies by verifying that every impression has the opportunity to be effective, optimizing towards opportunities to consistently improve results, and analyzing digital’s impact on consumer actions. Built on data science and engineering, IAS is headquartered in New York, with global operations in ten countries.

⁵ The Media Rating Council was established in the early 1960’s at the behest of the U.S. Congress. The objective or purpose to be promoted or carried on by Media Rating Council is: To secure for the media industry and related users audience measurement services that are valid, reliable and effective. To evolve and determine minimum disclosure and ethical criteria for media audience measurement services. To provide and administer an audit system designed to inform users as to whether such audience measurements are conducted in conformance with the criteria and procedures developed.

Submission button will be the primary goal, driving optimizations.

33. To determine the net reach percentage in this matter, industry standard computer software tools *Print R/F* and *MediaMix* were used to determine the reach of each individual notice methodology and to deduplicate between them.

PRINT PUBLICATION

34. To identify the best print vehicle for delivering notice to the Target Audience, objective syndicated data (see paragraph 24 *supra*) was used to analyze and filter publications to determine the titles with the highest reach against our Target Audience. *People* was chosen as the best title for this notice program due to its strong reach towards the Target Audience. One 1/2-page black and white insertion will be published. The following chart details the magazine circulation in the general public and within our Target Audience.

Publication	Circulation	Target Audience
People	3,510,533	2,514,000

TARGETED SOCIAL MEDIA NOTICE

35. The notice program also includes a customized Facebook campaign in which Angeion will upload known Prior Settlement Class Member email addresses directly to Facebook. If any of the email addresses are used as the primary log-on email address for a Facebook account, Angeion will be able to contact those specific Prior Settlement Class Members on a one-to-one basis via ads displayed on their Facebook timeline, effectively targeting verified Prior Settlement Class Members. This methodology has proven in other consumer settlements to be an extremely effective form of claims stimulation, as it increases class members' frequency of exposure to the class notice messaging. We may also use Facebook to engage in an interest-based program to further stimulate claims filing activity.

RESPONSE MECHANISMS

36. The Notice Program will cause the case-specific website (www.nmsettlement.com) to be updated accordingly, providing Prior Settlement Class Members with general information about this class action, the ability to review relevant Court documents and view important dates and deadlines pertinent to the Settlement. The website will also have a “Contact Us” page whereby individuals can send an email with any additional questions to a dedicated email address.

37. Additionally, the website will contain a web portal which will allow visitors to the website to enter certain specific information (such as last name and last-four digits of the affected credit/debit card number) to preliminarily determine whether such information is (i) consistent with cards that were used at a Neiman Marcus store at a time that the card-scraping malware was operating in that store (in which case, the submitter may be eligible to receive up to \$100), (ii) consistent with cards used at a Neiman Marcus store between July 16, 2013 and October 30, 2013, but not at a time that the malware was operating in that store (in which case, the submitter may be eligible to receive up to \$25), or (iii) not consistent with cards used during the class period (in which case the submitter may not be a Revised Settlement Class Member and thus not entitled to benefits under the Revised Settlement). After visitors enter that information into the web portal, they will receive instantaneous feedback about which of these categories the information entered falls into.

38. The toll-free hotline devoted to this case (1-844-412-4027) will likewise be updated to apprise Class Members of the rights and options in the Settlement. The toll-free hotline utilizes an interactive voice response (“IVR”) system to provide Class Members with responses to frequently asked questions and provide important information regarding the Settlement. This hotline is accessible 24 hours a day, 7 days a week.

REACH AND FREQUENCY

39. The Notice Program combines direct notice via mail and email, advanced internet notice, print publication in a leading consumer magazine and a customized social media campaign to provide notice to Prior Settlement Class Members. This declaration describes the reach and frequency evidence which courts systemically rely upon in reviewing class action publication notice programs for adequacy. The reach percentage and the number of exposure opportunities meet or exceed the guidelines as set forth in the Federal Judicial Center’s Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide.

40. Specifically, the media portion of the Notice Program is designed to deliver an approximate 79.18% reach with an average frequency of 3.00 times each. The 79.18% reach does not include the direct notice or custom social media notice, which are standalone efforts. Similarly, the informational website and toll-free hotline is not calculable in reach percentage but will nonetheless aid in informing Prior Settlement Class Members of their rights and options under the Revised Settlement.

PLAIN LANGUAGE NOTICE DESIGN

41. The notice forms used in this matter are designed to be “noticed,” reviewed, and—by presenting the information in plain language—understood by Prior and Revised Settlement Class Members. The design of the notices follows principles embodied in the Federal Judicial Center’s illustrative “model” notices posted at www.fjc.gov. The notice forms contain plain-language summaries of key information about Prior and Revised Settlement Class Members’ rights and options pursuant to the Settlement. Consistent with normal practice, prior to being delivered and published, all notice documents will undergo a final edit for accuracy.

42. Rule 23(c)(2) of the Federal Rules of Civil Procedure requires class action notices to be written in “plain, easily understood language.” Angeion Group maintains a strong commitment to

adhering to this requirement, drawing on its experience and expertise to craft notices that effectively convey the necessary information in plain language.

CONCLUSION

43. The Notice Program outlined above includes direct notice to all reasonably identifiable Prior Settlement Class Members via the use of email or mail to effectuate individual notice. Further, the parties have implemented a social media campaign, along with a media notice program consisting of state-of-the-art digital banner ads that will be hyper-targeted to an overinclusive Target Audience to effectuate the twin goals of providing due process to the class and stimulating class member activity.

44. In my opinion, the Notice Program will provide full and proper notice to Prior Settlement Class Members before the claims, opt-out, and objection deadlines. Moreover, it is my opinion that Notice Program is the best notice that is practicable under the circumstances, fully comports with due process, utilizes contemporary communication methods and comports with the mandates Fed. R. Civ. P. 23. After the Notice Plan is complete, Angeion will provide a final report verifying its effective implementation.

45. The anticipated administrative expenses of this matter based on the scope of the settlement administration contemplated in Angeion's cost estimate will be approximately \$400,000.

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

Dated: October 28, 2019


STEVEN WEISBROT

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

HILARY REMIJAS and JOANNE KAO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

THE NEIMAN MARCUS GROUP, LLC, a
Delaware limited liability company,

Defendant.

Case No. 14-cv-1735

Hon. Sharon Johnson Coleman

**DECLARATION OF TINA WOLFSON IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Tina Wolfson, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney licensed to practice in all courts in the State of California, and am admitted to practice *pro hac vice* in the Northern District of Illinois in this case. I am a founding member of the law firm of Ahdoot & Wolfson, PC (“AW”). I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class. The matters stated herein are true of my own knowledge or, where indicated, I am informed and believe that they are true. If called upon as a witness, I could and would competently testify as follows.

2. A true and correct copy of the Revised Settlement Agreement and its Exhibits is attached as Exhibit 1 to the concurrently filed Memorandum of Law in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement and Certification of Settlement Class.

3. AW is experienced in litigating and settling class actions, including data breach and privacy lawsuits such as this action. A true and correct copy of our firm CV is attached hereto as **Exhibit A**, which demonstrates that AW, the attorneys who worked on this case, and I are well qualified to serve as Class Counsel in this action.

4. On January 13, 2014, AW filed the first filed putative class action lawsuit against The Neiman Marcus Group, LLC (“NMG” or “Defendant”) related to the Cybersecurity Incident¹, in the United States District Court for the Eastern District of New York. That action was entitled *Frank v. Neiman Marcus Group*, E.D.N.Y. Case No. 14-cv-00233-ADS-GRB.

¹ Unless otherwise defined, capitalized terms and phrases used herein shall have the same meaning as ascribed to them in the Revised Settlement Agreement (filed concurrently herewith in this Action).

Before initiating that litigation, plaintiffs' counsel investigated the underlying facts, including by analyzing Defendant's public statements concerning the Cybersecurity Incident.

5. Thereafter, a number of other class actions were filed against NMG. On March 12, 2014, Plaintiff Remijas filed her original Complaint in this action. An action entitled *Clark v. Neiman Marcus Group, Ltd., LLC*, No. 1:14-cv-0236, was filed on January 27, 2014 in the Northern District of Georgia; and *Wong v. The Neiman Marcus Group, LLC*, No. 2:14-cv-00703-SJO-JC, was filed on January 29, 2014 in the Central District of California. Similar actions followed, including *Chau v. Neiman Marcus Group, Ltd, Inc.*, No. 14-cv-597 (S.D. Cal. filed Mar. 14, 2014), and *Shields v. The Neiman Marcus Group, LLC*, No. 14-cv-752 (S.D. Cal. filed Apr. 1, 2014).

6. After filing, plaintiffs' counsel's investigation continued. In this regard, plaintiffs' counsel retained and consulted with experts on data security issues, who helped analyze publicly available information concerning the Cybersecurity Incident. Plaintiffs' counsel fought for early discovery, filing, in the *Frank* case cited above, a motion to expedite discovery and, later, a motion to compel Defendant to participate in a Rule 26 conference so that regular discovery could proceed. (*Frank*, Dkt. Nos. 5, 29.) AW and co-counsel in the *Frank* action also filed a motion for a protective order seeking to curtail Defendant's communications to the class. (*Frank*, Dkt. No. 4.) The *Frank* court did not rule upon those motions before the cases were effectively consolidated in this Court.

7. After these actions were filed, plaintiffs' counsel in all the actions related to NMG's Cybersecurity Incident met and conferred in order to self-organize the cases for the sake of judicial economy and efficiency.

8. Plaintiffs agreed to consolidate and proceed with their cases in the Northern District of Illinois.

9. On June 2, 2014, plaintiffs filed a First Amended Class Action Complaint in this Action, alleging negligence, breach of implied contract, unjust enrichment, violation of state unfair business practices statutes, invasion of privacy, and violation of state data breach acts.

10. On July 2, 2014, Defendants filed a Motion to Dismiss the Action, which was granted by the Court on September 16, 2014.

11. Plaintiffs filed their Notice of Appeal of the September 16, 2014 dismissal on September 25, 2014. On July 20, 2015, after briefing and oral argument before the United States Court of Appeals for the Seventh Circuit, the order granting Defendant's Motion to Dismiss was reversed and the case was remanded to the District Court. Thereafter, the Court of Appeals denied NMG's petition for rehearing *en banc* rehearing and remanded the case back to this Court.

12. On November 12, 2015, NMG renewed its Motion to Dismiss the Action and filed supplemental briefing. After full briefing, the Court denied NMG's motion to dismiss on January 13, 2016.

13. In December 2015, the Parties began discussing possible settlement, which resulted in a long series of arms' length negotiations, including mediation and numerous post-mediation discussions between counsel and the mediator.

14. Between December 2015 and September 2019, the Parties participated in three formal mediation sessions with mediator Judge Wayne R. Andersen (Ret.) of JAMS, Inc. (on December 22, 2015, on March 2, 2016, and January 23, 2019), engaged in numerous telephonic conversations and negotiations with Judge Andersen, and conducted extensive negotiations among counsel.

15. Judge Andersen is a highly respected and experienced class action mediator, who joined JAMS following more than twenty-six years on the bench, spending the most recent nineteen years as a U.S. District Judge for the Northern District of Illinois.

16. During the settlement negotiations, Plaintiffs obtained substantial information from Defendant concerning the Incident. For example, Defendant, *inter alia*, revealed that:

a. In January 2014, Neiman Marcus announced that it had experienced a cybersecurity intrusion that caused the potential compromise of the Payment Card information of certain of its customers who used Payment Cards to make purchases at certain stores owned by Neiman Marcus (“the Cybersecurity Incident” or “the Incident”).

b. From July 16, 2013 to January 10, 2014, approximately 2,187,773 different Payment Card accounts were used at NMG Stores. Out of these approximately 2,187,773 different Payment Card accounts, only approximately 370,385 Payment Card accounts were used at a NMG Store during the Malware Period on a date and at a time that the Malware was operating in that store. The remaining approximately 1,817,388 Payment Card accounts were not exposed to the Malware at any time and could not have been compromised as a result of the Cybersecurity Incident.

c. Because Neiman Marcus does not possess the full name and billing address of all of the payment cards used at a time and place that malware capable of collecting payment card data was operating, it is possible that claimants who submit only the name and billing address associated with their payment card will have their claims denied due to a lack of information sufficient to determine whether or not that card was used at a time and place that the malware operated.

d. Since learning of the Cybersecurity Incident and after the initial lawsuit described above was filed, Neiman Marcus took measures to further enhance the security of its customers’ data, which remain in effect as of the execution of the Revised Settlement Agreement and include the following:

i. Neiman Marcus created and filled the position of Chief Information Security Officer (CISO), an executive position with responsibility to coordinate and be responsible for Neiman Marcus's program(s) to protect the security of customers' personal information;

ii. Neiman Marcus created a new organizational unit responsible for information security and has hired employees to fill the organization, including a Director of Security Operations and a Director of Security, Risk Management and Compliance;

iii. Neiman Marcus increased the frequency and depth of reporting to its executive team and members of its board of directors about its cybersecurity efforts and the cybersecurity threat landscape;

iv. Neiman Marcus equipped all of its stores with devices that allow customers to pay for purchases using payment cards containing embedded computer chips;

v. Neiman Marcus expanded its program to educate and train its workforce on methods to protect the privacy and security of its customers' information;

vi. Neiman Marcus invested in a new tool to automatically collect and analyze logs generated by Neiman Marcus systems for potential security threats; and

vii. Neiman Marcus joined several public-private partnerships that facilitate information sharing concerning cybersecurity and threat awareness.

17. Plaintiffs expect that Defendant would attempt to present certain materials as evidence and arguments that would seek to demonstrate that: (i) Defendant implemented robust security architecture to protect its systems and customer data, (ii) Plaintiffs' damages were not caused by the Incident or, at least, could have had other causes including other cybersecurity incidents; (iii) Assessments by independent third parties found that Defendant was in compliance with applicable data security standards before, during, and after the Incident; (iv) there was no

evidence that the payment card information collected by the Malware in the Cybersecurity Incident was actually exfiltrated; (v) transactions on Defendant's websites and at Defendant's restaurants were not compromised; and (vi) PIN data was not compromised. Defendant would also likely attempt to present evidence in an effort to establish that they sent written notice of the Incident to consumers with an offer of free credit monitoring for one year.

18. Before initiating action against NMG, AW investigated the underlying facts and analyzed the veracity of the claims. These efforts included evaluation of the relevant law, facts, and allegations to assess the merits of the claims and potential claims and to determine the strength of anticipated defenses in the action. AW continued these efforts after filing the action and before entering into the Initial Settlement and Revised Settlement Agreement, and conducted a thorough examination, investigation, and evaluation of the relevant law and facts to assess the merits of the claims and defenses.

19. In connection with mediation, Plaintiffs requested information from NMG. NMG provided information sufficient to permit Plaintiffs and Class Counsel to evaluate the claims and potential defenses and to meaningfully conduct informed settlement discussions.

20. After the December 22, 2015 and March 2, 2016 mediations, the Parties began to memorialize a full class action settlement, which generated numerous additional rounds of negotiations. The Parties extensively negotiated each specific aspect of the settlement, including each of its eight (8) exhibits. For example, counsel negotiated and meticulously refined the final Notice program and each document comprising the Notice (the Class Notice, Summary Settlement Notice, and Claim Form), with the assistance of Angeion, a company that specializes in developing class action notice plans, to ensure that the information disseminated to Settlement Class Members is clear and concise. The Class Representatives expended time and effort in the

litigation of this matter. They reviewed case documents, stayed in regular contact with Class Counsel, and responded to all inquiries they were called to answer.

21. On March 17, 2017, Plaintiffs moved for preliminary approval of a class action settlement between Plaintiffs and NMG dated February 23, 2017 (the “Initial Settlement”). On June 21, 2017, the Court granted preliminary approval to the Initial Settlement, and the Court-appointed Settlement Administrator disseminated notice to class members regarding the Initial Settlement.

22. Following the requisite notice period, Plaintiffs filed their motions for final approval of class action settlement (Dkt. No. 158) and for attorneys’ fees, costs, and service awards. (Dkt. No. 159.) Several objections were subsequently filed to the Initial Settlement. (Dkt. Nos. 164-165.) Those objections were fully briefed and the Court heard arguments regarding them.

23. On September 17, 2018, the Court denied final approval to the Initial Settlement based on issues described in the Court’s written opinion.

24. Following the Court’s ruling on September 17, 2018, the Parties worked collaboratively to arrive at and agree upon amendments to the Initial Settlement in an effort to address the Court’s concerns. The Parties engaged in numerous and lengthy negotiations and discussions and participated in an additional mediation with Judge Andersen on January 23, 2019.

25. Robert Ahdoot and I attended the January 23 mediation telephonically, while co-counsel John Yanchunis attended in person, as did Jay Edelson, counsel for objector Parvinder Chohan.

26. Following the January 23 mediation, I participated in numerous telephone calls with Judge Andersen, in an effort to resolve Mr. Edelson’s objections to the Initial Settlement. In addition, I corresponded with Mr. Edelson and defense counsel on these issues directly, by email,

and participated in a call with Mr. Edelson's colleague, Ryan Andrews. Ultimately, however, our efforts to resolve Mr. Edelson's objections proved fruitless.

27. On June 12, 2019, the Parties informed the Court that an agreement as to all material terms of this action on a class-wide basis was reached. The Parties jointly requested a stay on all deadlines to allow them to draft and execute a full Revised Settlement Agreement and to allow Plaintiffs time to prepare and file the concurrently filed Motion for Preliminary Approval of this Revised Settlement.

28. In the time since June 12, we have worked with defense counsel to finalize the Revised Settlement Agreement and all exhibits thereto, the preliminary approval motion, the Second Amended Complaint, and sought to resolve Mr. Edelson's objections to the Initial Settlement, to no avail.

CONCLUSION

29. Based upon AW's investigation, research, information review, interviews, as well as my personal knowledge and experience, I believe that the Revised Settlement is in the best interests of the Class and that the Revised Settlement is fair, reasonable, and adequate. The benefits afforded by the Revised Settlement reflect a reasoned compromise which not only takes into consideration the risks inherent in all complex, class litigation, but also the various issues in this case specifically, which had the potential to completely eliminate recovery available to the Class.

30. While I believe that the claims asserted in this action have merit and that the evidence developed to date supports those claims, I also recognize and acknowledge, based on my experience, the expense and length of time necessary to prosecute this case to judgment. I have also have taken into account the uncertain outcome and the risk of any litigation, as well as the difficulties and delays inherent in such litigation.

I declare under penalty of perjury under the laws of California and of the United States that the foregoing is true and correct. Executed this 28th day of October, 2019 in Los Angeles, California.


Tina Wolfson

Exhibit A



AHDOOT & WOLFSON, PC

ATTORNEYS

Ahdoot & Wolfson (“AW”) is a nationally recognized law firm founded in 1998 that specializes in complex and class action litigation, with a focus on consumer fraud, anti-competitive business practices, privacy rights, employee rights, defective products, civil rights, and taxpayer rights and unfair practices by municipalities. The attorneys at AW are experienced litigators who have vindicated the rights of millions of class members in protracted, complex litigation, to successful results. AW has been appointed to the leadership teams in numerous class actions in both state and federal courts.

Tina Wolfson graduated Harvard Law School *cum laude* in 1994. Ms. Wolfson began her civil litigation career at the Los Angeles office of Morrison & Foerster, LLP, where she defended major corporations in complex actions and represented indigent individuals in immigration and deportation trials as part of the firm’s *pro bono* practice. She then gained further invaluable litigation and trial experience at a boutique firm, focusing on representing plaintiffs on a contingency basis in civil rights and employee rights cases. Since co-founding AW in 1998, Ms. Wolfson had led numerous class actions to successful results. Ms. Wolfson is a member of the California, New York, and District of Columbia Bars.

Recognized for her extensive class action experience, Ms. Wolfson frequently lectures on numerous class action topics across the country. Her notable speaking engagements include:

- Class Action Mastery Forum at the University Of San Diego School of Law (Data Breach/Privacy Class Action Panel) January 16, 2019;
- Association of Business Trial Lawyers: “Navigating Class Action Settlement Negotiations and Court Approval: A Discussion with the Experts,” Los Angeles May 2017, featuring Hon. Philip S. Gutierrez and Hon. Jay C. Gandhi;
- CalBar Privacy Panel: “Privacy Law Symposium: Insider Views on Emerging Trends in Privacy Law Litigation and Enforcement Actions in California,” Los Angeles Mar. 2017 (Moderator), featuring Hon. Kim Dunning;
- HarrisMartin: Equifax Data Breach Litigation Conference, November 2017, Atlanta (Co-Chair).

- American Conference Institute: “2nd Cross-Industry and Interdisciplinary Summit on Defending and Managing Complex Class Actions,” April 2016, New York: Class Action Mock Settlement Exercise featuring the Hon. Anthony J. Mohr;
- Federal Bar Association: N.D. Cal. Chapter “2016 Class Action Symposium,” San Francisco Dec. 2016 (Co-Chair), featuring Hon. Joseph F. Anderson, Jr. and Hon. Susan Y. Illston;
- Federal Bar Association: “The Future of Class Actions: Cutting Edge Topics in Class Action Litigation,” San Francisco Nov. 2015 (Co-Chair & Faculty), featuring Hon. Jon S. Tigar and Hon. Laurel Beeler.
- American Association for Justice: AAJ 2015 Annual Convention – “The Mechanics of Class Action Certification,” July 2015, Montreal, Canada.
- HarrisMartin: Data Breach Litigation Conference: The Coming of Age – “The First Hurdles: Standing and Other Motion to Dismiss Arguments,” March 2015, San Diego.
- Bridgeport: 2015 Annual Consumer Class Action Conference, February 2015, Miami (Co-Chair).
- Venable, LLP: Invited by former opposing counsel to present mock oral argument on a motion to certify the class in a food labeling case, Hon. Marilyn Hall Patel (Ret.) presiding, October 2014, San Francisco.
- Bridgeport: 15th Annual Class Action Litigation Conference – “Food Labeling and Nutritional Claim Specific Class Actions,” September 2014, San Francisco (Co-Chair and Panelist).
- Bridgeport: 2014 Consumer Class Action Conference – “Hot Topics in Food Class Action Litigation,” June 2014, Chicago.
- Perrin Conferences: Challenges Facing the Food and Beverage Industries in Complex Consumer Litigations, invited to discuss cutting edge developments in settlement negotiations, notice, and other topics, April 2014, Chicago.
- Bridgeport: Class Action Litigation & Management Conference – “Getting Your Settlement Approved,” April 2014, Los Angeles.
- HarrisMartin: Target Data Security Breach Litigation Conference – “Neiman Marcus and Michael’s Data Breach Cases and the Future of Data Breach Cases,” March 2014, San Diego.
- Bridgeport: Advertising, Marketing & Media Law: Litigation and Best Management Practices – “Class Waivers and Arbitration Provisions Post-Concepcion / Oxford Health Care,” March 2014, Los Angeles

Ms. Wolfson currently serves as a Lawyer Representative for the Ninth Circuit (Central District of California), on the Federal Litigation Section of the Federal Bar Association, and on the board of Public Justice.

Robert Ahdoot graduated from Pepperdine Law School *cum laude* in 1994, where he served as Literary Editor of the Pepperdine Law Review. Mr. Ahdoot clerked for the Honorable Paul Flynn at the California Court of Appeals, and then began his career as a civil litigator at the Los Angeles office of Mendes & Mount, LLP, where he defended large corporations and syndicates such as Lloyds of London in complex environmental and construction-related litigation as well as a variety of other matters. Since co-founding AW in 1998, Mr. Ahdoot had led numerous class actions to successful results. Recognized for his deep class action experience, Mr. Ahdoot frequently lectures on numerous class action topics across the country. His notable speaking engagements include:

- MassTorts Made Perfect: Speaker Conference, April 2019, Las Vegas: “Llegal Fees: How Companies and Governments Charge The Public, and How You Can Fight Back.”
- HarrisMartin: Lumber Liquidators Flooring Litigation Conference, May 2015, Minneapolis: “Best Legal Claims and Defenses.”
- Bridgeport: 15th Annual Class Action Litigation Conference, September 2014, San Francisco: “The Scourge of the System: Serial Objectors.”
- Strafford Webinars: Crafting Class Settlement Notice Programs: Due Process, Reach, Claims Rates and More, February 2014: “Minimizing Court Scrutiny and Overcoming Objector Challenges.”
- Pincus: Wage & Hour and Consumer Class Actions for Newer Attorneys: The Do’s and Don’ts, January 2014, Los Angeles: “Current Uses for the 17200, the CLRA an PAGA.”
- Bridgeport: 2013 Class Action Litigation & Management Conference, August 2013, San Francisco: “Settlement Mechanics and Strategy.”

Theodore Maya is a partner at AW. He graduated from UCLA Law School in 2002 after serving as Editor-in-Chief of the UCLA Law Review. From July 2003 to August 2004, Mr. Maya served as Law Clerk to the Honorable Gary Allen Feess in the United States District Court for the Central District of California. Prior to joining AW, Mr. Maya worked as a litigation associate in the Los Angeles offices of Kaye Scholer LLP on a large variety of complex commercial litigation from inception through trial, for approximately eight years. Mr. Maya was named “Advocate of the Year” for 2007 by the Consumer Law Project of Public Counsel for successful *pro bono* representation of a victim of a large-scale equity fraud ring.

Bradley K. King was a senior associate at AW and was recently promoted to partner. Mr. King is a member of the Bars of the States of New Jersey, New York, District of Columbia, and California. He graduated from Pepperdine University School of Law in 2010, where he served as Associate Editor of the Pepperdine Law Review. He worked as a law clerk for the California Office of the Attorney General, Correctional Law Section in Los Angeles and was a certified law clerk for the Ventura County District Attorney's Office. Mr. King began his legal career at a boutique civil rights law firm, gaining litigation experience in a wide variety of practice areas, including employment law, police misconduct, municipal contracts, criminal defense, and premises liability cases.

Recent Notable Cases

Attorneys at AW have been appointed lead counsel in numerous complex consumer class actions, sometimes in contested leadership applications. Some of AW's notable cases include:

- *Eck, et al. v. City of Los Angeles*, No. BC577028 (Los Angeles Superior Court ("LASC")): AW was appointed Co-Class Counsel and achieved a \$295 million finally-approved settlement based on allegedly unlawful city tax regulations regarding electrical power.
- *In re: Experian Data Breach Litig.*, No. 8:15-cv-01592-AG-DFM (C.D. Cal.): AW is co-Class Counsel for the Class of almost 16 million class members who were victims of a data breach affecting T-Mobile applicants and customers whose personal data was stored by Experian. Class action settlement conservatively valued at over \$150 million finally approved in May 2019.
- *Kirby v. McAfee, Inc.*, No. 14-cv-02475-EJD (N.D. Cal.): Co-Class Counsel where Plaintiffs challenged defendant's auto renewal and false discount practices. Finally approved Settlement made \$80 Million available to the class and included injunctive relief requiring McAfee to notify customers at the point of every sale that the service will be auto-renewed at an undiscounted subscription price. Further, the settlement required McAfee to change its policy regarding the past product price it lists as a reference to any discount it's currently offering. McAfee will now only list a past price that it has actually charged customers within the past 45 days.
- *In re: Premiera Blue Cross Customer Data Sec. Breach Litig.*, No. 15-md-02633-SI (D. Or.): AW selected to the Executive Leadership Committee after contested leadership applications. AW was instrumental in litigating the case through class certification and achieving a preliminarily approved settlement valued at \$74 million.
- *Lavinsky v. City of Los Angeles*, No. BC542245 (LASC): AW as lead Class Counsel, in a case challenging the imposition of certain utility taxes on the use of natural gas, prevailed on summary adjudication, certified a class, and achieved a finally approved settlement

with a minimum value of \$51 million.

- *In re: Lumber Liquidators Chinese-Manufactured Flooring Durability Mktg. & Sales Practices Litig.*, No. 1:16-md-02743-AJT-TRJ (E.D. Va.): AW was co-Class Counsel for the plaintiffs claiming alleged misrepresentations of laminate flooring durability, coordinated with MDL proceedings regarding formaldehyde emissions. \$36 million non-reversionary fund settlement.
- *McKnight v. Uber Techs., Inc.*, No. 3:14-cv-05615-JST (N.D. Cal.): AW appointed co-Class Counsel in a finally approved class settlement establishing a non-reversionary fund of \$32.5 million returning allegedly hidden “safe ride” fee that Uber unfairly charged its customers.
- *In re: The Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.): AW served, by court appointment, on the MDL Consumer Plaintiffs’ Steering Committee. The finally approved settlement provided approximately \$29 million of monetary relief to the consumer class, as well as robust injunctive relief requiring Home Depot to overhaul its data security practices.
- *Pantelyat vs. Bank of America*, No. 1:16-cv-8964-AJN (S.D.N.Y.): AW served as sole Class Counsel. \$22 million settlement between Bank of America and account holders who claimed the Bank breached its contract by assessing overdraft fees resulting from non-recurring Uber rideshare transactions.
- *Smith v. Floor and Décor Outlets of America, Inc.*, No. 1:15-cv-04316-ELR (N.D. Ga.): AW served as co-Class Counsel in a class action that resulted in a \$14 million class settlement regarding flooring product defect allegations.
- *Chimeno-Buzzi v. Hollister Co, et al.*, No. 1:14-cv-23120-MGC (S.D. Fla.): AW served as co-Class Counsel in a class action that resulted in a \$10 million finally approved class settlement arising from violations of the Telephone Consumer Protection Act of 1991 (“TCPA”).
- *Pappas v. Naked Juice Co. of Glendora, Inc.*, No. 2:11-cv-8276-JAK-PLA (C.D. Cal.): AW appointed co-lead counsel after contested applications in this food false labeling action; resulted in nationwide settlement for \$9 million non-reversionary fund and injunctive relief in the form of product labeling changes, and periodic audits to assure compliance with labeling representations.
- *In re: Uber FCRA Litig.*, No. 3:14-cv-05200-EMC (N.D. Cal.): Class settlement provided \$8.2M in monetary relief as well as injunctive relief guaranteeing Uber’s compliance with FCRA background check requirements; settlement reached while district court’s denial

of a motion to compel individual arbitration was pending (and ultimately overturned) before the 9th Circuit.

- *Weiss v. Los Angeles*, No. BC141354 (LASC): As class counsel, AW won *writ of mandate* trial to stop the allegedly illegal practice pertaining to parking violation notices, judgment affirmed on appeal.
- *Carter, et al. v. Gen. Nutrition Centers, Inc.*, No. 2:16-cv-00633-MRH (W.D. Pa.): AW is co-lead plaintiffs' counsel in this "false discount" class action, involving products for sale on the GNC website. Preliminary approved \$6 million class settlement providing monetary, as well as non-monetary relief.
- *Alvarez v. Sirius XM Radio, Inc.*, No. 2:18-cv-08605-JVS (C.D. Cal.): AW is lead plaintiffs' counsel in this breach of contract class action alleging that defendant did not honor its lifetime subscriptions. A class settlement in principle has been reached while plaintiffs' appeal from trial court's granting the motion to compel arbitration was pending, and in is in the process of memorialization.
- *In re: Apple Inc. Device Performance Litigation*, No. 5:18-md-02827-EJD (N. D. Cal.): AW appointed to the Plaintiffs' Steering Committee after contested applications.
- *Novoa v. The Geo Group, Inc.*, No. 5:17-cv-02514-JGB-SHK (C.D. Cal.): AW is co-counsel for the plaintiffs; case challenges private prison's alleged practices of forced labor against immigration detainees.
- *Williams v. City of New York*, No. 1:17-cv-02303-RJD-SM (E.D.N.Y.): AW is co-counsel for plaintiffs challenging unconstitutional prison conditions at Rikers Island and other facilities.
- *In re: U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, No. 1:15-mc-01394-ABJ (D.D.C.): AW selected to the PSC after contested leadership applications. Order granting MTD reversed on appeal to the D.C. Circuit.
- *In re: Kind LLC "All Natural" Litig.*, No. 1:15-md-02645-WHP (S.D.N.Y.): AW appointed interim co-lead counsel for the plaintiff class by MDL Court after contested leadership applications.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

HILARY REMIJAS and JOANNE KAO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

THE NEIMAN MARCUS GROUP, LLC, a
Delaware limited liability company,

Defendant.

Case No. 1:14-cv-01735

Hon. Samuel Der-Yeghiayan

**DECLARATION OF JOHN YANCHUNIS IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, John A. Yanchunis, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I lead the National Consumer Class Action section of Morgan & Morgan's Complex Litigation Group. Morgan & Morgan is among the largest, if not the largest, exclusively plaintiffs law firms in the United States, with over 500 lawyers and 2,000 support staff, who serve consumers in offices in Alabama, Arkansas, California, Georgia, Florida, Indiana, Illinois Mississippi, Kentucky, Tennessee, Massachusetts, Pennsylvania, New York and West Virginia . Morgan & Morgan is comprised of outstanding trial lawyers who have recovered groundbreaking, multi-million dollar verdicts, as well as attorneys who now hold or have held in the past significant roles in government and public service. Morgan and Morgan lawyers have played pivotal roles in shaping class-action jurisprudence across the country. While Morgan & Morgan's Complex Litigation Group draws its expertise from fifteen attorneys supported by skilled paralegals, retired FBI agents who work in the department as investigators, and state-of-the-art technology, the Group benefits from the vast experience, commitment, and resources of the entire firm. In particular, one of the Group's two former FBI agents—who was the agent in charge of the FBI's investigation of ENRON and who retired from senior management with the Bureau—leads the investigative team of the Group. These investigators, who have investigated cyber-crime during their respective careers in

the FBI, are unique assets available to the prosecution efforts of the firm and will play an important role in the factual investigation of this case.

2. My practice—which began after completing a two-year clerkship with United States District Judge Carl O. Bue, Jr., Southern District of Texas—has concentrated on complex litigation and spans over 34 years, including consumer class actions for two-thirds of that time. I have represented consumers in numerous privacy rights and data-breach cases, beginning with *In re DoubleClick Inc. Privacy Litigation*, No. 00-cv-0641-NRB (S.D.N.Y.), a seminal and formative privacy class action that settled in 2002 and involved DoubleClick’s use of cookies to track the private activities of internet users. I also served as co-lead counsel in the successful prosecution and settlement of perhaps the two the largest class action cases in the United States: *Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM (S.D. Fla.), and *Fresco v. R.L. Polk*, No. 07-cv-60695-JEM (S.D. Fla.). These cases involved the advocacy for and protection of the important privacy rights of a class comprising over 225 million individuals throughout the United States and its territories. My role as co-lead counsel in these cases is particularly noteworthy because they targeted the world’s largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier (which owns Lexis/Nexis), which were defended by the largest law firms in the country. These cases successfully protected the privacy rights of consumers.

3. I also served as co-lead counsel in the successful resolution of the following privacy, non-data-breach class actions: *Davis v. Bank of America*, No. 05-cv-80806 (S.D. Fla.) (\$10 million common fund), *Kehoe v. Fidelity Federal Bank and Trust*, No. 03-cv-80593 (S.D. Fla.) (\$50 million common fund), and *Pino v. Warranty Acceptance Corporation*, No. 05-cv-61576 (S.D. Fla.).

4. I have also achieved noteworthy results in the settlement of a series of data breach cases. For example, I served as co-lead counsel in the MDL case *In re The Home Depot, Inc. Customer Data Security Data Breach Litigation*, No. 1:14-md-02583-TWT (N.D. Ga.) (consumer class cases) which was settled for \$ 19.5 million, and lead counsel in the following data-breach class cases: *Burrows v. Purchasing Power, LLC*, No. 1:12-cv-22800 (S.D. Fla.); *Elyzabeth Ramirez v. ChenMed, LLC*, No. 14-12319-CA-04 (Fla. 11th Cir. Ct.); *Carsten v. University of Miami*, No. 1:14-cv-20497-KMW (S.D. Fla.); *John Doe v. Tampa General Hospital*, No. 14-CA-012657 (Fla. 13th Cir. Ct.) (preliminary approval entered, fairness hearing scheduled); *Linnins v. HAECO Americas, LLC, formerly known as TIMCO Aviation Services, Inc., and HAECO Americas Line Services, LLC*, 16-cv-486 (M.D.N.C.) (preliminary approval pending). The settlement of these cases provided (or in the case of those settlements pending approval, will provide) substantial monetary and injunctive relief to class members. I currently serve on the Executive Committee overseeing the consumer class, the financial institution class, and the

shareholder derivative litigation pending against Target Corporation—one of the largest data-breach cases to date—in *In re Target Corporation Customer Data Security Breach Litigation*, MDL No. 2522 (D. Minn.). As a member of the Overall Executive Committee, I also served on the Executive Committee of the consumer class case and assisted in its prosecution and the negotiation of a class settlement. The settlement in the Target consumer litigation, which received final court approval in 2015 (now on appeal, oral argument has been held), provides a \$10 million non-reversionary fund for distribution to consumers and important equitable relief to protect consumers' privacy rights.

5. I have been appointed lead counsel in *In Re: Yahoo! Customer Data Security Breach Litigation*, Case No. 16-MD-02752-LHK, pending in the Northern District of California. This breach affected over 1 billion users of Yahoo's email and other services. The court in that case has preliminarily approved a settlement with a common fund of \$117.5 million. I am also lead or co-lead counsel in the following pending privacy and data-breach class litigation involving the loss of medical and financial information: *Bishop v. Shorter University*, No. ca-4:15-cv-0033-HLM (N.D. Ga.); and lead counsel in a payment card data breach case of *Torres v. Wendy's International, LLC*, No. 6:16-cv-210 (M.D. Fla.)

6. I am a member of the Executive Committee in the MDL data breach case against the Office of Personnel Management, *In re: U.S. Office of Personnel*

Management Data Security Breach Litigation, 1:15-mc-01394-ABJ (D.C.)⁹ a case involving the loss of approximately 22 million present and former federal employees' information) , and the Executive Committee in *Ortiz v. UCLA Health System*, No. BC589327 (Cal. Sup. Ct. Los Angeles Cnty.); and *Walters v Kimpton Hotel & Restaurant Group, LLC*, No. 3:16-cv-05387 (N.D. Cal.).

7. As a result of my extensive experience in privacy and data-breach litigation, I regularly lecture at seminars regarding privacy litigation. Many of these seminars are held for corporations that handle consumer data as a part of their business operations, insurance companies which provide data breach coverage to those companies, and for cyber security professionals.

8. In light of this experience, I was selected by the National Law Journal as a Trailblazer in the Area of Cybersecurity & Data Privacy for 2016.

9. Alongside my experience in the area of privacy, I also served as lead, co-lead, and class counsel in numerous national class actions, including multi-district litigation, involving a wide range of subjects affecting consumers, including antitrust, defective products, life insurance, annuities, and deceptive and unfair acts and practices.

10. As a result of my experience in insurance and complex litigation, beginning in 2005, I was selected by Tom Gallagher, the Chief Financial Officer for the state of Florida and a member of the Florida Cabinet, to serve as lead counsel for

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

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

12. Through my experience in numerous leadership positions in class cases, I have exhibited the ability to work cooperatively with others, including both co-counsel and opposing counsel. Accordingly, I am well regarded in the state of Florida as a lawyer, as reflected by my election to and service on the Florida Board of Governors (the governing body of The Florida Bar), a member of the Florida Bar Foundation, and by my appointment by the Supreme Court of Florida to serve as a member of the Board of Directors of the Florida Board of Bar Examiners. Although I completed my five-year appointment on the Board of Bar Examiners, I continue to serve as an Emeritus Member on character and fitness panels and as an arbiter in final hearings. I have also served on many committees of The Florida Bar, including leadership and chair positions. Most recently, I completed a term as the Chair of the Consumer Protection Committee of the Florida Bar. I have also represented The Florida Bar in a number of matters. As result of my experience in the area of class litigation and ethics, I have served as an expert for The Florida Bar on ethical issues arising in class action litigation.

13. I am currently a member in good standing of The Florida Bar, and of all the bars to which I have been admitted, including the United States Supreme Court, the United States Court of Appeals for the Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits, and the United States District Courts of the Southern District of Texas, Northern District of Texas, Eastern District of Wisconsin, Western District of

Wisconsin, Western District of Tennessee, Middle District of Florida, Southern District of Florida, Eastern District of Michigan, and Northern District of Illinois.

14. My law firm and I were fully and unequivocally committed to this action and the time consuming task of prosecuting this litigation to conclusion, including in the mediation of the claims which led to the proposed class action settlement. Most recently, I attended a mediation session in person on January 23 of this year. My co counsel Robert Ahdoot appeared by telephone. Judge Wayne Anderson was the mediator at this session as he has been throughout the process. Defendant was represented by counsel , and Jay Edelson was present at this session.

15. It is my opinion that the results reached in this case for the class is a fair, reasonable and adequate settlement, when balancing the risks involved in the certification of the class, and the ultimate trial and appeals which would follow if the case were tried.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed October 21, 2019 in Tampa, Florida.

By: _____


John A. Yanchunis