

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE ESO SOLUTIONS, INC. BREACH
LITIGATION,

Case No. 1:23-cv-01557-RP

**PLAINTIFF'S *UNOPPOSED* MOTION AND MEMORANDUM IN
SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

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Pursuant to Fed. R. Civ. P. 23(e), Plaintiff Robert Day in the Consolidated Action of *In Re ESO Solutions, Inc. Breach Litigation* (“Plaintiff”), individually and on behalf of himself and all others similarly situated, hereby moves this Court for preliminary approval of a proposed class action settlement. In support thereof, Plaintiff relies upon the accompanying Memorandum in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement; the Settlement Agreement (“Settlement Agreement”) attached as **Exhibit 1**; the Declaration of Bryan L. Bleichner in Support of Preliminary Approval of Class Action Settlement (“Bleichner Decl.”) attached as **Exhibit 2**; the records, pleadings, and papers filed in this action; and such other evidence or argument that may be presented to the Court. A Proposed Order Granting Preliminary Approval of Class Action Settlement is attached as **Exhibit 3**.

MEMORANDUM IN SUPPORT

Plaintiff in the above titled action individually and on behalf of himself and all others similarly situated, respectfully submits this memorandum of law in support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement.

I. INTRODUCTION

Plaintiff and the proposed Class have reached a class action settlement with Defendant ESO Solutions, Inc. (“ESO” or “Defendant”) for a \$757,500 non-reversionary common fund to resolve claims arising from September 2023 cyberattack that potentially impacted the highly sensitive information retained by ESO, a third-party software and data solutions company, for approximately 49,472 Texas residents (the “Data Breach”). *See* Bleichner Decl. ¶ 6. The Data Breach involved the potential access and exfiltration of names, phone numbers, addresses, Social Security numbers, patient account numbers, medical record numbers, insurance information, payer

information, diagnosis information, injury information, and medical treatment information (collectively “Personal Information”). Settlement Agreement ¶ 1.28.

The proposed Settlement is the result of arm’s length negotiations with the assistance of an experienced mediator, the Honorable David E. Jones (ret.) of Resolute Systems, LLC, and provides significant relief to the Settlement Class. Settlement Agreement ¶ I; *see also* Bleichner Decl. ¶¶ 8-9. The settlement lies well within the range of reasonableness necessary for this Court to grant preliminary approval of the class action settlement under Rule 23(e). *See* Bleichner Decl. ¶¶ 13, 23. Therefore, the Court should: (1) preliminarily approve the settlement, (2) appoint Robert Day as Class Representative, (3) appoint Plaintiff’s Counsel as Class Counsel, (4) certify the Settlement Class for settlement purposes only, (5) direct that notice be sent to all Settlement Class Members in the reasonable manner outlined below, (6) set necessary settlement deadlines, and (7) schedule a Final Approval Hearing.

II. BACKGROUND

A. Factual and Procedural Background

This case arises from the potential compromise of Personal Information because of a September 2023 cyberattack experienced by ESO. CAC ¶ 35; *see also* Bleichner Decl. ¶ 6. Plaintiff and Class Members include Texas residents whose Personal Information was stored by ESO in its role as a software service that contracts with hospitals and healthcare systems. CAC ¶ 24. In response to the Data Breach, beginning on or around December 12, 2023, Defendant sent a Notice of Data Security Incident to Plaintiff and Class Members (“Notice Letter”) providing a description of the type of Personal Information potentially involved. *Id.* ¶¶ 35-36.

Following the Data Breach, six separate putative class action lawsuits were filed. These cases were consolidated on January 10, 2024, and a consolidated complaint was filed on February

9, 2024. On January 10, 2024, the Court also entered an Order appointing Bryan L. Bleichner of Chestnut Cambronne PA, Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, and John Yanchunis of Morgan & Morgan Complex Litigation Group as Interim Class Counsel for Plaintiff and Joe Kendall of Kendall Law Group PLLC and Bruce W. Steckler of Steckler Wayne & Love PLLC as Texas Local Counsel. *Jones v. ESO Solutions, Inc.*, No. 1:23-cv-01557, ECF No. 8 (W.D. Tex. Jan. 10, 2024).

On February 09, 2024, the Consolidated Complaint was filed alleging that Plaintiff, individually and on behalf of the Class, suffered numerous actual and concrete injuries and would likely suffer additional harm in the future as a direct result of the Data Breach. CAC ¶ 115. Plaintiff's claims for damages include but are not limited to the following categories of harms: (i) invasion of privacy; (ii) loss of benefit of the bargain; (iii) lost time, spent on activities remedying harms resulting from the Data Breach; (iv) lost opportunity costs associated with attempting to mitigate the actual consequences of the Data Breach; (iv) lost opportunity costs associated with attempting to mitigate the actual consequences of the Data Breach; and (v) the present and continuing risk to their Private Information. *Id.* ¶ 341.

Plaintiff, individually and on behalf of other members of the Classes proposed in the CAC asserted claims for Negligence (Count I), Negligence Per Se (Count II), Breach of Third-Party Beneficiary Contract (Count III), Unjust Enrichment (Count IV), Declaratory Judgment and Injunctive Relief (Count V), Violation of the Florida Deceptive and Unfair Trade Practices Act (Count VI), Violation of the North Carolina Unfair and Deceptive Trade Practices Act (Count VII), and Violation of the New York Deceptive Trade Practices Act (Count VIII). *Id.* ¶¶ 233-345. Plaintiff sought injunctive relief, declaratory relief, monetary damages, and all other relief as authorized in equity or by law. *Id.* at pp. 81-84.

B. Negotiations and Settlement

This Settlement is the result of lengthy arm's-length negotiations and hard bargaining. Bleichner Decl. ¶¶ 8-9. Before entering into this Settlement Agreement, Defendant produced informal discovery confirming the class size of roughly 49,472 potentially impacted Texas residents, the scope and source of the Data Breach, and Defendant's available insurance for the Data Breach. *Id.* ¶ 8. Through the informal settlement discovery, motion practice, and the mediation process, Plaintiff was able to properly evaluate damages on a class-wide basis. *Id.* On May 8, 2025, the Parties attended mediation with the Honorable David E. Jones (ret.) of Resolute Systems, LLC and reached a settlement in principle. *Id.* Subsequently, five plaintiffs entered into individual settlements and were dismissed from the CAC. *Id.* ¶ 9. This Settlement will resolve all claims related to the Data Breach for the Settlement Class. *See generally*, Settlement Agreement.

C. Summary of Settlement Terms

Under the proposed settlement, Defendant will pay seven hundred fifty-seven thousand five hundred dollars (\$757,500.00), which shall be deposited into the Escrow Account within thirty (30) business days of the Preliminary Approval Order. Settlement Agreement ¶ 1.37. The Settlement defines the Class as:

All Persons who received a Notice Letter from ESO and were residents of Texas at the time ESO distributed the Notice Letter to individuals.

Id. ¶ 1.7. The Class specifically excludes all Persons who timely and validly request exclusion from the Class. *Id.* Additionally, the Class excludes Defendant's past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is

found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge. *Id.* ¶ 1.30. Under the Proposed Settlement, Defendant agrees to pay a total of \$757,500.00 into the Settlement Fund. *Id.* ¶ 1.37. Furthermore, Defendant agrees under the Settlement Agreement to implement business practice changes, the cost of which shall also be borne by Defendant separate and apart from the Settlement Fund. *Id.* ¶ 2(C).

1. Settlement Benefits

The Settlement Fund will provide broad relief to the Class and offer several categories of relief. First, the Settlement Fund will be used to pay Cash Payments to all Settlement Class Members who submit a valid claim. Those valid claims may be subject to *pro rata* increase or decrease depending on the aggregated number of payments to valid claimants. *Id.* ¶ 2. In addition to the Pro Rata Cash Payment, Settlement Class Members may submit a Claim Form selecting the Out-of-Pocket Loss option, under which they may be compensated for valid and timely claims up to a maximum amount of \$5,000 per individual. *Id.* The Settlement Fund shall be used to pay, in the following order: (i) all costs of Settlement Administration; (ii) Fees and Costs/Expenses; (iii) Service Awards; and (iv) Settlement Benefits. *Id.* ¶ 8.5.

To the extent any monies remain in the Settlement Fund following payment of all Settlement Administrative Costs, Attorneys' Fees, Costs, and Expenses, Service Awards, and Settlement Benefits, at the expiration of all monetary payments distributed to Settlement Class Members, a "Subsequent Settlement Payment" shall be distributed to the Cy Pres Designee subject to Court approval. *Id.*

2. Scope of the Release

In exchange for consideration above, Class Members who do not timely and validly exclude themselves from the Settlement will be deemed to have released Defendant from claims arising from or related to the Data Breach at issue in this Litigation. *Id.* ¶ 6.1.

3. The Notice and Administration Plan

Class Counsel, with Defendant's approval, has selected Kroll Settlement Administration LLC ("KSA") to be the Settlement Administrator. KSA will provide the Class with Notice and administer the claims. Defendant will send a Class List with all Settlement Class Members' names and mailing addresses, to the Settlement Administrator for the purpose of issuing Notice to the Settlement Class. Class Counsel reviewed settlement administration proposals from three settlement administrators before selecting KSA as the appropriate settlement administrator for this case. Bleichner Decl. ¶ 15. Class Counsel's decision, with Defendant's consent, to select KSA was based on the scope of settlement administrator KSA's proposed balanced against the cost for such services. *Id.* Class Counsel understands that any settlement administration costs and expenses will be deducted from the Settlement Fund and endeavored to select a settlement administrator for this case offering the broadest services for a price favorable to the Class. *Id.*

The Settlement Administrator has reviewed and approved the proposed Notice Plan, including the Claim Form, Long Notice, and Short Notice agreed upon by the Settling Parties. Settlement Agreement, Exhs. A (Claim Form); B (Long Notice); D (Short Notice). The Settlement Administrator shall establish a Settlement Website, along with a tollfree help line. Settlement Agreement ¶ 1.39. The Settlement Administrator shall provide the approved Notice commencing within 30 days of the entry of a Preliminary Approval Order. Settlement Agreement ¶ 1.21.

The proposed Short Form Notice clearly and concisely informs Class Members of the amount of the Settlement Fund and their options: they may do nothing and be bound by the settlement, submit an objection, exclude themselves by completing an exclusion form, or file a claim form and be bound by the settlement. Settlement Agreement, Ex. B. The Settlement Administrator will also publish a Long Form Notice and Claim Form on the Settlement Website established and administered by the Settlement Administrator, which shall contain information about the settlement, including copies of the Notice, the Settlement Agreement, and all court documents related to the Settlement. Settlement Agreement ¶ 1.19. The Settlement Administrator will be responsible for accounting all claims made and exclusions requested, determining eligibility, and disbursing funds to Class Members. Settlement Agreement ¶ 9.1.

4. Attorneys' Fees, Costs, Expenses, and Service Awards

Plaintiff will also separately seek an award of attorneys' fees not to exceed 1/3 of the Settlement Fund (i.e., \$252,475.00), and for reimbursement of Class Counsel's reasonable costs and litigation expenses which shall be paid from the Settlement Fund. Settlement Agreement ¶ 7.2; Bleichner Decl. ¶ 19. The Settlement Agreement further provides that Class Counsel will seek a Class Representative Service Award of \$2,500 for the Class Representative. Settlement Agreement SA ¶ 7.3.

III. ARGUMENT

A. The Court Should Preliminarily Approve the Settlement

Before the Settlement can be finally approved, the Settlement Class Members who will be bound by its terms must be notified and given an opportunity to object or otherwise react to the proposed Settlement. Fed. R. Civ. P. 23(e). This notification process takes time and can be expensive, so courts will generally first conduct a preliminary fairness review. *See Newberg on*

Class Actions § 13:10 (5th ed.). Here, preliminary approval of the Settlement is warranted for the reasons set forth.

B. Legal Standard

Under the revised Rule 23(e), the question for preliminary approval is whether “the court will likely be able to . . . approve the proposal under Rule 23(e)(2),” which is the requisite provision that governs final approval. A proposed settlement “will be preliminarily approved unless there are obvious defects in the notice or other technical flaws, or the settlement is outside the range of reasonableness or appears to be the product of collusion, rather than arm’s-length negotiation.”

McLaughlin on Class Actions § 6:7 (15th ed. 2018). The general standard for final approval of a proposed settlement of a class action under Rule 23(e)(2) remains whether it is “fair, reasonable and adequate.” To make that determination, Rule 23(e)(2) provides the following factors to consider:

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

Fed. R. Civ. P. 23(e)(2).

Common-law criteria preceded the Rule 23 factors. In *Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983), the Fifth Circuit identified six factors for courts to consider in

determining the fairness, reasonableness, and adequacy of a proposed class settlement: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members. *See Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 639 n.11 (5th Cir. 2012) (quoting *Reed*, 703 F.2d at 172).

“Because the Rule 23 and case-law factors overlap, courts in this circuit often combine them in analyzing class settlements.” *O'Donnell v. Harris County*, No. H-16-1414, 2019 WL 4224040, at *8–9 (S.D. Tex. Sept. 5, 2019). (citation omitted); *Al's Pals Pet Care v. Woodforest Nat'l Bank, NA*, No. H-17-3852, 2019 WL 387409, at *3 (S.D. Tex. Jan. 30, 2019); see also Fed. R. Civ. P. 23(e)(2) Committee Notes to 2018 amendments (“The goal of this amendment [to Rule 23(e)(2)] is not to displace any [circuit caselaw] factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.”).

“When considering [Rule 23(e)(2)] factors, the court should keep in mind the strong presumption in favor of finding a settlement fair.” *Purdie v. Ace Cash Express, Inc.*, No. 301CV1754L, 2003 WL 22976611, at *4 (N.D. Tex. Dec. 11, 2003); *see also In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico*, on Apr. 20, 2010, 910 F.Supp.2d 891, 930-31 (E.D. La. 2012), *aff'd sub nom.*; *In re Deepwater Horizon—Appeals of the Econ. & Prop. Damage Class Action Settlement*, 739 F.3d 790 (5th Cir. 2014) (“Because the public interest strongly favors the voluntary settlement of class actions, there is a strong presumption in favor of finding the settlement fair, reasonable, and adequate.); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 650 (N.D.

Tex. 2010) (There is a “strong presumption that an arms-length class action settlement is fair—especially when doing so will result in significant economies of judicial resources”).

A “proposed settlement need not obtain the largest conceivable recovery for the class to be worthy of approval; it must simply be fair and adequate considering all the relevant circumstances.” *Klein*, 705 F. Supp. 2d at 649. Indeed, because “compromise is the essence of a settlement … the settlement need not accord the plaintiff class every benefit that might have been gained after full trial.” *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1214 (5th Cir. 1978); *see also Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (“The trial court should not make a proponent of a proposed settlement justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained; inherent in compromise is a yielding of absolutes and an abandoning of highest hopes.”). Accordingly, “absent fraud, collusion, or the like, [courts] should be hesitant to substitute [their] own judgment for that of counsel.” *Klein*, 705 F. Supp. 2d at 649.

Here, the foregoing Rule 23 and *Reed* factors weigh in favor of preliminary approval, as there are no grounds to doubt the fairness of the settlement.

C. The Proposed Settlement is Fair, Adequate, and Reasonable

1. The Class Representative and Class Counsel Have Adequately Represented the Class

It has been approximately 18 months since the consolidation of the separate complaints, and Class Counsel have vigorously and actively represented the proposed Class, including coordinating among counsel to establish a leadership structure for Plaintiff’s counsel, filing a Consolidated Amended Complaint, engaging Defendant’s counsel to discuss efficiently litigating this matter, engaging in informal discovery, and—of most importance to the current motion—engaging in extensive negotiations that led to the proposed Settlement. Bleichner Decl. ¶¶ 6-9. The

proposed Class Representative has been an active participant in this process. *Id.* ¶¶ 21-22. Neither the Class Representative nor Class Counsel have any conflict with regard to representing the proposed Class. *Id.* ¶ 21. The adequacy of proposed Class Counsel is also demonstrated by their extensive experience, and prior success, in resolving litigation related to potential data breaches. *Id.* ¶¶ 4-5; *see also* Coordinated Plaintiffs' Motion to Appoint Interim Class Counsel, *Jones v. ESO Solutions, Inc.*, No. 1:23-cv-01557, ECF No. 7 (W.D. Tex. Jan. 09, 2024).

2. The Proposed Class Settlement Was Negotiated at Arm's Length Without Fraud or Collusion

The proposed Class Settlement in this case was the product of rigorous, hard-fought negotiations conducted at arm's length between opposing counsel who are familiar with class action litigation and the legal and factual issues in this Action. Bleichner Decl. ¶ 8. The negotiations ultimately leading to the Settlement required the services of an experienced, independent mediator for ultimate resolution. *Id.* ¶¶ 8-9.

There has been no fraud or collusion, and there are no agreements among the Settling Parties or their counsel apart from the Settlement Agreement. *Id.* ¶ 14. *Welsh v. Navy Fed. Credit Union*, No. 16-CV-1062-DAE, 2018 WL 7283639, at *12 (W.D. Tex. Aug. 20, 2018) (“The Court may . . . presume that no fraud or collusion occurred between opposing counsel in the absence of any evidence to the contrary.”). The Parties engaged in extensive negotiations before the Honorable David E. Jones (ret.) of Resolute Systems, LLC. Bleichner Decl. ¶ 8. The parties exchanged lengthy mediation briefs in advance of the mediation wherein they discussed the strengths and weakness of their respective claims and defenses. *Id.* This free exchange of information, and the guidance of Judge Jones, allowed the Parties to reach an agreement in principle as the material terms of the Settlement. *Id.* ¶ 8-9. After reaching an agreement in

principle, the Parties spent significant time apart from the mediator negotiating the specific terms and language of the Settlement Agreement. *Id.* ¶ 9.

3. The Settlement is Favorable Given Litigation Risks

There exists “an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex.” *Assoc. for Disabled Am., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) (citing *Cotton*, 559 F.2d at 1331). “When the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened.” *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1064 (S.D. Tex. 2012); *see also Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004) (“[S]ettling now avoids the risks and burdens of potentially protracted litigation.”).

Here, the parties settled this case approximately 18 months after Plaintiff first sought class wide relief. ESO during that time has repeatedly denied its liability and proved it was willing and able to vigorously defend itself, including through the filing of an extensive motion to dismiss. *Jones v. ESO Solutions, Inc.*, No. 1:23-cv-01557, ECF No. 25 (W.D. Tex. Mar. 28, 2024). Furthermore, data breach class actions are complex and remain unpredictable. *See Cotter v. Checkers Drive-In Rests., Inc.*, No. 8:19-cv-1386, 2021 WL 3773414, at *12 (M.D. Fla. Aug. 25, 2021) (noting data breach class actions present “serious risks” due, in part, to “the ever-developing law surrounding data breach cases”); *In re Citrix Data Breach Litig.*, No. 19-61350- CIV, 2021 WL 2410651, at *3 (S.D. Fla. Jun 11, 2021) (“Data breach cases in particular present unique challenges with respect to issues like causation, certification, and damages.”); *In re Arby’s Rest. Grp., Inc. Data Sec. Litig.*, No. 1:17-cv-1035-WMR, 2019 WL 2720818, at *3 (N.D. Ga. June 3, 2019) (“Further, data breach litigation involves the application of unsettled law with disparate outcomes across states and circuits.”). This case is no exception. The pursuit of class claims and

relief presents complex issues of law and fact and would require years of time to resolve and involve expensive expert discovery, among other issues. Yet there is no guarantee that lengthy litigation and expensive discovery would lead to greater benefits for the Class Members. In contrast, the Settlement provides Class Members with immediate monetary relief. Bleichner Decl. ¶¶ 8, 10.

4. The Stage of Proceedings and Amount of Discovery Support Settlement

The next factor asks whether “the parties and the district court possess ample information with which to evaluate the merits of the competing positions.” *Ayers*, 358 F.3d at 369. “Thus, the question is not whether the parties have completed a particular amount of discovery, but whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed or continuing to litigate it.” *In re Educ. Testing Serv. Praxis Principles of Learning & Teaching: Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 620 (E.D. La. 2006); *see also In re Heartland*, 851 F. Supp. 2d at 1064 (approving settlement because “[t]he parties have shown that they possessed sufficient information to gauge the strengths and weaknesses of the claims and defenses” despite the fact that only informal discovery was taken and the case settled at an early stage).

The information necessary to evaluate the Settlement has been obtained through public sources as well as through informal discovery prior to mediation. There is no dispute that a Data Breach occurred, that certain types of unencrypted Personal Information were potentially accessed and exfiltrated, and that this occurred for approximately 49,472 Class Members. These data points alone enable a thorough assessment of the Settlement, particularly where the legal positions involved have been litigated in many other cases, providing a solid basis for a reasoned judgment.

5. The Settlement Terms Represent a Favorable Compromise, Balancing the Likelihood of Success with Attendant Risks

While Class Counsel believe that Plaintiff has a strong case on the merits, Defendant has a similarly strong belief to the contrary. There are numerous difficult factual issues involved in litigation of potential data breach issues, as well as complicated legal issues relating to causation and damages. *In re Citrix*, 2021 WL 2410651, at *3. A district court “must not try the case in the settlement hearings because the very purpose of the compromise is to avoid the delay and expense of such a trial.” *Reed*, 703 F.2d at 172 (internal quotation marks and alteration omitted). This factor favors approval of the settlement when the class’s likelihood of success on the merits is questionable. *See In re Corrugated Container Antitrust Litig.*, 659 F.2d 1322, 1326-27 (5th Cir. 1981) (affirming the district court’s finding that this factor favored approving the settlement when the class faced major obstacles in establishing proof of liability and damages).

The settlement afforded here, as compared to the uncertainty of damages even following a successful finding of liability, weighs in favor of preliminary approval. Bleichner Decl. ¶ 8. As discussed in the section above relating to litigation risks, the time and expense involved for all Parties in resolving those issues suggests a reasonable early settlement is the wisest course for everyone concerned.

6. The Recovery is Within an Appropriate Range

Class Counsel has handled numerous cases involving data breach allegations. *Id.* ¶¶ 4-5. This allows for a strong database of information on which to judge a proposed settlement. *Id.* A chart describing some of those settlements, including the proposed Settlement of this case, demonstrates that the proposed recovery is well within an appropriate range in terms of the amount recovered per Class Member. *Id.* ¶ 13.

7. The Settlement is Supported by Experienced Class Counsel and the Proposed Class Representative

As previously discussed, Class Counsel have extensive experience with class actions of this nature and strongly support the proposal. *See Bleichner Decl.* ¶¶ 4-5. “The Fifth Circuit has repeatedly stated that the opinion of class counsel should be accorded great weight” when “evaluating a proposed settlement.” *Klein*, 705 F. Supp. 2d at 649 (*citing Pettway*, 576 F.2d at 1216); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 292 (W.D. Tex. 2007) (“The endorsement of class counsel is entitled to deference.”). By their review and consent to the terms of the Settlement Agreement the proposed Class Representative is of the same opinion.

8. The Settlement Treats Settlement Class Members Equitably Relative to Each Other

The final factor, Rule 23(e)(2)(D), looks at whether Settlement Class Members are treated equitably. Here, the Settlement provides for a Notice plan that is designed to reach as many Settlement Class Members as possible and provides Settlement Class Members with direct mail notice of the Settlement. *See Section II(D)(3), infra.* It also informs Settlement Class Members of their right to object to, or opt out of, the Settlement. *Id.* Every Settlement Class Member who submits a valid claim and who attests that he or she was potentially impacted by the Data Breach is eligible to receive a pro rata cash payment, and those who can prove out-of-pocket damages are eligible to receive payment up to \$5,000. Settlement Agreement ¶ 2. The Settlement treats Settlement Class Members equitably relative to each other, satisfying Rule 23(e)(2)(D).

In sum, each factor identified under Rule 23(e)(2) and as required by the Fifth Circuit in *Reed* is satisfied. *Reed*, 703 F.2d at 172. Given the litigation risks involved and the complexity of the underlying issues, the \$757,500 non-reversionary common fund is an excellent result. It could not have been achieved without full commitment from the proposed Class Representative and

Class Counsel. We respectfully submit that the Settlement is both fair and adequate and that it meets each of the Rule 23(e)(2) and *Reed* factors such that notice of the Settlement should be sent to the Settlement Class. *See O'Donnell*, 2019 WL 4224040, at *9–10 (preliminarily finding the proposed consent decree and settlement agreement terms were fair, reasonable and adequate under Rule 23(e) and the governing case all where “[a]ll of the Rule 23(e)(2) and *Reed* factors weigh[ed] in favor of preliminarily approving the proposed consent decree and settlement agreement.”).

D. The Court Should Preliminarily Certify the Settlement Class

1. The Settlement Class Meets the Requirements of Rule 23(a) of the Federal Rules of Civil Procedure

Before assessing the Parties' Settlement, the Court should first confirm that the underlying Settlement Class meets the requirements of Federal Rule of Civil Procedure 23 (“Rule 23”). *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); *Manual for Complex Litigation*, § 21.632. The prerequisites for class certification under Rule 23(a) are numerosity, commonality, typicality, and adequacy—each of which is satisfied here.

(a) Numerosity

Rule 23 first requires that the class be so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). There is no specific threshold that must be surpassed to satisfy the numerosity requirement; rather, the determination “requires examination of the specific facts of each case and imposes no absolute limitations.” *Gen. Tel. Co. of the Northwest, Inc. v. EEOC*, 446 U.S. 318, 330 (1980). That said, a showing that the class consists of more than forty members “should raise a presumption that joinder is impracticable.” *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (quoting *Newberg on Class Actions* § 3.05, at 3–25 (3d ed. 1992)); see *In re Talbert*, 347 B.R. 804, 808–809 (E.D. La. 2005) (finding numerosity requirement met when class potentially consisted of 88 members).

Here, the numerosity requirement is easily met. The Settlement Class consists of approximately 49,472 members. *See CAC ¶ 7.*

(b) Commonality

Rule 23(a)(2)'s commonality requirement demands that "there are questions of law or fact common to the class." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 368 (2011) (citing Fed. R. Civ. P. 23). "The principal requirement of [Dukes] is merely a single common contention that enables the class action 'to generate common answers apt to drive the resolution of the litigation.'" *In re Deepwater Horizon*, 739 F.3d at 811 (citing *M.D. ex rel. Stukenberg v. Perry*, 675 F.3d 832, 840 (5th Cir. 2012)). "These 'common answers' may indeed relate to the injurious effects experienced by the class members, but they may also relate to the defendant's injurious conduct." *Id.* Regardless, "a single common question will do." *Id.* (citing *Dukes*, 564 U.S. at 359).

The commonality requirement is easily satisfied here. All Settlement Class Members' claims turn on whether Defendant's security environment was adequate to protect Settlement Class Members' Personal Information. Thus, common questions include, *inter alia*, whether Defendant engaged in the wrongful conduct alleged; whether Settlement Class Members' Personal Information was compromised in the Data Breach; whether Defendant owed a duty to Plaintiff and Settlement Class Members; whether Defendant breached its duties; whether Defendant unreasonably delayed in notifying Plaintiff and Settlement Class Members of the material facts of the Data Breach; and whether Defendant committed the common law and statutory violations alleged in the CAC. *See, e.g., In re Heartland*, 851 F. Supp. 2d at 1054 ("The common factual question in this case is what actions Heartland took before, during, and after the data breach to safeguard the Consumer Plaintiffs' financial information."); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16- MD-02752-LHK, 2020 WL 4212811, at *3 (N.D. Cal. July 22, 2020)

(common questions of whether defendant employed sufficient data security measures, knew of inadequacies, and timeliness of data breach disclosure satisfy commonality requirement).

(c) Typicality

Rule 23(a)(3) “requires that the named representatives’ claims be typical of those of the class.” *Langbecker v. Elec. Data Sys. Corp.*, 476 F.3d 299, 314 (5th Cir. 2007). Here, Plaintiff’s claims are typical of Settlement Class Members’ claims because they arise from the same course of alleged conduct and are premised on the same legal theory. Plaintiff had Personal Information that was stored on Defendant’s systems that was potentially compromised in the Data Breach, and so they suffered the same alleged injury, were allegedly harmed by the same alleged inadequate data security, and seek to assert the same underlying claims as the rest of the Settlement Class. *See James v. City of Dallas*, 254 F.3d 551, 571 (5th Cir. 2001) (“[T]he critical inquiry is whether the class representative’s claims have the same essential characteristics of those of the putative class. If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality.”).

(d) Adequacy of Representation

The Court should also easily conclude that “the representative parties will fairly and adequately protect the interests of the class,” as required by Rule 23(a)(4). This requirement is satisfied when (i) there are no substantial conflicts of interest between the class representatives and the class; and (ii) the representatives and their attorneys will properly prosecute the case. *Sosna v. Iowa*, 419 U.S. 393, 403 (1975); *see also Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 294 (5th Cir. 2017). The existence of minor conflicts of interest between the plaintiff and the class “alone will not defeat a party’s claim to class certification: the conflict must be a ‘fundamental’ one going to the specific issues in controversy.” *In re Deepwater Horizon*, 739 F.3d

at 814 (quoting *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1189 (11th Cir. 2003)).

Both prongs are satisfied here.

The Plaintiff adequately represents the Settlement Class, as he has no conflicts of interest with other Settlement Class Members, is subject to no unique defenses, and he and his counsel have and continue to vigorously prosecute this case on behalf of the Settlement Class. Bleichner Decl. ¶ 21. Further, Class Counsel are experienced in the successful litigation and settlement of class action litigation, including data privacy cases. *Id.* ¶ 4-5; *In re Heartland*, 851 F. Supp. 2d at 1055 (adequacy satisfied where class counsel had “extensive experience representing consumers, and other plaintiff classes, in class-action litigation,” including “experience representing consumer classes in similar data-breach cases”). Bleichner Decl. ¶ 4-5.

2. The Settlement Class Meets the Demands of Rule 23(b)(3)

“In addition to satisfying Rule 23(a)’s prerequisites, parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3).” *Amchem Prods.*, 521 U.S. at 614. Plaintiff seeks class certification under Rule 23(b)(3), which requires “that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

(a) Common Legal and Factual Questions Predominate in This Litigation

Common legal and factual questions predominate in this Litigation relating to the Data Breach and related allegations. The predominance inquiry under Rule 23(b)(3) tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. *Ahmad v. Old Republic Nat. Title Ins. Co.*, 690 F.3d 698, 702 (5th Cir. 2012). Rule 23(b)(3), however, does not require a plaintiff seeking class certification to prove that each element of the claim is susceptible

to class-wide proof. *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013). Rather, it requires that common questions predominate over any questions affecting only individual class members. *Id.* “A common question is one where the same evidence will suffice for each member to make a *prima facie* showing or the issue is susceptible to generalized, class-wide proof.” *Crutchfield v. Sewerage & Water Bd. of New Orleans*, 829 F.3d 370, 376 (5th Cir. 2016) (citations and quotations omitted).

Here, for settlement purposes, the central common questions predominate over any questions that may affect individual Settlement Class Members. The central common questions include whether Defendant owed a duty to Plaintiff and Settlement Class Members, whether Defendant breached its duty, and whether Defendant unreasonably delayed in notifying Plaintiff and Settlement Class Members of the material facts of the Data Breach. These issues are subject to “class-wide proof” and “outweigh those issues that are subject to individualized proof.” *Id.* “When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.” *Id.* (citations and quotations omitted). Courts have found similar settlement classes to meet the preponderance requirement in data breach cases. “Indeed, the focus on a defendant’s security measures in a data breach class action is the precise type of predominant question that makes class-wide adjudication worthwhile.” *In re Yahoo! Inc.*, 2020 WL 4212811, at *7 (quotation marks omitted) (collecting cases). The Settlement Class meets the predominance requirement for settlement purposes, and certification will meet the objective of Rule 23(b)(3) to promote economy and efficiency of time, effort, and expense over separate suits.

(b) A Class Action is the Superior Means to Adjudicate Plaintiff's Claims

The Court should find that the class action is the superior means of adjudication under Rule 23(b)(3). Each of the Rule 23(b)(3) factors, below, weigh in favor of finding superiority:

- (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

All of these factors favor class treatment in this case. The value of each Settlement Class Members' claim is much smaller than the cost it would take to litigate individual actions. Thus, Settlement Class Members would not individually be able seek redress in this matter in an economically feasible manner. It is desirable to concentrate the litigation of the claims into the present forum in view of the scale of the class under Rule 23(b)(3)(C). With approximately 49,472 Class Members, a class action would be superior to individual adjudication. *See Mullen*, 186 F.3d at 627 (comparing a class that would consist of hundreds, instead of millions, of members). As detailed above, this Litigation includes other consolidated actions initiated by other Settlement Class Members, which weighs in favor of class treatment under Rule 23(b)(3)(B).

3. The Court Should Approve the Proposed Notice Program

Rule 23(e) requires that the Court "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the "best notice practicable," under Fed. R. Civ. P. 23(c)(2)(B), which means "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 172 (1974). The proposed Notice

program meets these requirements. Here, the proposed Notice Program includes that Defendant will provide the Claims Administrator with a list of Settlement Class Members no later than 21 days following Preliminary Approval. *See* Settlement Agreement ¶ 3. Within 30 days of Preliminary Approval, the Settlement Administrator will send Notice to the Class (the “Notice Date”). *Id.* ¶ 1.21. The Settlement Administrator will also establish a dedicated Settlement Website with the Short Notice, the Long Notice, the Claim Form, and will update that website throughout the claim period. *Id.* ¶ 3.2. A tollfree line staffed with a reasonable number of live operators will be made available to address Settlement Class Members’ inquiries. *Id.*

Substantively, Rule 23(c)(2)(B) requires, and the Notice Program provides, information, written in easy-to-understand plain language, regarding: “(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusions; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B). “There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements.” *O’Donnell*, 2019 WL 4224040, at *26. Instead, a settlement notice need only satisfy the broad reasonableness standards imposed by due process. *Id.* (citations and quotation marks omitted).

The Short Notice defines the Settlement Class, explains all Settlement Class Members’ rights, the scope and impact of Released Claims, and the applicable deadlines for submitting claims, objecting, and opting out. Further, it describes in detail the monetary relief provided by the Settlement Agreement, including the procedures for allocating and distributing the Settlement Fund amongst the Settlement Class Members, all Class Counsel, and the Settlement Administrator.

Settlement Agreement, Ex. D. The Notice will also indicate the time and place of the Final Approval Hearing, and explain the methods for objecting to, or opting out of, the Settlement. *Id.* It details the provisions for payment of Attorneys' Fees, Costs and Service Awards, and provides contact information for Settlement Class Counsel. *Id.* In light of the foregoing, the Notice Program has been designed to give the best notice practicable, is tailored to reach the Settlement Class Members, and ensures their due process rights are amply protected.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of this class action settlement including provisionally granting class certification for settlement purposes, preliminarily approving the terms of the Settlement Agreement as fair, adequate, and reasonable; preliminarily appointing Plaintiff as the Class Representative for settlement purposes only; preliminarily approving the Notice Program as set forth in the Settlement Agreement and set the dates for the Claims Deadline, Opt-Out Deadline, and Objection Deadline; and appointing KSA as the Settlement Administrator.

Dated: October 31, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically filed with the Court and that counsel of record, who are deemed to have consented to electronic service are being served this 31st day of October 2025, via the Court's CM/ECF System.

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EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and among the following Settling Parties (as defined below) Robert Day (“Plaintiff”) and ESO Solutions, Inc. (“ESO” or “Defendant”) (together with Plaintiff, the “Parties” or “Settling Parties”). The Settlement Agreement is subject to Court approval and intended by the Settling Parties to resolve, discharge, and settle the Released Claims (as defined below) and this Litigation (as defined below), upon and subject to the terms and conditions set forth below.

I. PROCEDURAL BACKGROUND

The case arises from the alleged compromise of Private Information (as defined below) of Plaintiff and Settlement Class Members (as defined below) as a result of the Data Incident (as defined below). In response to the Data Incident, Defendant sent a Notice Letter (as defined below) informing affected individuals that their Private Information may have been compromised.

Due to the Data Incident, six separate putative class action lawsuits were filed. These cases were consolidated on January 10, 2024, and a consolidated complaint was filed on February 9, 2024 (the “Consolidated Complaint”). The causes of action alleged include (1) negligence, (2) negligence *per se*, (3) breach of third-party beneficiary contract, (4) unjust enrichment, (5) declaratory judgment and injunctive relief, (6) violation of the Florida Deceptive and Unfair Trade Practices Act (Fla. Stat. § 501.201, *et seq.*), (7) violation of the North Carolina Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat. Ann. § 75-1.1, *et seq.*), and (8) violation of the New York Deceptive Trade Practices Act (New York Gen. Bus. Law § 349)

The Consolidated Complaint, alleged individually and on behalf of a putative Class (as defined below) that, as a direct result of the Data Incident, the Class Members suffered numerous injuries and would likely suffer additional harm in the future. Claims for alleged damages included

the following categories of harms: (i) invasion of privacy, (ii) theft of their Private Information, (iii) lost or diminished value of their Private Information, (iv) lost time, opportunity costs, and out-of-pocket expenses associated with attempting to mitigate the actual consequences of the Data Incident, (v) loss of benefit of the bargain, (vi) experiencing an increase in spam calls, texts, and/or emails, (vii) anxiety and emotional distress, (viii) experiencing fraud and identity theft, (ix) statutory damages, (x) nominal damages, and (xi) the continued and certainly increased risk to their Private Information.

On March 28, 2024, ESO filed a motion to dismiss the Consolidated Complaint. On July 30, 2024, the Honorable Robert Pitman granted in part and denied in part ESO's motion to dismiss. Beginning in November 2024, recognizing the risk and expense of prolonged litigation, the Parties agreed to pursue informal discovery and settlement negotiations. After Defendant produced informal discovery to allow Class Counsel to understand the scope and mechanism of the Data Incident, the Parties engaged in arm's-length settlement negotiations over the course of several months. On May 8, 2025, the Parties attended mediation with the Honorable David E. Jones (ret.) of Resolute Systems, LLC and reached a settlement in principle. Subsequently, five plaintiffs entered into individual settlements and were dismissed from the Consolidated Complaint. Accordingly, pursuant to the terms identified below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Defendant and the Released Persons (as defined below) relating to the Data Incident and this Litigation, by and on behalf of Plaintiff and Class Members.

II. PLAINTIFF'S CLAIMS AND BENEFITS OF SETTLING

Plaintiff and Proposed Class Counsel (as defined below) believe the claims asserted in the Litigation, as set forth in their consolidated complaint, have merit. Plaintiff and Proposed Class

Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation through motion practice, discovery, class certification, trial, and potential appeals. Plaintiff and Proposed Class Counsel have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, especially in complex class actions. Proposed Class Counsel are highly experienced in class action litigation and, in particular, data breach and privacy litigation, and have previously served as lead counsel in other data breach class actions through final approval. Plaintiff and Proposed Class Counsel have determined that the Settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class Members.

III. DENIAL OF WRONGDOING AND LIABILITY

Defendant denies each and all of the claims and contentions alleged against it in the consolidated complaint. Defendant denies all charges of wrongdoing or liability as alleged, or which could be alleged. Nonetheless, Defendant has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. Defendant has also considered the uncertainty and risks inherent in any litigation. Defendant has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

IV. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff, individually and on behalf of the Class Members, Proposed Class Counsel, as set forth in the signature block below, and Defendant that, subject to the approval of the Court, the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be

dismissed with prejudice as to the Settling Parties and the Class Members, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. Definitions

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

- 1.1 “Administration Fees” shall mean the fees, costs, and other expenses incurred for Settlement Administration (as defined below).
- 1.2 “Agreement” or “Settlement Agreement” means this agreement.
- 1.3 “CAFA Notice” means a notice of the proposed Settlement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.* (“CAFA”).
- 1.4 “Claim” means a claim for Settlement Benefits (as defined below) made under the terms of this Settlement Agreement.
- 1.5 “Claim Form” means the form that will be used by Class Members to submit a Claim to the Settlement Administrator and that is substantially in the form as shown in **Exhibit A** to this Settlement Agreement.
- 1.6 “Claims Deadline” means the postmark and/or online submission deadline for Claims, which shall be 90 days after the Notice Date (as defined below). The Claims Deadline shall clearly be set forth in the Preliminary Approval Order (as defined below), as well as in the Notice (as defined below) and on the Claim Form.
- 1.7 “Class” means all Persons (as defined below) who received a Notice Letter from ESO and were residents of Texas at the time ESO distributed the Notice Letter. The Class specifically excludes: (i) all Persons who timely and validly request exclusion from the Class; (ii) the Judge assigned to evaluate the fairness of this Settlement; and (iii) any other Person found by

a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.8 “Class Member(s)” means any Person or Persons who fall within the definition of the Class.

1.9 “Court” means the United States District Court for the Western District of Texas.

1.10 “Cy Pres Designee” means an entity mutually agreed upon by the Parties and submitted to the Court in a subsequent filing who may receive unclaimed residual funds, as set forth in ¶ 8.5, subject to approval by the Court.

1.11 “Data Incident” means the cyberattack Defendant experienced on or about September 28, 2023, that involved an unauthorized third-party accessing Defendant’s network and computer systems and potentially accessing the Private Information of Plaintiff and the Class Members.

1.12 “Dispute Resolution” means the process for resolving disputed Claims as set forth in this Agreement.

1.13 “Effective Date” shall mean the date when the Settlement Agreement becomes Final (as defined below). The Effective Date is the first date by which all of the events and conditions specified in ¶ 1.15 and ¶ 10.1 have occurred and been met.

1.14 “Escrow Account” means the interest-bearing account opened by the Settlement Administrator. All accrued interest shall inure to the benefit of the Settlement Class.

1.15 “Final” means the occurrence of all of the following events: (i) the Settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment (as defined below); and (iii) the time to appeal or seek permission to appeal from the

Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the Court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys' fees award or Service Awards (as defined below) made in this case shall not affect whether the Judgment is "Final" or any other aspect of the Judgment.

1.16 "Final Approval Order" is the order through which the Court grants final approval of class action settlement and finds that this Settlement is fair, reasonable, and adequate.

1.17 "Judgment" means a judgment rendered by the Court.

1.18 "Litigation" means this consolidated case, *In Re ESO Solutions, Inc. Breach Litigation*, Case No. 1:23-cv-01557-RP, pending in the United States District Court for the Western District of Texas.

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

1.20 "Notice" means the written notice to be sent to the Class Members pursuant to the Preliminary Approval Order.

1.21 "Notice Date" means the date that Notice will be sent to Class Members. The Notice Date shall be 30 days after the entry of the Preliminary Approval Order.

1.22 "Notice Letter" means the notice ESO provided to Persons informing them that their Private Information may have been or was accessed, stolen, or compromised as a result of the Data Incident.

1.23 “Objection Date” means the date by which Class Members must file with the Court through the Court’s electronic case filing (“ECF”) system and mail to Class Counsel and counsel for Defendant their objection to the Settlement for that objection to be effective and timely. The postmark date shall constitute evidence of the date of mailing for these purposes. The Objection Date shall be 60 days after the Notice Date.

1.24 “Opt-Out Date” means the date by which Class Members must mail to the Settlement Administrator their requests to be excluded from the Class for that request to be effective and timely. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Date shall be 60 days after the Notice Date.

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

1.26 “Plaintiff” and/or “Class Representative” means Robert Day.

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

1.28 “PII” or “Private Information” means personal identifying information, including, but not limited to, name, phone number, address, Social Security number, patient account number, medical record number, insurance information, payer information, diagnosis information, injury information, and medical treatment information.

1.29 “Proposed Class Counsel” and “Class Counsel” means Bryan L. Bleichner of Chestnut Cambronne PA, Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, John A. Yanchunis of Morgan & Morgan Complex Litigation Group, and Bruce W. Steckler of Steckler Wayne & Love, PLLC.

1.30 “Related Entities” means Defendant’s past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.31 “Released Claims” shall collectively mean any and all past, present, and future claims and causes of action including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality and all similar statutes in effect in any states in the United States (as defined below) (including, but not limited to, 15 U.S.C. § 45, *et seq.*, 45 C.F.R. § 160, *et seq.*, and 42 U.S.C. § 17921); state consumer-protection statutes (including, but not limited to, Fla. Stat. § 501.201, *et seq.*, N.C. Gen. Stat. Ann. § 75-1.1, *et seq.*, New York Gen. Bus. Law § 349); negligence; negligence *per se*; breach of third-party beneficiary contract; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute

or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief or judgment, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall include Unknown Claims (as defined below). Released Claims shall not include the right of any Class Member or any of the Released Persons to enforce the terms of this Settlement Agreement, or the claims of any Person who has timely excluded themselves from the Class.

1.32 "Released Persons" means Defendant and its Related Entities and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers.

1.33 "Service Award" shall have the meaning ascribed to it as set forth in ¶ 7.3 of this Settlement Agreement. The Service Award requested in this matter will be \$2,500.00 to Class Representative, subject to Court approval and will be in addition to any other Settlement Benefits Class Representative may receive. The Service Awards shall be paid from the Settlement Fund.

1.34 "Settlement Administration" means the processing and payment of Claims received from Class Members by the Settlement Administrator.

1.35 “Settlement Administration Costs” means all actual costs associated with or arising from Settlement Administration, including specifically costs of preparation and issuance of the CAFA Notice and Administration Fees.

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

1.37 “Settlement Fund” means a non-reversionary common fund to be funded by Defendant’s insurance carrier in the amount of seven hundred fifty seven thousand five hundred dollars (\$757,500.00), which shall be deposited into the Escrow Account within thirty (30) business days of the Preliminary Approval Order.

1.38 “Settling Parties” means, collectively, Defendant and Plaintiff, individually and on behalf of the Class and all Released Persons.

1.39 “Short Notice” means the short notice of the proposed Settlement, substantially in the form as shown in **Exhibit D** to this Settlement Agreement. The Short Notice will direct recipients to the Settlement Website where recipients may view, *inter alia*, the Long Notice and make a Claim for monetary relief. The Short Notice will also inform Class Members, *inter alia*, of the Claims Deadline, the Opt-Out Date and Objection Date, and the date of the Final Fairness Hearing (as defined below). The Short Notice shall also contain a “tear-off claim form” with Business Reply Mail (BRM) postage, which Settlement Class Members may use to claim a pro rata cash payment.

1.40 “Settlement Website” shall be the website which the Settlement Administrator will establish and will contain detailed information about this Litigation.

1.41 “United States” as used in this Settlement Agreement means the United States of America and includes all of its States, the District of Columbia, and all territories.

1.42 “Unknown Claims” means any of the Released Claims that any Class Member, including any Plaintiff, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiff intends to and expressly shall have, and each of the other Class Members intend to and shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law (including the common law) of any state, province, or territory of the United States (including, without limitation, Montana Code Ann. § 28-1-1602, North Dakota Cent. Code § 9-13-02, and South Dakota Codified Laws § 20-7-11) that is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

Class Members, including Plaintiff, and any of them, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiff expressly shall have, and each other Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims, including

Unknown Claims. The Settling Parties acknowledge, and Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.43 “Valid Claims” means Claims in an amount approved by the Settlement Administrator or found to be valid through the claims processing and/or Dispute Resolution process.

2. Settlement Benefits

Claimed Benefits: All Class Members shall have the opportunity to submit a Claim Form for certain claimed benefits either through the Settlement Website or by hand to a designated Post Office box established by the Settlement Administrator. Any valid claims may be subject to *pro rata* increase or decrease depending on the aggregated amount of payments to Valid Claims. The claimed benefits, as described below, shall include reimbursement for out-of-pocket losses and *pro rata* cash payments (the “Settlement Benefits”), which shall be taken from the Settlement Fund.

A. Reimbursement for Out-of-Pocket Losses: All Class Members who submit a Valid Claim are eligible to receive reimbursement for documented out-of-pocket losses, if fairly traceable to the Data Incident, up to \$5,000 per individual (“Out-of-Pocket Loss Cap”), which shall be paid out of the Settlement Fund.

i. “Out-of-Pocket Losses” are unreimbursed costs or expenditures incurred by a Class Member in responding to notice of the Data Incident. Out-of-Pocket Losses may include, without limitation, the following: (1) costs incurred on or after September 28, 2023, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency; (2) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage,

copying, mileage, and long-distance telephone charges; (3) credit monitoring or other mitigative costs that were incurred on or after September 28, 2023 through the date of the Class Member's Claim submission.

ro ii. Class Members who elect to submit a Claim for reimbursement of Out-of-Pocket Losses must provide to the Settlement Administrator the information required to evaluate the Claim, including: (1) the Class Member's name and current address; (2) documentation supporting their Claim; (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone; and (4) a verification, stating that the Claim is true and correct to the best of the Class Member's knowledge and belief. Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not "self-prepared" by the Class Member that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation.

iii. Out-of-Pocket Losses will be deemed "fairly traceable" to the Data Incident for purposes of this paragraph if the timing of the loss occurred on or after September 28, 2023.

iv. Class Members may submit multiple Claims for Out-of-Pocket Losses and the total of all amounts recovered for Out-of-Pocket Losses is subject to the \$5,000 Out-of-Pocket Loss Cap.

B. Pro Rata Cash Payments. Class Members may, in addition to making a Claim for reimbursement of Out-of-Pocket Losses, elect to receive a cash payment the amount of which will be determined *pro rata* to exhaust the Settlement Fund following the payment of any Attorneys' fees, litigation expense reimbursements, service awards, settlement administration costs, as well as all Valid Claims for Out-of-Pocket loss reimbursements.

C. Business Practices Changes & Confirmatory Discovery.

Defendant has implemented substantial business practice changes designed to improve its data security and has agreed to provide Class Counsel with a confidential declaration detailing these changes, so that any data security improvements are not made publicly available. In 2023 and 2024 the cost of the Defendant's data security related business practices was approximately \$6,584,433, and Defendant anticipates spending another \$8,321,404 in additional changes in 2025 and 2026 for its data security related business practices.

2.1 Dispute Resolution for Claims. The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support Claims for Out-of-Pocket Loss; (3) the information submitted could lead a reasonable person to conclude that it is more likely than not the claimant has suffered the claimed losses as a result of the Data Incident; and (4) the claimant timely submitted their Claim Form. The Settlement Administrator may, at any time, request from the claimant, in writing, additional information that the Settlement Administrator deems reasonably necessary to evaluate the claim, *e.g.*, documentation requested on the Claim Form, information regarding the claimed losses, and Claims previously made for identity theft and the resolution thereof. For any such Claims that the Settlement Administrator determines to be invalid, the Settlement Administrator will submit those claims to the Settling Parties, by and through their respective Counsel. If, upon meeting and conferring, the Settling Parties disagree as to the Claim validity, then the Claim shall be referred back to the Settlement Administrator for final determination on the Claim validity.

2.2.1 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the Claim is facially valid, the Settlement Administrator shall request additional information and allow the claimant 14 days from the date of the request to cure the defect. If the defect is not cured within the time allotted, then the Claim for document losses will be deemed invalid. If a Claimant makes a claim for documented losses that is found to be invalid for lack of documentation, but fails to claim a *pro rata* cash payment, that Claimant shall be deemed to have made a valid claim for a *pro rata* cash payment.

2.2.2 Following timely receipt of additional information pursuant to a request by the Settlement Administrator under ¶ 2.2.1, the Settlement Administrator shall have ten (10) days to accept or reject the Claim. If, after review of the Claim and all documentation submitted by the claimant, the Settlement Administrator determines that such a Claim is a Valid Claim, then the Claim shall be paid. If the Claim is not valid because the claimant has not provided the information requested by the Settlement Administrator, then the Settlement Administrator may reject the Claim without any further action. A defect in one Claim shall not cause rejection of any other Valid Claim submitted by the claimant.

2.2.3 Class Members shall have ten (10) days from receipt of the approval of a Claim that provides a payment that deviates from the documented losses described on the Claim Form to accept or reject the Claim. This provision does not apply where the Claim payment deviates due to a *pro rata* increase or decrease.

2.3 Settlement Expenses. All costs for Notice to the Class Members as required under ¶¶ 1.19, 1.20, 1.21, 1.32, 1.39, and 3.2, Administration Fees under ¶ 1.1, Settlement Administration Costs under ¶ 1.35, and the costs of Dispute Resolution described in ¶ 2.1, shall be paid out of the Settlement Fund.

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

3. Order of Preliminary Approval and Publishing of Notice of Final Fairness Hearing

3.1. As soon as practicable after the execution of the Settlement Agreement, Proposed Class Counsel and counsel for Defendant shall jointly submit this Settlement Agreement to the Court and file a motion for preliminary approval of the Settlement with the Court requesting entry of a Preliminary Approval Order in the form substantially similar to **Exhibit C** in both terms and cost, requesting, *inter alia*:

- a) certification of the Class for Settlement purposes only pursuant to ¶ 2.4;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) the scheduling of a Final Fairness Hearing;
- d) appointment of Proposed Class Counsel as Class Counsel;
- e) appointment of Robert Day as Class Representative;
- f) approval of the Short Notice to be mailed to Class Members in a form substantially similar to the one attached as **Exhibit D** to this Settlement Agreement;

- g) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to the one attached as **Exhibit B** to this Settlement Agreement, which, together with the Short Notice, shall include a fair summary of the Parties' respective Litigation positions, statements that the Settlement and Notice of Settlement are legitimate and that the Class Members are entitled to benefits under the Settlement, the general terms of the Settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the Settlement, instructions for how to obtain the Settlement Benefits, the process and instructions for making Claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing;
- h) approval of a Claim Form to be used by Class Members to make a Claim in a form substantially similar to the one attached as **Exhibit A** to this Settlement Agreement; and
- i) appointment of Kroll as the Settlement Administrator.

The Short Notice, Long Notice, and Claim Form have been reviewed and approved by the Settlement Administrator but may be revised as agreed upon by the Settling Parties before submission to the Court for approval. Immaterial revisions to these documents may also be made prior to dissemination of Notice. Any changes to the Preliminary Approval Order, Short Notice, Long Notice, and Claim Form that do not materially affect the substance of the Settlement Agreement that the Court may require will not invalidate this Settlement Agreement.

3.2 Costs for providing Notice to the Class in accordance with the Preliminary Approval Order, and the costs of such Notice, together with the Administration Fees and

Settlement Administration Costs, shall be paid from the Settlement Fund. Attorneys' fees, costs, and expenses of Proposed Class Counsel, and a Service Award to Class Representative, as approved by the Court, shall also be paid from the Settlement Fund. Notice shall be provided to Class Members by the Settlement Administrator as follows:

- a) *Class Member Information:* No later than twenty one (21) days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the names, emails, and/or mailing addresses of Class Members, to the extent that such information was contained in the original list used by Defendant to notice about the Data Incident (collectively, "Class Member Information").
- b) Class Member Information and its contents shall be used by the Settlement Administrator solely for the purpose of performing its obligations pursuant to this Settlement Agreement and shall not be used for any other purpose at any time. Except to administer the Settlement as provided in this Settlement Agreement or provide all data and information in its possession to the Settling Parties upon request, the Settlement Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.
- c) *Settlement Website:* Prior to the dissemination of the Notice, the Settlement Administrator shall establish the Settlement Website that will inform Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information. The Settlement Website shall include, in .pdf format and available for download, the

following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; and (v) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide Class Members with the ability to complete and submit the Claim Form electronically and shall have a “Contact Us” page whereby Class Members can send an email with any additional questions to a dedicated email address and send hardcopy documents to a designated Post Office box established by the Settlement Administrator.

- d) *Short Notice:* On the Notice Date, and subject to the requirements of this Settlement Agreement and the Preliminary Approval Order, the Settlement Administrator shall provide Notice to the Class through any one of the following means:
 - Via mail to the Class Member’s postal address that Defendant provided to the Settlement Administrator. Before any mailing under this paragraph occurs, the Settlement Administrator shall run the postal addresses of Class Members through the United States Postal Service (“USPS”) National Change of Address database to update any change of address on file with the USPS;
 - in the event that a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address,

the Settlement Administrator shall re-send the Short Notice to the forwarding address if the Short Notice is returned as undeliverable;

- in the event that subsequent to the first mailing of a Short Notice, and at least 14 days prior to the Opt-Out Date and Objection Date, a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the Class Member’s current address and, if such an address is ascertained, the Settlement Administrator will re-send the Short Notice within 7 days of receiving such information. This shall be the final requirement for mailing.

e) Publishing, on or before the Notice Date, the Claim Form, Long Notice, and this Settlement Agreement on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the website throughout the Claim period;

f) A toll-free help line with an interactive voice response (“IVR”) system and a live operator option shall be made available to provide Class Members with additional information about the Settlement. The Settlement Administrator also will provide copies of the Long Notice and paper Claim Form, as well as this Settlement Agreement, upon request; and

g) Contemporaneously with seeking final approval of the Settlement, Proposed Class Counsel and Defendant shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with these provisions regarding Notice.

3.3 The Short Notice, Long Notice, and other applicable communications to the Class may be adjusted by the Settlement Administrator in consultation and agreement with the Settling Parties as may be reasonable and not inconsistent with such approval.

3.4 Proposed Class Counsel and Defendant's counsel shall request that after Notice to the Class, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the Settlement set forth herein, and request that the Final Fairness Hearing occur on a date that is convenient for the Court and is at least 120 days after the entry of the Preliminary Approval Order.

4. Opt-Out Procedures

4.1 Each Person wishing to opt-out of the Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator. The written notice must clearly manifest the Person's intent to opt-out of the Class. To be effective, written notice must be postmarked no later than the Opt-Out Date.

4.2 All Persons who submit valid and timely notices of their intent to opt-out of the Class (hereinafter, "Opt-Outs"), as set forth in ¶ 4.1 above, shall not receive any benefits of and shall not be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Class who do not opt-out of the Class in the manner set forth in this Agreement shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

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

4.4 If the total number of Opt-Outs constitute 2% or more of the Class, Defendant may, by notifying Proposed Class Counsel in writing, void this Settlement Agreement in its entirety. Defendant shall have five (5) days after the Settlement Administrator provides the Opt-Out List to the Parties to exercise this right to void the Settlement Agreement.

5. Objection Procedures

5.1 Each Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of their objection by the Objection Date. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) the case name and docket number; (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (*e.g.*, copy of the objector's Settlement Notice, copy of original notice of the Data Incident, or a statement explaining why the objector believes they are a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or their counsel will appear at the Final Fairness Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. To be timely, written notice of an objection in the appropriate form must be: (1) mailed, with a postmark date no later than the Objection Date, to Gary Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, as Class Counsel; and Christopher J. Seusing of Wood Smith Henning & Berman, LLP, as counsel for

Defendant; and (2) filed with the Court through the Court's ECF system or submitted to the Clerk of the Court for the U.S. District Court for the Western District of Texas, no later than the Objection Date. For all objections mailed to Class Counsel and counsel for Defendant, Class Counsel will file them with the Court with the Motion for Final Approval of the Settlement, unless the Objection(s) were previously filed on the docket.

5.2 Any Class Member who fails to comply with the requirements for objecting set forth herein shall waive and forfeit any and all rights they may have to appear separately and/or to object to the Settlement Agreement and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and Judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of this Settlement Agreement. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

6. Release

6.1 Upon the Effective Date, each Class Member who did not Opt-Out of the Settlement, including Plaintiff, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims as against all Released Persons. Further, upon the Effective Date, and to the fullest extent permitted by law, each Class Member, including Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the Settlement as provided herein) in which any of the

Released Claims is asserted. Any other claims or defenses Plaintiff and each and all of the Class Members may have against Defendant that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Data Incident, the Litigation, or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

7. Plaintiff's Counsel's Attorneys' Fees, Costs, and Expenses; Service Awards to Plaintiff

7.1 The Settling Parties did not discuss the payment of Attorneys' Fees, Costs, and Expenses and/or a Service Award to Class Representative, until after the substantive terms of the Settlement had been agreed upon, other than that reasonable Attorneys' Fees, Costs, and Expenses and Service Awards to Plaintiff as may be agreed to by Defendant and Class Counsel and/or as ordered by the Court, shall be paid from the Settlement Fund.

7.2 Plaintiff and Class Counsel shall move for, and Defendant agrees not to object to, an award of attorneys' fees at or below one-third (33.33%) of the Settlement Fund, or approximately \$252,475.00, plus the reasonable litigation expenses actually incurred. Class Counsel, in their sole discretion, shall allocate and distribute any amounts of attorneys' fees, costs, and expenses awarded by the Court among Class Counsel. Payment of any attorneys' fees and expenses awarded by the Court shall be paid from the Settlement Fund within seven (7) days after the Effective Date.

7.3 Subject to Court approval, Class Representative intends to request a Service Award in the amount of \$2,500.00 as a result of his time and efforts expended on behalf of the Class. Payment of any Service awards that are Court approved shall be paid from the Settlement Fund within seven (7) days after the Effective Date.

7.4 No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any Attorneys' Fees, Costs, and Expenses and/or Service

Awards ordered by the Court to Class Counsel or Class Representative shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

8. Settlement Fund

8.1 Deposits. Defendant agrees to make a payment of, and deposit that payment into, the Settlement Fund as follows: Defendant shall pay the full balance of the Settlement Fund into the interest-bearing Escrow Account within thirty (30) business days after the Court's entry of the Preliminary Approval Order. Settlement Administrator shall use this balance to pay for Settlement Administration Costs. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendant's liability shall not exceed \$757,500.00.

8.2 Custody of the Settlement Fund. The Settlement Fund shall be deposited into an appropriate trust established by the Settlement Administrator but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to the Settlement Agreement or returned to Defendant in the event this Settlement Agreement is voided, terminated, or cancelled.

8.3 Treasury Regulations and Fund Investment. The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund ("QSF") within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any taxes owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date

possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation (“FDIC”) at a financial institution determined by the Settlement Administrator and approved by the Parties. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check-clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

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

8.5 To the extent any monies remain in the Settlement Fund following payment of all Settlement Administrative Costs, Attorneys’ Fees, Costs, and Expenses, Service Awards, and Settlement Benefits, at the expiration of all monetary payments distributed to Settlement Class Members, a “Subsequent Settlement Payment” shall be distributed to the Cy Pres Designee.

9. Administration of Claims

9.1 The Settlement Administrator shall administer and calculate the Claims submitted by Class Members. Class Counsel and Defendant shall be given reports as to both Claims and distributions and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Settlement Administrator's final determination of whether a Claim is a Valid Claim shall be binding, subject to the Dispute Resolution process.

9.2 Payment of Valid Claims shall be made within 30 days after the Effective Date. No Valid Claims shall be paid until after the Effective Date. If this Settlement Agreement is terminated or otherwise does not become final (e.g., disapproval by the Court or any appellate court) prior to the payment of Valid Claims, Defendant shall have no obligation to pay such Claims.

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

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

10. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

10.1 The Effective Date of the Settlement shall be conditioned on the occurrence of all of the following events:

- (a) the Court has entered the Preliminary Approval Order;
- (b) Defendant has not exercised its option to terminate the Settlement Agreement pursuant to ¶ 4.4;

Robert Munden
(c) the Court has entered the Judgment granting final approval to the Settlement and certification of the Class as set forth herein; and

- (d) the Judgment has become Final, as defined in ¶ 1.15.

10.2 If all conditions specified in ¶¶ 10.1 and 1.15 are not satisfied, the Settlement Agreement shall be canceled and terminated unless Class Counsel and Defendant's counsel mutually agree in writing to proceed with the Settlement Agreement.

10.3 In the event that the Settlement Agreement including the releases are not approved by the Court or the Settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled Litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel, and (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of Attorneys' Fees, Costs, and Expenses and/or Service Awards shall constitute grounds for cancellation or termination of the Settlement Agreement.

11. Representation and Warranties

11.1 Class Counsel agrees and hereby represents and warrants, on behalf of themselves and all others acting on their behalf, that (i) they have not filed any lawsuit and have not asserted any claim against the Released Persons other than as asserted in the Litigation; and (ii) they do not presently represent any other potential claimants or clients intending to assert any type of individual, collective or class claims against the Released Persons, including claims released herein with respect to the Data Incident, and claims similar to those asserted in the Litigation. This representation and warranty shall not in any way be interpreted or enforced as a restriction on the right of Class Counsel to practice law within the meaning of Texas Rule of Professional Conduct 5.6, ABA Model Rule of Professional Conduct 5.6 or the equivalent to ABA Model Rule of Professional Conduct Rule 5.6 in any jurisdiction(s) in which Class Counsel may practice or whose ethics rules may otherwise apply.

11.2 Class Counsel agrees and hereby represents and warrants, on behalf of themselves and all others acting on their behalf, that they have not discussed the Litigation, the allegations therein, and/or the Data Incident with any party other than the Parties to this Agreement

12. Miscellaneous Provisions

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

12.2 In the event that the aggregated amount of payments of all Valid Claims (*i.e.*, Out-of-Pocket Loss Claims and Pro Rata Cash Payment Claims) exceeds the total amount of the Settlement Fund, then the value of the payments to be paid to each Class Member making a Valid Claim shall be reduced on a *pro rata* basis, such that the aggregate value of all payments for all

Valid Claims does not exceed the Settlement Fund (after payment of all Settlement Administration Costs, Attorneys' Fees, and Service Awards). All *pro rata* reduction determinations shall be made by the Settlement Administrator.

12.3 The Settling Parties intend this Settlement to be a final and complete resolution of all claims and disputes between them with respect to the Data Incident and this Litigation. The Settlement compromises claims, including but not limited to all Released Claims, that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the Settlement was negotiated in good faith by the Settling Parties and reflects a Settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such Party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth herein.

12.4 Neither the Settlement Agreement, nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them to support a defense or counterclaim based on principles of *res judicata*, collateral

estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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

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

12.7 This Settlement Agreement, including all exhibits hereto, constitutes the entire agreement among the Parties hereto, and no representations, warranties, or inducements have been made to any Party concerning the Settlement Agreement other than the representations, warranties, and covenants contained and memorialized herein. Except as otherwise provided herein, each Party shall bear its own costs. This Settlement Agreement supersedes all previous agreements made between the Parties.

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

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

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

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

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

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

12.14 The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Texas, and the rights and obligations of the Parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Texas.

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

12.16 If a Class Member opts to receive Settlement Benefits via mailed check, cashing the Settlement check is a condition precedent to any Class Member’s right to receive Settlement Benefits. All Settlement checks shall be void 90 days after issuance and shall bear the language:

“This check must be cashed within 90 days, after which time it is void.” If a check becomes void, the Class Member shall have until six (6) months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Class Member will have failed to meet a condition precedent to recovery of Settlement Benefits, the Class Member’s right to receive monetary relief shall be extinguished, and there shall be no obligation to make payments to the Class Member for expense reimbursement or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than 180 days after the Effective Date, requests for re-issuance need not be honored after such checks become void.

12.17 The Settlement Website shall be deactivated 180 days after the Effective Date.

12.18 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

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

Defendant:

By: Robert Munden
Its: Chief Legal & Compliance Officer

Date: September 25, 2025

By: Christopher J. Seusing
Christopher J. Seusing
Wood Smith Henning & Berman, LLP

Date: October 3, 2025

Counsel for Defendant

By: Bryan L. Bleicher
Bryan L. Bleicher
Chestnut Cambronne PA

Date: October 31, 2025

By: Gary M. Klinger
Gary M. Klinger
Milberg Coleman Bryson Phillips Grossman, PLLC

Date: October 7, 2025

By: John A. Yanchunis
John A. Yanchunis
Morgan & Morgan Complex Litigation Group

Date: October 31, 2025

By: Bruce W. Steckler
Bruce W. Steckler
Steckler Wayne & Love, PLLC

Date: October 31, 2025

Counsel for Plaintiff and the Settlement Class

Plaintiff:

Robert Day
Robert Day

Date: 10 / 15 / 2025

EXHIBIT A

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Your Claim must
be submitted
online or
postmarked by:
**<<Claims
Deadline>>**

CLAIM FORM FOR ESO DATA INCIDENT LITIGATION

In Re ESO Solutions, Inc. Breach Litigation

Case No. 1:23-cv-01557-RP

United States District Court for the Western District of Texas

ESO-C

GENERAL INSTRUCTIONS

You are a Settlement Class Member if you are a Person who received a Notice Letter from ESO and were a resident of Texas at the time ESO distributed the Notice Letter, outlined below.

Please refer to the Long Notice posted on the Settlement Website www.Website.com, for more information on submitting a Claim Form and if you part of the Class.

To receive a Settlement Benefit from this Settlement via an electronic payment, you must submit the Claim Form below electronically at www.Website.com by <<Claims Deadline>>.

This Claim Form may also be mailed to the address below. Please type or legibly print all requested information, in blue or black ink. Mail your completed Claim Form, including any supporting documentation, by U.S. mail to:

<Mailing Caption>
c/o Kroll Settlement Administration LLC
P.O. Box XXXX
New York, NY 10150-XXXX

Class Members under the Settlement Agreement will be eligible to receive the following Settlement Benefits:

❖ **Reimbursement for Out-of-Pocket Losses:** All Class Members who submit a Valid Claim are eligible to receive reimbursement for documented Out-of-Pocket Losses, if fairly traceable to the Data Incident, **up to \$5,000** per individual (Out-of-Pocket Loss Cap), which shall be paid out of the Settlement Fund **upon submission of reasonable documented losses;**

AND

❖ **Pro Rata Cash Payments:** Class Members may, in addition to making a Claim for reimbursement of Out-of-Pocket Losses, elect to receive a cash payment the amount of which will be determined *pro rata* to exhaust the Settlement Fund following the payment of any Attorneys' Fees, Costs, and Expenses and/or Service Awards for Plaintiffs, Settlement Administration Costs, Administration Fees, as well as all Valid Claims for Out-of-Pocket Loss reimbursements.

I. PAYMENT SELECTION

If you would like to elect to receive your Settlement Benefit through electronic transfer, please visit the Settlement Website and timely file your Claim Form. The Settlement Website includes a step-by-step guide for you to complete the electronic payment option.

Questions? Go to www.Website.com or call toll-free (XXX) XXX-XXXX.

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II. CLASS MEMBER NAME AND CONTACT INFORMATION

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this Claim Form.

First Name**Last Name****Address 1****Address 2****City****State****Zip Code****Email Address:** _____

@_____

III. PROOF OF DATA INCIDENT CLASS MEMBERSHIP

Check this box to certify if you are a Person who received a Notice Letter from ESO and were a resident of Texas at the time ESO distributed the Notice Letter.

Enter the Class Member ID Number provided on your Short Notice:

Class Member ID: 0 0 0 0 0 _____

IV. REIMBURSEMENT FOR OUT-OF-POCKET LOSSES

All Class Members who submit a Valid Claim are eligible to receive reimbursement for documented Out-of-Pocket Losses, if fairly traceable to the Data Incident, up to \$5,000 per individual (Out-of-Pocket Loss Cap), which shall be paid out of the Settlement Fund upon submission of reasonable documented losses.

- Out-of-Pocket Losses are unreimbursed costs or expenditures incurred by a Class Member in responding to notice of the Data Incident. Out-of-Pocket Losses may include, without limitation, the following:
 - (1) costs incurred on or after September 28, 2023, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency;
 - (2) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges;
 - (3) credit monitoring or other mitigative costs that were incurred on or after September 28, 2023, through the date of the Class Member's Claim submission.

- Class Members who elect to submit a Claim for reimbursement of Out-of-Pocket Losses must provide to the Settlement Administrator the information required to evaluate the Claim, including: (1) the Class Member's

Questions? Go to www.Website.com or call toll-free (XXX) XXX-XXXX.

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name and current address; (2) documentation supporting their Claim; (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone; and (4) a verification, stating that the Claim is true and correct to the best of the Class Member's knowledge and belief.

Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not "self-prepared" by the Class Member that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation. Out-of-Pocket Losses will be deemed *fairly traceable* to the Data Incident for purposes of this paragraph if the timing of the loss occurred on or after September 28, 2023.

Class Members may submit multiple Claims for Out-of-Pocket Losses and the total of all amounts recovered for Out-of-Pocket Losses is subject to the \$5,000 Out-of-Pocket Loss Cap.

You must have Out-of-Pocket Losses incurred as a result of the Data Incident and submit documentation to obtain this Settlement Benefit.

I have attached documentation showing that the documented losses were more likely than not caused by the Data Incident. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support to other submitted documentation.

Cost Type (Fill all that apply)	Approximate Date of Out-of-Pocket Losses	Amount of Out-of-Pocket Losses	Description of Supporting Reasonable Documentation (Identify what you are attaching and why)
Example: Identity Theft Protection Service	0 7/17/2 0 (mm/dd/yy)	\$50.00	Copy of identity theft protection service bill
	____ / ____ / ____ (mm/dd/yy)	\$ _____ : _____	
	____ / ____ / ____ (mm/dd/yy)	\$ _____ : _____	
	____ / ____ / ____ (mm/dd/yy)	\$ _____ : _____	

Questions? Go to www.Website.com or call toll-free (XXX) XXX-XXXX.

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V. PRO RATA CASH PAYMENT

Class Members may, in addition to making a Claim for reimbursement of Out-of-Pocket Losses, elect to receive a cash payment the amount of which will be determined *pro rata* to exhaust the Settlement Fund following the payment of any Attorneys' Fees, Costs, and Expenses and/or Service Awards for Plaintiffs, Settlement Administration Costs, Administration Fees, as well as all Valid Claims for Out-of-Pocket Loss reimbursements.

Yes, I choose a *pro rata* cash payment. **You may also submit a Claim for Out-of-Pocket Losses above.**

If a Claimant makes a Claim for documented Out-of-Pocket Losses that is found to be invalid for lack of documentation, but fails to Claim a *pro rata* cash payment, that Claimant shall be deemed to have made a Valid Claim for a *pro rata* cash payment.

VI. ATTESTATION & SIGNATURE

I swear and affirm under the laws of my state that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

Signature

_____/_____/_____

Date

Print Name

Questions? Go to www.Website.com or call toll-free (XXX) XXX-XXXX.

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EXHIBIT B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

United States District Court for the Western District of Texas

In Re ESO Solutions, Inc. Breach Litigation
Case No. 1:23-cv-01557-RP

A Court has authorized this Long Notice (“Notice”). This is not a solicitation from a lawyer.

If You Are a Person Who Received A Notice Letter From ESO and Were a Resident of Texas at the Time Defendant Distributed the Notice Letter, You Are Eligible to Receive a Settlement Benefit from a Class Action Settlement

- A Court authorized this Notice, to those that are eligible to receive Settlement Benefits from a proposed class action settlement. The Litigation is titled *In Re ESO Solutions, Inc. Breach Litigation*, Case No. 1:23-cv-01557-RP and is pending in the United States District Court for the Western District of Texas. The people that filed the class action lawsuit are called Plaintiffs or Class Representatives and the company they sued is ESO Solutions, Inc. (ESO or Defendant). Defendant denies any wrongdoing whatsoever.

- **Who is a Class Member?**

All Persons who received a Notice Letter from ESO and were residents of Texas at the time ESO distributed the Notice Letter.

The Class specifically excludes: (i) all Persons who timely and validly request exclusion from the Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

- Class Members under the Settlement Agreement will be eligible to receive the following Settlement Benefits:

❖ **Reimbursement for Out-of-Pocket Losses:** All Class Members who submit a Valid Claim are eligible to receive reimbursement for documented Out-of-Pocket Losses, if fairly traceable to the Data Incident, **up to \$5,000** per individual (Out-of-Pocket Loss Cap), which shall be paid out of the Settlement Fund **upon submission of reasonable documented losses**;

AND

❖ **Pro Rata Cash Payments:** Class Members may, in addition to making a Claim for reimbursement of Out-of-Pocket Losses, elect to receive a cash payment the amount of which will be determined *pro rata* to exhaust the Settlement Fund following the payment of any Attorneys' Fees, Costs, and Expenses and/or Service Awards for Plaintiffs, Settlement Administration Costs, Administration Fees, as well as all Valid Claims for Out-of-Pocket Loss reimbursements.

Questions? Go to www.website.com or call (XXX) XXX-XXXX

- To obtain more information visit www.website.com or call (XXX) XXX-XXXX.

Please read this Notice carefully. Your legal rights will be affected, and you have a choice to make at this time.

	Summary of Legal Rights	Deadline(s)
Submit a Claim Form	The only way to receive a Settlement Benefit from the settlement.	Submitted or postmarked on or before <<Claims Deadline>>.
Exclude Yourself by Opting Out of the Settlement Class	Receive no benefit from the settlement. This is the only option that allows you to keep your right to bring any other lawsuit against Defendant relating to the Data Incident.	Mailed and postmarked on or before <<Opt-Out Date>>.
Object to the Settlement and/or Attend the Final Fairness Hearing	You can write the Court about why you agree or disagree with the settlement or the Attorneys' Fees, Costs, and Expenses and/or Service Awards for Plaintiffs. The Court cannot order a different settlement. You can also ask to speak at the Final Fairness Hearing on <<Final Fairness Hearing date>> at [TIME] CT, about the fairness of the settlement, with or without your own attorney.	Mailed and postmarked on or before <<Objection Date>>.
Do Nothing	You will not receive any Settlement Benefit from this class action settlement, but will remain a Class Member and be bound by the releases.	N/A

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

Questions? Go to www.website.com or call (XXX) XXX-XXXX

What This Notice Contains

Basic Information.....	4
Who is in the Settlement	4
The Settlement Benefits—What You Get if You Qualify	5
How Do You Submit a Claim	6
Excluding Yourself from the Settlement.....	7
Objecting to the Settlement	8
The Lawyers Representing You.....	9
The Court's Final Fairness Hearing	9
If You Do Nothing	10
Additional Information.....	10

Questions? Go to www.website.com or call (XXX) XXX-XXXX

BASIC INFORMATION

1. Why is there a Notice?

The Court authorized this Notice because you have a right to know about the settlement, and all of your options, before the Court decides whether to give final approval to the settlement. This Notice explains the nature of the Litigation that is the subject of the settlement, the general terms of the settlement, and your legal rights and options.

The Judge Robert Pitman of the United States District Court for the Western District of Texas is overseeing this case captioned as *In Re ESO Solutions, Inc. Breach Litigation*, Case No. 1:23-cv-01557-RP. The people who brought the lawsuit are called the Class Representatives. The company being sued, ESO Solutions, Inc., is called ESO or the Defendant.

2. What is the Litigation about?

The Litigation arises from the alleged compromise of Private Information of Plaintiffs and Class Members as a result of the Data Incident. In response to the Data Incident, Defendant sent a Notice Letter informing affected individuals that their Private Information may have been compromised.

Defendant denies any wrongdoing whatsoever. No court or other judicial body has made any judgment or other determination that Defendant has done anything wrong.

3. Why is this a class action?

In a class action, one or more people called “Class Representatives” or “Plaintiffs” sue on behalf of all people who have similar claims. Together, all of these people are called a “Class,” and the individuals are called “Class Members.” One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4. Why is there a settlement?

The Court has not decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to the settlement. The settlement avoids the cost and risk of a trial and related appeals, while providing benefits to Class Members. The Class Representatives appointed to represent the Class, and the attorneys for the Class, Class Counsel, think the settlement is best for all Class Members.

WHO IS IN THE SETTLEMENT?

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

You are affected by the settlement and potentially a Class Member if you are a Person who received a Notice Letter from ESO and were a resident of Texas at the time ESO distributed the Notice Letter.

The Class specifically excludes: (i) all Persons who timely and validly request exclusion from the Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

Questions? Go to www.website.com or call (XXX) XXX-XXXX

6. What if I am not sure whether I am included in the settlement?

If you are not sure whether you are included in the settlement, you may call **(XXX) XXX-XXXX** with questions. You may also write with questions to:

<Mailing Caption>
 c/o Kroll Settlement Administration LLC
 P.O. Box **XXXX**
 New York, NY 10150-**XXXX**

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

7. What does the settlement provide?

The settlement provides the following Settlement Benefits available to Class Members who submit Valid Claims: (a) Reimbursement for Out-of-Pocket Losses; and (b) *Pro Rata* Cash Payments.

8. What Settlement Benefits are available under the settlement?

Class Members that submit a valid and timely Claim Form may select one or more of the following Settlement Benefits:

- a) **Reimbursement for Out-of-Pocket Losses:** All Class Members who submit a Valid Claim are eligible to receive reimbursement for documented Out-of-Pocket Losses, if fairly traceable to the Data Incident, up to \$5,000 per individual (Out-of-Pocket Loss Cap), which will be paid out of the Settlement Fund.
 - Out-of-Pocket Losses are unreimbursed costs or expenditures incurred by a Class Member in responding to notice of the Data Incident. Out-of-Pocket Losses may include, without limitation, the following:
 - (1) costs incurred on or after September 28, 2023, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency;
 - (2) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges;
 - (3) credit monitoring or other mitigative costs that were incurred on or after September 28, 2023, through the date of the Class Member's Claim submission.
 - Class Members who elect to submit a Claim for reimbursement of Out-of-Pocket Losses must provide to the Settlement Administrator the information required to evaluate the Claim, including: (1) the Class Member's name and current address; (2) documentation supporting their Claim; (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone; and (4) a verification, stating that the Claim is true and correct to the best of the Class

Questions? Go to www.website.com or call **(XXX) XXX-XXXX**

Member's knowledge and belief.

- Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not "self-prepared" by the Class Member that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation. Out-of-Pocket Losses will be deemed *fairly traceable* to the Data Incident for purposes of this paragraph if the timing of the loss occurred on or after September 28, 2023.
- Class Members may submit multiple Claims for Out-of-Pocket Losses and the total of all amounts recovered for Out-of-Pocket Losses is subject to the \$5,000 Out-of-Pocket Loss Cap.

AND

- b) **Pro Rata Cash Payments:** Class Members may, in addition to making a Claim for reimbursement of Out-of-Pocket Losses, elect to receive a cash payment the amount of which will be determined *pro rata* to exhaust the Settlement Fund following the payment of any Attorneys' Fees, Costs, and Expenses and/or Service Awards for Plaintiffs, Settlement Administration Costs, Administration Fees, as well as all Valid Claims for Out-of-Pocket Loss reimbursements

If a Claimant makes a Claim for documented losses that is found to be invalid for lack of documentation, but fails to Claim a *pro rata* cash payment, that Claimant shall be deemed to have made a Valid Claim for a *pro rata* cash payment.

HOW DO YOU SUBMIT A CLAIM?

9. How do I get a Settlement Benefit?

To receive a Settlement Benefit, you must complete and submit a Claim Form online at www.website.com or by mail to <Mailing Caption>, c/o Kroll Settlement Administration LLC, P.O. Box XXXX, New York, NY 10150-XXXX. Read the Claim Form instructions carefully, fill out the Claim Form, provide the required documentation, and submit online by <<Claims Deadline>> or by mail postmarked by <<Claims Deadline>>.

TO RECEIVE AN ELECTRONIC OR ACH PAYMENT FOR YOUR VALID CLAIM, YOU MUST FILE A CLAIM FORM ONLINE AT WWW.WEBSITE.COM

10. When will I get my Settlement Benefit?

The Court will hold a Final Fairness Hearing on <<Date>>, at <<Time>> a.m. CT to decide whether to approve the settlement. If the Court approves the settlement, there may be appeals from that decision and resolving them can take time. It also takes time for all of the Claim Forms to be processed. Please be patient. Settlement Benefits will begin after the settlement has obtained Court approval and the time for all appeals has expired.

11. What am I giving up as part of the settlement?

ESO and its affiliates will receive a release from all claims that could have been or that were brought against ESO relating to the Data Incident. Thus, if the Settlement becomes Final and you do not exclude yourself from the Settlement, you will be a Class Member and you will give up your right to sue ESO, and each entity which is controlled by, controlling or under common control with ESO and their respective past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge, in its capacity as such and assigns of each of them as well as covered entities associated with the Data Incident. These releases are described in Section 6 of the Settlement Agreement, which is available at www.website.com. If you have any questions, you can talk to the law firms listed in **Question 17** for free or you can talk to your own lawyer.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to be part of the settlement, then you must take steps to exclude yourself from the Class. This is sometimes referred to as “opting out” of the Class.

12. If I exclude myself, can I get a Settlement Benefit from this settlement?

No. If you exclude yourself, you will not be entitled to receive any benefits from the settlement.

13. If I do not exclude myself, can I sue the Related Entities for the same thing later?

No. Unless you exclude yourself, you give up any right to sue ESO and any other Related Entities for any claim that could have been or was brought relating to the Data Incident. You must exclude yourself from the Settlement to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case.

14. How do I exclude myself from the settlement?

To exclude yourself, send an individually signed and timely submitted written notice of such intent to the Settlement Administrator at the address below. The written notice must clearly manifest the Person’s intent to opt-out of the Class. To be effective, written notice must be **postmarked no later than <>Opt-Out Date<>**, to:

<Mailing Caption>
 c/o Kroll Settlement Administration LLC
 P.O. Box XXXX
 New York, NY 10150-XXXX

If you do not opt-out of the Class in the manner above, you will be bound by the terms of the Settlement Agreement and Judgment entered by the Court.

Questions? Go to www.website.com or call **(XXX) XXX-XXXX**

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I do not like the settlement?

You can tell the Court that you do not agree with the settlement, and/or Attorneys' Fees, Costs, and Expenses and/or Service Awards for Plaintiffs or some part of it by objecting to the settlement. Objections must be: (1) mailed, to Gary Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, as Class Counsel; and Christopher J. Seusing of Wood Smith Henning & Berman, LLP, as counsel for Defendant; and (2) filed with the Court through the Court's ECF system or submitted to the Clerk of the Court for the U.S. District Court for the Western District of Texas, with a **postmark date no later than the <>Objection Date<>**.

Class Counsel	Counsel for Defendant	Clerk of the Court
Gary Klinger Milberg Coleman Bryson Phillips Grossman, PLLC 800 S. Gay Street, Suite 1100 Knoxville, Tennessee 37929	Christopher J. Seusing Wood Smith Henning & Berman, LLP 14860 Landmark Blvd, Suite 120 Dallas, Texas 75254	<Court Address>

The objection must state:

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

16. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like the settlement or parts of it and why you do not think it should be approved. You can object only if you are a Class Member. Excluding yourself is telling the Court that you do not want to be part of the Class and do not want to receive any Settlement Benefit from the settlement.

Questions? Go to www.website.com or call (XXX) XXX-XXXX

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in this case?

Yes. The Court appointed Bryan L. Bleichner of Chestnut Cambronne PA, Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, John A. Yanchunis of Morgan & Morgan Complex Litigation Group, and Bruce W. Steckler of Steckler Wayne & Love, PLLC, as Class Counsel to represent the Class in settlement negotiations. If you want to be represented by your own lawyer, you may hire one at your own expense.

18. How will the Class Counsel be paid?

Plaintiffs and Class Counsel shall move for an award of Attorneys' Fees, Costs, and Expenses at or below one-third (33.33%) of the Settlement Fund, or approximately \$252,475.00, plus the reasonable litigation expenses actually incurred. Any such award would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the settlement and will be the only payment to them for their efforts in achieving this settlement and for their risk in undertaking this representation on a wholly contingent basis.

Subject to Court approval, Plaintiffs intend to request Service Awards in the amount of \$2,500 for each of the Plaintiffs as a result of Plaintiffs' time and efforts expended on behalf of the Class.

Any Attorneys' Fees, Costs, and Expenses and/or Service Awards payments must be approved by the Court. The Court may award less than the amounts requested.

THE COURT'S FINAL FAIRNESS HEARING

19. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Fairness Hearing on **<<Date>> at <<Time>> CT**, at the **<<Court Address>>, Room _____** as ordered by the Court. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are timely and valid objections, the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the Attorneys' Fees, Costs, and Expenses and/or Service Awards payments. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. The hearing may be moved to a different date or time without additional notice, so Class Counsel recommends checking the Settlement Website **www.website.com**, or calling **(XXX) XXX-XXXX**.

20. Do I have to attend the hearing?

No. Class Counsel will present the Class to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to visit the Court to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in **Question 15**, the Court will consider it.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must file an objection according to the instructions in **Question 15**, including all the information required. Your objection must be: (1) mailed to Gary Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, as Class Counsel; and Christopher J. Seusing of Wood Smith Henning & Berman, LLP, as counsel for Defendant; and (2) filed with the Court through the Court's ECF system or submitted to the Clerk of the Court for the U.S. District Court for the Western District of Texas, at the mailing addresses listed above, with a **postmark date no later than <<Objection Date>>**.

IF YOU DO NOTHING

22. What happens if I do nothing?

If you do nothing, you will not receive any Settlement Benefits from this settlement. If the settlement is granted final approval and becomes Final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against ESO or the other Related Entities based on any claim that could have been or that was brought relating to the Data Incident.

ADDITIONAL INFORMATION

23. How do I get more information?

This Notice summarizes the settlement. More details are in the Settlement Agreement itself. A copy of the Settlement Agreement is available at www.website.com. You may also call the Settlement Administrator with questions or to receive a Claim Form at **(XXX) XXX-XXXX**.

24. What if my contact information changes or I no longer live at my address?

It is your responsibility to inform the Settlement Administrator of your updated information. You may do so at the address below, calling toll-free **(XXX) XXX-XXXX** or at the Contact page of the Settlement Website:

<Mailing Caption>
 c/o Kroll Settlement Administration LLC
 P.O. Box **XXXX**
 New York, NY 10150-**XXXX**

PLEASE DO NOT CONTACT THE COURT, CLERK OF THE COURT OR CLASS COUNSEL FOR INFORMATION ABOUT THE CLASS ACTION SETTLEMENT

EXHIBIT C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE ESO SOLUTIONS, INC. BREACH
LITIGATION,

Master File No. 1:23-cv-01557-RP

This Document Relates To: All Parties

ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Before this Court is Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion"). The Court has reviewed the Motion and Settlement Agreement between Plaintiff Robert Day ("Plaintiff") and Defendant ESO Solutions, Inc ("Defendant"). After reviewing Plaintiff's unopposed request for preliminary approval, this Court grants the Motion and preliminarily concludes that the proposed Settlement is fair, reasonable, and adequate.

IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement,¹ including the proposed notice plan and forms of notice to the Class, the appointment of Plaintiff Robert Day as the Class Representative, the appointment of Class Counsel for Plaintiff and the Class, the approval of Kroll Settlement Administration LLC ("Kroll" or "KSA") as the Settlement Administrator, the various forms of class relief provided under the terms of the settlement and the proposed method of distribution of settlement benefits, are fair, reasonable, and adequate, subject to further consideration at the Fairness Hearing described below.

¹ All capitalized terms in this preliminary order shall have the same meanings as set forth in the Settlement Agreement

2. The Court does hereby preliminarily and conditionally approve and certify, for settlement purposes, the following Class:

All persons residing in the United States whose Private Information was compromised during the Data Breach that is the subject of the Notice Letter published by Defendant in December 2023, including all those who received the Notice Letter (the “Class”)

3. Based on the information provided: the Class is ascertainable; it consists of roughly 2,700,000 Settlement Class Members satisfying numerosity; there are common questions of law and fact including whether Defendant failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the Security Incident, satisfying commonality; the proposed Class Representative’s claims are typical in that they are a member of the Class and allege they have been damaged by the same conduct as the other members of the Class; the proposed Class Representative and Class Counsel fully, fairly, and adequately protect the interests of the Class; questions of law and fact common to members of the Class predominate over questions affecting only individual members for settlement purposes; and a class action for settlement purposes is superior to other available methods for the fair and efficient adjudication of this Action.

4. The Court appoints Plaintiff Robert Day as the Class Representative.

5. The Court appoints Bryan L. Bleichner of Chestnut Cambronne PA, Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, John A. Yanchunis of Morgan & Morgan Complex Litigation Group, and Bruce W. Steckler of Steckler Wayne & Love, PLLC as Class Counsel for the Class.

6. The Court appoints Kroll Settlement Administration LLC as the Settlement Administrator.

7. A Final Approval Hearing shall be held before the Court on [REDACTED], 2025 at [REDACTED] for the following purposes:

- a. To determine whether the proposed Settlement is fair, reasonable, and adequate to the Class and should be approved by the Court
- b. To determine whether to grant Final Approval, as defined in the Settlement Agreement, including conditionally certifying the proposed Class for settlement purposes only;
- c. To determine whether the notice plan conducted was appropriate;
- d. To determine whether the claims process under the Settlement is fair, reasonable and adequate and should be approved by the Court;
- e. To determine whether the requested Class Representative Service Award of \$2,500 to the Class Representative and Class Counsel's combined attorneys' fees of up to one third of the Settlement Fund (\$255,808.00) and reasonable litigation expenses not to exceed \$ [REDACTED] should be approved by the Court;
- f. To determine whether the settlement benefits are fair, reasonable, and adequate; and
- g. To rule upon such other matters that the Court may deem appropriate.

8. The Court approves, as to the form and content, the Notices (including the Short Form Notice). Furthermore, the Court approves the implementation of the Settlement Website and the proposed methods of mailing or distributing the notices substantially in the form as presented in the exhibits to the Motion for Preliminary Approval of Class Action Settlement, and finds that such notice plan meets the requirements of Fed. R. Civ. P. 23 and due process, and is the best

notice practicable under the circumstances, and shall constitute due and efficient notice to all persons or entities entitled to notice.

9. The Court preliminarily approves the following Settlement Timeline for the purposes of conducting the notice plan, settlement administration, claims processing, and other execution of the proposed Settlement:

SETTLEMENT TIMELINE

<u>From Order Granting Preliminary Approval</u>	
Defendant provides list of Settlement Class Members to the Settlement Administrator	+14
Defendant makes initial payment into Settlement Fund for Notice	+14
Settlement Website Active	+21 days
Notice Date	+30 days
Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards	+76 days
Objection & Opt-Out Deadline	+90 days
Settlement Administrator Provides List of Objections/Exclusions to the Parties' Counsel	+100 days
Claims Deadline	+120 days
<u>Final Approval Hearing</u>	, 2026
Motion for Final Approval	-14 days
<u>From Order Granting Final Approval</u>	
Effective Date	+60 days, assuming no appeal has been taken.
Defendant deposits the remaining payment into the Settlement Fund	+60 days after the Effective Date
Payment of Attorneys' Fees and Class Representative Service Award	+60 days after the Effective Date
Settlement Website Deactivation	+90 days

10. In order to be a timely claim under the Settlement, a Claim Form must be either postmarked or received by the Settlement Administrator no later than 90 days after the Notice Date. Class Counsel and the Settlement Administrator will ensure that all specific dates and

deadlines are added to the Class Notice and posted on the Settlement Website after this Court enters this Order in accordance with the timeline being keyed on the grant of this Order.

11. Additionally, all requests to opt out or object to the proposed Settlement must be received by the Settlement Administrator no later than 60 days after the Notice Date. Any request to opt out of the Settlement should, to the extent possible, contain words or phrases such as “opt-out,” “opt out,” “exclusion,” or words or phrases to that effect indicating an intent not to participate in the settlement or be bound by this Agreement) to Kroll Settlement Administration LLC. Opt-Out notices shall not be rejected simply because they were inadvertently sent to the Court or Class Counsel so long as they are timely postmarked or received by the Court, Kroll Settlement Administration LLC, or Class Counsel. Settlement Class Members who seek to Opt-Out shall receive no benefit or compensation under this Agreement.

12. Settlement Class Members may submit an objection to the proposed Settlement under Federal Rule of Civil Procedure 23(e)(5). For an Objection to be valid, it must be filed with the Court within 60 days of the Notice Date and include each and all the following:

- (i) The objector’s full name, address, telephone number, and email address (if any);
- (ii) Information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice or copy of original notice of the Security Incident);
- (iii) A written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
- (iv) The identity of any and all counsel representing the objector
- (v) The identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- (vi) A list of all Persons who will be called to testify at the Final Approval Hearing in support of the objection;

- (vii) A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and,
- (viii) The objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation.

Any Objection failing to include the requirements expressed above will be deemed to be invalid. Furthermore, any Settlement Class Member objecting to the Settlement agrees to submit to any discovery related to the Objection.

13. All Settlement Class Members shall be bound by all determinations and judgements in this Action concerning the Settlement, including, but not limited to, the release provided for in the Settlement Agreement, whether favorable or unfavorable, except those who timely and validly request exclusion from the Class. The persons and entities who timely and validly request exclusion from the Class will be excluded from the Class and shall not have rights under the Settlement Agreement, shall not be entitled to submit Claim Forms, and shall not be bound by the Settlement Agreement or any Final Approval order as to Defendant in this Action

14. Pending final determination of whether the Settlement Agreement should be approved, Plaintiff and the Class are barred and enjoined from commencing or prosecuting any claims asserting any of the Release Claims against Defendant.

15. The Court reserves the right to adjourn the date of the Final Approval Hearing without further notice to the potential Settlement Class Members and retains jurisdiction to consider all further requests or matters arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modification as may be agreed to by the Parties or as ordered by the Court, without further notice to the Class.

IT IS SO ORDERED this _____ day of _____, 2025

JUDGE ROBERT PITTMAN
UNITED STATES DISTRICT COURT
JUDGE FOR THE UNITED STATES
DISTRICT COURT FOR THE WESTERN
DISTRICT OF TEXAS

EXHIBIT D

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

<Mailing 3971318.1:17713-0008
c/o Kroll Settlement Administration LLC
P.O. Box XXXX
New York, NY 10150-XXXX

ELECTRONIC SERVICE REQUESTED

COURT APPROVED LEGAL NOTICE

In Re ESO Solutions, Inc. Breach Litigation

Case No. 1:23-cv-01557-RP

A federal Court has authorized this Short Notice
("Notice"). This is not a solicitation from a lawyer.

<<Refnum Barcode>>
<<Refnum Barcode>>
CLASS MEMBER ID: <<Refnum>>

Postal Service: Please do not mark barcode

<<FirstName>> <<LastName>>
<<Company>>
<<Address1>>
<<Address2>>
<<City>>, <<State>> <<Zip>>-<<zip4>>
<<Country>>

To all Persons who received a Notice Letter from
ESO and were residents of Texas at the time ESO
distributed the Notice Letter, a proposed class
action settlement may affect your rights

For more information on the proposed settlement,
including how to submit a Claim, exclude yourself,
or submit an objection, please visit or call:

www.website.com
(XXX) XXX-XXXX

A proposed settlement has been reached in a class action lawsuit known as *In Re ESO Solutions, Inc. Breach Litigation*, in the United States District Court for the Western District of Texas, Case No. 1:23-cv-01557-RP

Why am I receiving this Notice? You are receiving this Notice because the records of ESO Solutions, Inc. (ESO or Defendant) show the potential compromise of Private Information of Plaintiffs and Class Members as a result of the Data Incident. In response to the Data Incident, Defendant sent a Notice Letter informing affected individuals that their Private Information may have been compromised. You are therefore likely a Class Member eligible to receive Settlement Benefits under this settlement.

Who is a Class Member? You are affected by the settlement and potentially a Class Member if you are a Person who received a Notice Letter from ESO and were a resident of Texas at the time ESO distributed the Notice Letter.

What are the Settlement Benefits? – The settlement provides the following Settlement Benefits available to Class Members who submit Valid Claims: (a) Reimbursement for Out-of-Pocket Losses; and (b) Pro Rata Cash Payments. Please visit www.website.com for a full description of the Settlement Benefits and documentation requirements.

How do I submit a Claim Form for Settlement Benefits? You must submit a Claim Form online at www.website.com or use the attached Claim Form to be eligible to receive a Settlement Benefit. Your completed Claim Form must be submitted online or mailed to the Settlement Administrator at <Mailing Caption> c/o Kroll Settlement Administration LLC, P.O. Box 10 XXXX, New York, NY XXXX and postmarked by **DATE TO RECEIVE AN ELECTRONIC OR ACH PAYMENT FOR YOUR VALID CLAIM, YOU MUST FILE A CLAIM FORM ONLINE AT WWW.WEBSITE.COM.**

What are my other options? If you Do Nothing, you will be legally bound by the terms of the settlement, and you will release your claims against Defendants and other Related Entities as defined in the Settlement Agreement. You may Opt-Out of or file an Objection to the settlement by **DATE**. Please visit www.website.com for more information on how to opt-out of or object to the settlement.

Do I have a lawyer in this case? Yes, the Court appointed Bryan L. Bleichner of Chestnut Camborne PA, Gary M. Klinger of Milbank, Coleman Bryson Phillips Grossman, PLLC, John A. Yanchunis of Morgan & Morgan Complex Litigation Group, and Bruce W. Steckler of Steckler Wayne & Love, PLLC to represent you and other Class Members. You will not be charged directly for these lawyers; instead they will receive compensation from the Settlement Fund (subject to Court approval). If you want to be represented by your own lawyer, you may hire one at your own expense.

The Court's Final Fairness Hearing. The Court is scheduled to hold a Final Fairness Hearing on **DATE** at **TIME CT**, to consider whether to approve the settlement, Class Counsel's request for Attorneys' Fees, Costs, and Expenses at or below one-third (33.33%) of the Settlement Fund, or approximately \$222,475.00, plus the reasonable litigation expenses actually incurred, and Service Awards of \$2,500 to each of the Plaintiffs. You may appear at the hearing, either yourself or through an attorney hired by you, but you do have to.

This Notice is only a summary. For more information or to change your address, visit www.website.com or call toll-free (XXX) XXX-XXXX.

Doc ID: d47247b1c31178de78968a1f86654160000000743

Postage
Required

Doc ID: d47247b1c31f78de78968aff86e5416b08fdf743

BRM

3971318.1:1713-0008

Class Member ID: 3971318.1:1713-0008



VISIT THE SETTLEMENT WEBSITE BY
SCANNING THE PROVIDED QR CODE

POSTCARD CLAIM FORM

To submit a Claim for Pro Rata Cash Payment, please complete the below form, sign, and mail this portion of the postcard to the Settlement Administrator by no later than **DATE**. Claims for reimbursement of Out-of-Pocket Losses require supporting documentation and therefore must be submitted online at www.website.com or mailed to the Settlement Administrator with a separate Claim Form. To receive a Pro Rata Cash Payment from this settlement via electronic payment, you must submit a Claim Form electronically at www.website.com by **DATE**.

Class Member ID: <<refnum>>
<<firstname>> <<mi>> <<lastname>>
<<address1>> <<address2>>
<<City>>, <<State>> <<Zip>>

If different address from the preprinted data on the left, please print your correct information.

First Name _____ Last Name _____
Address _____
City _____ State _____ Zip Code _____

{telephone Number} - _____

Email Address

@ _____

Pro Rata Cash Payment

Yes, I would like to receive a cash payment the amount of which will be determined *pro rata* to exhaust the Settlement Fund following the payment of any Attorneys' Fees, Costs, and Expenses and/or Service Awards for Plaintiffs, Settlement Administration Costs, Administration Fees, as well as all Valid Claims for Out-of-Pocket Loss reimbursements.

SIGN AND DATE YOUR CLAIM FORM

I declare under penalty of perjury that the information supplied in this Claim Form is true and correct. I authorize the Settlement Administrator to contact me, using the contact information set forth above, to obtain any necessary supplemental information.

Signed this _____ of _____, 2023.

Doc ID: d47247b1c31f78de78968aff86e5418b08df7743

Print Name: _____ / _____ / _____

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE ESO SOLUTIONS, INC. BREACH LITIGATION,	Case No. 1:23-cv-01557-RP
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**DECLARATION OF BRYAN L. BLEICHNER IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Bryan L. Bleichner, hereby state pursuant to 28 U.S.C. § 1746(2) as follows:

1. I am a shareholder of the law firm Chestnut Cambronne PA. I am one of the proposed Class Counsel in this Litigation representing Plaintiff and the proposed Class and have monitored my firm's participation in this matter from December 2023 to the present. The contents of this Declaration are based upon my own personal knowledge, the events of this litigation, my experience in handling many class action cases, and my review of my firm's business records and information that are maintained on a routine basis.

2. My firm has been centrally involved in all aspects of this litigation from the initial investigation to the present. I have been one of the primary points of contact for Plaintiff and with counsel for Defendant ESO Solutions, Inc. ("ESO" or "Defendant"). Class Counsel undertook this

matter on a contingency fee basis with the risk of achieving no recovery at all. Additionally, Class Counsel have incurred reasonable litigation expenses that remain unreimbursed.

3. I am a former officer of the Antitrust Section of the National Federal Bar Association, a former featured speaker at the National American Bar Association, and a current member of the Sedona Conference Working Group Series. Most recently, I was appointed Co-Lead Counsel for the patient track in *In re: Change Healthcare, Inc. Customer Data Security Breach Litig.*, No. 24-md-03108-DWF/DJF (D. Minn.), a pending multi-district class action in the District of Minnesota against Change Healthcare and United Healthcare, Inc. It is one of the largest data breaches in United States history.

4. I have extensive experience serving as leadership or class counsel in data breach matters across the country: *In re Berry, Dunn, McNeil & Parker Data Security Incident Litigation*, No. 2:24-cv-00146 (D. Me.) (resulting in \$7.75 million settlement); *In re Group Health Plan Litig.*, No. 23-cv-267-JWB/DJF (D. Minn.) (resulting in \$6 million settlement); *In re Loancare Data Breach Litigation*, No. 3:23-cv-01508 (M.D. Fla.) (resulting in \$5.9 million settlement); *Hightower v. Receivables Performance Management, LLC*, No. 2:22-cv-01683 (W.D. Wash.) (resulting in \$5.6 million settlement); *In re Regents of the University of Minnesota Data Litigation*, No. 27-cv-23-14056 (Hennepin County, Minnesota); *Cahill v. Memorial Heart Institute, LLC d/b/a The Chattanooga Heart Institute*, No. 1:23-cv-168 (E.D. Tenn.); *In re R&B Corporation of Virginia d/b/a Credit Control Corporation*, No. 4:23-cv-00066-JKW-RJK (E.D. Va.); *In re OrthoAlaska Data Breach Litigation*, No. 3:23-cv-00242 (D. Alaska); *In re Whitworth Data Breach Security Litigation*, No. 2:23-cv-00179-SAB (E.D. Wash.); *Rasmussen v. Uintah Basin Healthcare*, No. 23-cv-00322-HCN-CMR (D. Utah); *Johnson v. Yuma Regional Medical Center*, No. 2:22-cv-01061 (D. Ariz.); *Anderson v. Fortra LLC*, No. 23-cv-00533-SRN/DTS (D. Minn.); *In re Netgain*

Technology, LLC, Consumer Data Breach Litigation, No. 21-cv-1210-SRN/LIB, (D. Minn.); *Inc. Data Security Litigation*, No. 19-cv-6019-GEKP (E.D. Pa.); *In re Equifax, Inc., Customer Hale v. ARcare, Inc.*, No. 3:22-cv-00117 (E.D. Ark.); *In re CCM Health Data Security Litigation*, No. 12-cv-24-169 (Chippewa County, Minnesota); *In re Tift Regional Health System, Inc. Data Breach Litig.*, No. 2023-cv-0313 (Tift County, Georgia); *Rodriguez v. Mena Regional Hospital Commission d/b/a Mena Regional Health System*, No. 2:23-cv-2002 (W.D. Ark.); *Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275-RAR (S.D. Fla.); *Baker v. ParkMobile, LLC*, No. 1:21-cv-02182 (N.D. Ga.); *In re Herff Jones Data Security Breach Litigation*, No. 1:21-cv-01329-TWP-DLP (S.D. Ind.); *In re EyeMed Vision Care, LLC Data Security Breach Litigation*, No. 1:21-cv-00036-DRC (S.D. Ohio); *In re Luxottica of America, Inc. Data Security Breach Litigation*, No. 1:20-cv-00908-MRB (S.D. Ohio); *Greenstate Credit Union v. Hy-Vee, Inc.*, No. 20-621-DSD-DTS (D. Minn.); *Village Bank v. Caribou Coffee Co., Inc.*, No. 0:19-cv-01640 (D. Minn.); *In re WaWa, Data Security Breach Litigation*, No. 17-md-2800-TWT (N.D. Ga.); *Midwest American Federal Credit Union v. Arby's Restaurant Group, Inc.*, No. 17-cv-00514-AT (N.D. Ga.); *Bellwether Cnty. Credit Union v. Chipotle Mexican Grill, Inc.*, No. 17-cv-1102 (D. Colo.); *First Choice Fed. Credit Union v. The Wendy's Company*, No. 2:16-cv-00506 (W.D. Pa.); *Veridian Credit Union v. Eddie Bauer LLC*, No. 2:17-cv-00356 (W.D. Wash.); *In re The Home Depot, Inc., Customer Data Security Breach Litigation*, No. 1:14-md-02583 (TWT) (N.D. Ga.); *In re Target Corporation Customer Data Security Breach Litigation*, No. 0:14-md-02522-PAM-JJK (D. Minn.); *Seabrian v. St. Joseph's/Candler Health System, Inc.*, No. STCV21-01652 (State Court of Chatham County, Georgia); *Lutz v. Electromed, Inc.*, No. 70-CV-21-11814 (D. Minn.); *In re Pawn America Consumer Data Breach Litig.*, No. 0:21-cv-02554-PJS/JFD (D. Minn.).

5. Gary Klinger, John Yanchunis, and Bruce Steckler, along with their firms are similarly experienced in representing plaintiffs in class action cases, including data breach class actions such as this one, and are qualified to serve as Class Counsel in this case.

LITIGATION AND PROTRACTED SETTLEMENT NEGOTIATIONS

6. This class action arises out of a cyberattack and data breach of Defendant's systems. Following the Data Breach, six separate putative class action lawsuits were filed and later consolidated by the Court on January 10, 2024. Plaintiff also filed a motion to appoint interim class counsel, which was granted by the Court on January 10, 2024. Thereafter, on February 9, 2024, Plaintiff filed a consolidated class action complaint.

7. On March 28, 2024, Defendant moved to dismiss Plaintiff's consolidated class action complaint. Plaintiff opposed Defendant's motion to dismiss on April 29, 2024, and Defendant filed a reply on May 29, 2024. Thereafter, on July 30, 2024, the Court issued an opinion and order granting in part and denying in part Defendant's motion to dismiss.

8. Following the motion to dismiss, and in view of the contested issues involved, the risks, uncertainty, and costs of further prosecution of the litigation, the Parties began discussing a potential resolution of this case. The Parties agreed to participate in mediation with the assistance of an experienced mediator, the Honorable David E. Jones. Prior to mediation, the Parties exchanged informal discovery and were able to make informed decisions about the potential resolution of this litigation. Through these settlement negotiations and detailed discovery exchanged by the Parties before mediation, Plaintiff was able to confirm the class size of approximately 49,472 Texas residents. The Parties' negotiations were arm's-length in that each side were zealous in their mediation positions while remaining professional. The negotiations were fair, and each side advanced their respective arguments zealously on behalf of the best interests of

their clients while demonstrating their willingness to continue to litigate rather than accept a settlement not in the best interests of their clients.

9. Following a full-day mediation, Counsel for Plaintiff and the putative class spent addition time negotiating the specific terms of the Settlement and ultimately entered into a Settlement Agreement and Release (“Settlement Agreement”) with Defendant. Subsequently, five of the six Plaintiffs entered into individual settlement agreements with Defendant and were dismissed from the Consolidated Complaint. Plaintiff Robert Day and Defendant, through this Settlement Agreement, agreed to resolve all claims asserted in the complaint filed in this litigation. Additionally, Defendant has agreed to and begun implementing business practices changes related to information security to safeguard Private Information in its systems. As a result of these negotiations, I can confirm that the Parties and their counsel support this Settlement, and believe it is fair and reasonable.

SETTLEMENT TERMS

10. The Settlement in this matter will provide tangible cash benefits to Class Members who submit valid claims under the \$757,500 non-reversionary Settlement Fund.

11. From the Settlement Fund, Class Members will be able to submit a claim to receive a *pro rata* cash payment and reimbursement for out-of-pocket losses up to \$5,000 for unreimbursed losses fairly traceable to the Data Incident, after the deduction of payment to Kroll Settlement Administration, LLC, for costs of settlement administration, for attorneys’ fees and expenses, and a Class Representative Service Award. If any money remains in the Settlement Fund after Settlement Administration is complete, a “Subsequent Settlement Payment” shall be distributed to the Cy Pres Designee subject to Court approval.

12. In addition to the above, Defendant has agreed to pay and implement substantial business practice changes designed to improve data security.

13. In my experience of handling many data breach class actions around the country including many other common fund cases, the payment of \$757,500 for a common fund settlement for roughly 49,472 class members (equivalent to \$15.31 per Class Member) is a good recovery and one that compares favorably to other data breach class action settlements.

Case	Settlement Amount	Class Size	Average Value Per Class Member
<i>Marshall v. Lamoille Health Partners</i> , No. 1:24-cv-00642 (D. Vt.)	\$520,000	59,831	\$9.03
<i>In re Stanley Steemer International Data Breach Litigation</i> , No. 2:23-cv-3932 (S.D. Ohio)	\$700,000	63,000	\$11.11
<i>Rodriguez v. Mena Hospital Commission</i> , No. 2:23-cv-2002 (W.D. Ark.)	\$500,000	42,000	\$11.90
<i>Lamie v. Lendingtree, LLC</i> , No. 3:22-cv-00637 (W.D.N.C.)	\$875,000	69,142	\$12.66
<i>Kohn v. Loren Stark Co., Inc.</i> , No. 4:23-cv-3035 (S.D. Tex.)	\$750,000	58,065	\$12.92

14. The provisions of the Settlement relating to Defendant's commitment to pay any attorneys' fees and costs approved by the Court were negotiated only after substantive terms of the Settlement were discussed and agreed upon by the parties. There has been no fraud or collusion in coming to this Settlement Agreement, nor are there any agreements among the Settling Parties apart from the Settlement Agreement.

SETTLEMENT ADMINISTRATION AND NOTICE PROGRAM

15. Understanding that settlement administration costs and expenses will be deducted from the Settlement Fund, Class Counsel sought to engage the service of a settlement administrator with experience handling data privacy class actions and providing cost-effective services. I

reviewed in detail three settlement administration proposals from three settlement administrators and concluded that Kroll offered the best scope of services at the best possible price for the Class. Notably, Kroll's bid included comprehensive settlement administration services and a price that is favorable to the Class. I have received and reviewed hundreds of settlement administration bids during my career and am very familiar with what a reasonable settlement administration bid is per class member while factoring in the size of the class and the primary notice method. After receiving Kroll settlement administration quote including the scope of service, I can confirm that the quote is reasonable and in the Class's best interests.

16. Kroll is a qualified class action settlement administration company, as evidenced in the documentation supporting its declaration concerning the notice program.

17. Through Kroll, the Notice Plan consists of sending each Class Member the Short Form Notice with a tear-off claim form including via regular U.S. Mail, and the Long Form Notice and full Claim Form will be posted on the Settlement Website. Additional case information including important documents will also be included on the Settlement Website.

18. To better help Class Members, Kroll will also establish a toll-free help line with an interactive voice response system and a live operation option shall be made available to answer questions and provide Class Members with additional information about the Settlement.

CLASS COUNSEL'S ATTORNEYS' FEES & EXPENSES ARE REASONABLE FOR PURPOSES OF PRELIMINARY APPROVAL

19. Under the Settlement, Class Counsel may seek up to one-third of the Settlement Fund (\$252,475.00) as attorneys' fees and reimbursement of reasonable litigation expenses from the Settlement Fund.

20. Class Counsel have undertaken this case on a contingency fee basis and have not received any payment for their work in this case to date and have not been reimbursed for any of

their litigation expenses. Class Counsel have invested considerable time and resources into the prosecution of this action. Class Counsel will submit detailed declarations in support of any upcoming motion for attorneys' fees, expenses, and class representative service awards identifying the tasks they have performed on behalf of the Class in prosecution of this case and in procuring this Settlement.

CLASS REPRESENTATIVE SERVICE AWARD IS REASONABLE

21. Class Counsel kept in close contact with Plaintiff Robert Day during the litigation through numerous emails and personal telephone calls. Plaintiff Robert Day has been an active participant in this case and has stayed informed about the litigation. He has reviewed and approved the terms of the settlement in principle and the Settlement Agreement. Neither Class Counsel nor the proposed Class Representative have any conflict with regard to representing the proposed Class.

22. Class Counsel will request up to a \$2,500 service award to Plaintiff Robert Day whose service to the Class included consultation with Plaintiff's counsel, reviewing documents, numerous phone calls and emails, and being available for subsequent settlement discussions.

THE SETTLEMENT IS FAIR, REASONABLE, AND A STRONG RECOVERY FOR THE CLASS

23. Class Settlement Counsel recommends, for the Court's consideration, preliminary approval of the Settlement because it is well within the range of possible approval and is fair, reasonable, and adequate and in the best interests of the Settlement Class in that it provides broad, tangible Settlement benefits to 49,472 Class Members.

24. To my knowledge, no other cases will be affected by the settlement for which we are seeking approval from the Court.

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

Executed this 31st day of October 2025 in Minneapolis, Minnesota.

/s/ Bryan L. Bleichner

Bryan L. Bleichner

EXHIBIT 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE ESO SOLUTIONS, INC. BREACH
LITIGATION,

Master File No. 1:23-cv-01557-RP

This Document Relates To: All Parties

ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Before this Court is Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion"). The Court has reviewed the Motion and Settlement Agreement between Plaintiff Robert Day ("Plaintiff") and Defendant ESO Solutions, Inc ("Defendant"). After reviewing Plaintiff's unopposed request for preliminary approval, this Court grants the Motion and preliminarily concludes that the proposed Settlement is fair, reasonable, and adequate.

IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement,¹ including the proposed notice plan and forms of notice to the Class, the appointment of Plaintiff Robert Day as the Class Representative, the appointment of Class Counsel for Plaintiff and the Class, the approval of Kroll Settlement Administration LLC ("Kroll" or "KSA") as the Settlement Administrator, the various forms of class relief provided under the terms of the settlement and the proposed method of distribution of settlement benefits, are fair, reasonable, and adequate, subject to further consideration at the Fairness Hearing described below.

¹ All capitalized terms in this preliminary order shall have the same meanings as set forth in the Settlement Agreement

2. The Court does hereby preliminarily and conditionally approve and certify, for settlement purposes, the following Class:

All persons residing in the United States whose Private Information was compromised during the Data Breach that is the subject of the Notice Letter published by Defendant in December 2023, including all those who received the Notice Letter (the “Class”)

3. Based on the information provided: the Class is ascertainable; it consists of roughly 2,700,000 Settlement Class Members satisfying numerosity; there are common questions of law and fact including whether Defendant failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the Security Incident, satisfying commonality; the proposed Class Representative’s claims are typical in that they are a member of the Class and allege they have been damaged by the same conduct as the other members of the Class; the proposed Class Representative and Class Counsel fully, fairly, and adequately protect the interests of the Class; questions of law and fact common to members of the Class predominate over questions affecting only individual members for settlement purposes; and a class action for settlement purposes is superior to other available methods for the fair and efficient adjudication of this Action.

4. The Court appoints Plaintiff Robert Day as the Class Representative.

5. The Court appoints Bryan L. Bleichner of Chestnut Cambronne PA, Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, John A. Yanchunis of Morgan & Morgan Complex Litigation Group, and Bruce W. Steckler of Steckler Wayne & Love, PLLC as Class Counsel for the Class.

6. The Court appoints Kroll Settlement Administration LLC as the Settlement Administrator.

7. A Final Approval Hearing shall be held before the Court on ___, 2025 at ___ for the following purposes:

- a. To determine whether the proposed Settlement is fair, reasonable, and adequate to the Class and should be approved by the Court
- b. To determine whether to grant Final Approval, as defined in the Settlement Agreement, including conditionally certifying the proposed Class for settlement purposes only;
- c. To determine whether the notice plan conducted was appropriate;
- d. To determine whether the claims process under the Settlement is fair, reasonable and adequate and should be approved by the Court;
- e. To determine whether the requested Class Representative Service Award of \$2,500 to the Class Representative and Class Counsel's combined attorneys' fees of up to one third of the Settlement Fund (\$255,808.00) and reasonable litigation expenses not to exceed \$ ___ should be approved by the Court;
- f. To determine whether the settlement benefits are fair, reasonable, and adequate; and
- g. To rule upon such other matters that the Court may deem appropriate.

8. The Court approves, as to the form and content, the Notices (including the Short Form Notice). Furthermore, the Court approves the implementation of the Settlement Website and the proposed methods of mailing or distributing the notices substantially in the form as presented in the exhibits to the Motion for Preliminary Approval of Class Action Settlement, and finds that such notice plan meets the requirements of Fed. R. Civ. P. 23 and due process, and is the best

notice practicable under the circumstances, and shall constitute due and efficient notice to all persons or entities entitled to notice.

9. The Court preliminarily approves the following Settlement Timeline for the purposes of conducting the notice plan, settlement administration, claims processing, and other execution of the proposed Settlement:

SETTLEMENT TIMELINE

<u>From Order Granting Preliminary Approval</u>	
Defendant provides list of Settlement Class Members to the Settlement Administrator	+14
Defendant makes initial payment into Settlement Fund for Notice	+14
Settlement Website Active	+21 days
Notice Date	+30 days
Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards	+76 days
Objection & Opt-Out Deadline	+90 days
Settlement Administrator Provides List of Objections/Exclusions to the Parties' Counsel	+100 days
Claims Deadline	+120 days
<u>Final Approval Hearing</u>	, 2026
Motion for Final Approval	-14 days
<u>From Order Granting Final Approval</u>	
Effective Date	+60 days, assuming no appeal has been taken.
Defendant deposits the remaining payment into the Settlement Fund	+60 days after the Effective Date
Payment of Attorneys' Fees and Class Representative Service Award	+60 days after the Effective Date
Settlement Website Deactivation	+90 days

10. In order to be a timely claim under the Settlement, a Claim Form must be either postmarked or received by the Settlement Administrator no later than 90 days after the Notice Date. Class Counsel and the Settlement Administrator will ensure that all specific dates and

deadlines are added to the Class Notice and posted on the Settlement Website after this Court enters this Order in accordance with the timeline being keyed on the grant of this Order.

11. Additionally, all requests to opt out or object to the proposed Settlement must be received by the Settlement Administrator no later than 60 days after the Notice Date. Any request to opt out of the Settlement should, to the extent possible, contain words or phrases such as “opt-out,” “opt out,” “exclusion,” or words or phrases to that effect indicating an intent not to participate in the settlement or be bound by this Agreement) to Kroll Settlement Administration LLC. Opt-Out notices shall not be rejected simply because they were inadvertently sent to the Court or Class Counsel so long as they are timely postmarked or received by the Court, Kroll Settlement Administration LLC, or Class Counsel. Settlement Class Members who seek to Opt-Out shall receive no benefit or compensation under this Agreement.

12. Settlement Class Members may submit an objection to the proposed Settlement under Federal Rule of Civil Procedure 23(e)(5). For an Objection to be valid, it must be filed with the Court within 60 days of the Notice Date and include each and all the following:

- (i) The objector’s full name, address, telephone number, and email address (if any);
- (ii) Information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice or copy of original notice of the Security Incident);
- (iii) A written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
- (iv) The identity of any and all counsel representing the objector
- (v) The identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- (vi) A list of all Persons who will be called to testify at the Final Approval Hearing in support of the objection;

- (vii) A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and,
- (viii) The objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation.

Any Objection failing to include the requirements expressed above will be deemed to be invalid. Furthermore, any Settlement Class Member objecting to the Settlement agrees to submit to any discovery related to the Objection.

13. All Settlement Class Members shall be bound by all determinations and judgements in this Action concerning the Settlement, including, but not limited to, the release provided for in the Settlement Agreement, whether favorable or unfavorable, except those who timely and validly request exclusion from the Class. The persons and entities who timely and validly request exclusion from the Class will be excluded from the Class and shall not have rights under the Settlement Agreement, shall not be entitled to submit Claim Forms, and shall not be bound by the Settlement Agreement or any Final Approval order as to Defendant in this Action

14. Pending final determination of whether the Settlement Agreement should be approved, Plaintiff and the Class are barred and enjoined from commencing or prosecuting any claims asserting any of the Release Claims against Defendant.

15. The Court reserves the right to adjourn the date of the Final Approval Hearing without further notice to the potential Settlement Class Members and retains jurisdiction to consider all further requests or matters arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modification as may be agreed to by the Parties or as ordered by the Court, without further notice to the Class.

IT IS SO ORDERED this _____ day of _____, 2025

JUDGE ROBERT PITTMAN
UNITED STATES DISTRICT COURT JUDGE