

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

MICHAEL WARSHAWSKY and MICHAEL
STEINHAUSER, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

CBDMD, INC. and CBD INDUSTRIES LLC,

Defendants.

Case No. 20-cv-00562

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
AND TO DIRECT NOTICE OF SETTLEMENT**

Plaintiffs Michael Warshawsky and Michael Steinhauser (“Plaintiffs”), by and through their undersigned counsel, respectfully submit this Unopposed Motion for Preliminary Approval of Class Action Settlement, wherein they seek entry of an order: (i) granting preliminary approval of the proposed settlement as memorialized in the Settlement Agreement that was executed on April 30, 2021; (ii) approving the form and manner of giving notice of the Settlement to the certified Class and approving the form and content of the Notice; (iii) certifying the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (iv) approving the procedures set forth in the Settlement Agreement for Settlement Class Members to exclude themselves from the Settlement Class; (v) staying the Action pending Final Approval of the Settlement; (vi) staying and/or enjoining, pending Final Approval of the Settlement, any actions brought by Settlement Class Members concerning any Released Claims; and (vii) setting a hearing date for the final approval of the Settlement and its terms, including the proposed

distribution of funds, a motion seeking a service award to the Representative Plaintiffs, and Class Counsel's motion for attorneys' fees, costs and expenses.

Plaintiffs submit that the proposed Settlement is in the best interest of the Class and provides fair, just and substantial benefits to Settlement Class Members, which will be described to the class in a comprehensive Notice Plan, and it satisfies the requirements of Rule 23(e) of the Federal Rules of Civil Procedure. For the reasons set forth herein and in the Memorandum of Law submitted herewith and accompanying exhibits, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement.

Plaintiffs' Motion for Preliminary Approval is unopposed by Defendants.

Dated: April 30, 2021

Respectfully submitted,

/s/ Jean S. Martin

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CERTIFICATE OF SERVICE

I, Jean Sutton Martin, certify that I caused the foregoing to be electronically filed in this case on April 30, 2021 using the Court's CM/ECF System, thereby serving it upon all counsel of record in this case.

/s/ Jean Sutton Martin

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
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I. INTRODUCTION

Plaintiffs Michael Warshawsky and Michael Steinhauser (“Plaintiffs”), by and through their undersigned counsel, respectfully submit this Memorandum in support of their Unopposed Motion for Preliminary Approval of Class Action Settlement, wherein they seek entry of an order: (i) granting preliminary approval of the proposed settlement as memorialized in the Settlement Agreement that was executed on April 30, 2021 (the “Settlement Agreement” or “SA”)¹, attached hereto as **Exhibit 1**; (ii) approving the form and manner of giving notice of the Settlement to the certified Class and approving the form and content of the Notice; (iii) certifying the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (iv) approving the procedures set forth in the Settlement Agreement for Settlement Class Members to exclude themselves from the Settlement Class; (v) staying the Action pending Final Approval of the Settlement; (vi) staying and/or enjoining, pending Final Approval of the Settlement, any actions brought by Settlement Class Members concerning any Released Claims; and (vii) setting a hearing date for the final approval of the Settlement and its terms, including the proposed distribution of funds, a motion seeking a service award to the Representative Plaintiffs, and Class Counsel’s motion for attorneys’ fees, costs and expenses.

The underlying action between Plaintiffs and Defendants cbdMD, Inc. and CBD Industries, LLC (collectively “cbdMD” or “Defendants”) pertains to an unauthorized disclosure of certain personal information to unknown third parties. Between March 30, 2020 and May 8, 2020, and also between May 14, 2020 and May 18, 2020, cbdMD suffered a cyberattack on its eCommerce platform that accepts payment cards. Through the operation of unauthorized JavaScript code, the unauthorized JavaScript code directed customer-input HTML elements to a third-party server

¹ The capitalized terms used in this Memorandum are defined in the Settlement Agreement, attached hereto as Exhibit 1.

unaffiliated with cbdMD between March 30, 2020 at 00:03:12 UTC (Coordinated Universal Time) and the end of May 8, 2020, and again between May 14, 2020 at 21:02:57 UTC through the end of May 18, 2020. Those data elements that were directed to a non-authorized third party consisted of first and last names, shipping addresses, billing addresses, credit or debit card numbers including expiration dates and card verification values, and/or bank account numbers. Subsequently, Representative Plaintiffs filed a class action lawsuit asserting claims against cbdMD relating to the Security Incident (as defined below) (the “Litigation”). While cbdMD disputes the claims alleged in the Complaint and maintains that it has valid defenses as to liability and damages, cbdMD has agreed to provide relief to Settlement Class Members as set forth in the Settlement Agreement.

As discussed below, Plaintiffs and Class Counsel submit that the proposed Settlement is in the best interest of the Class and provides fair, just and substantial benefits to Settlement Class Members, which will be described to the class in a comprehensive Notice Plan, and it satisfies the requirements of Rule 23(e) of the Federal Rules of Civil Procedure. For the reasons set forth herein, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement.

II. FACTUAL BACKGROUND

A. Nature of the Action

Plaintiffs allege that beginning on or about September 25, 2020, cbdMD notified the U.S. Securities and Exchange Commission (“SEC”), various states’ Attorneys’ General, and thousands of affected customers about two incidents that occurred through the cbdMD.com website from March 30, 2020 through May 8, 2020, and again from May 14, 2020 through May 18, 2020 (the “Security Incident”). Plaintiffs further allege that hackers not only “scraped” many of cbdMD’s consumers’ names from Defendants’ website by infecting the ecommerce platform with a “malicious code,” hackers also stole customers’ payment card numbers, CVV security codes,

credit card expiration dates, addresses, email addresses, and bank account numbers (“PII”). These criminals potentially obtained enough information to illegally use cbdMD’s customers’ payment cards to make fraudulent purchases, and to commit myriad financial crimes and fraud. As a result of the Security Incident, 44,541 customers potentially had their PII compromised.

B. The Litigation

This class action lawsuit was initially commenced on October 9, 2020, by Plaintiffs Michael Warshawsky and Michael Steinhauser, who had purchased products from cbdMD’s website during the Security Incident. (ECF No. 1.) In the complaint, Plaintiffs seek to represent a class of consumers residing in the United States who made a purchase online with cbdMD between March 30, 2020 and May 8, 2020, or between May 14, 2020 through May 18, 2020. Plaintiffs allege that, due to the Security Incident, they and other similarly situated cbdMD consumers became victims of identity theft and asserted claims for negligence; declaratory judgment; unjust enrichment; and violations of Florida’s Deceptive and Unfair Trade Practices Act, Florida Statute § 501.203, *et seq.* and California’s Consumer Privacy Act (“CCPA”), Cal. Civ. Code § 1798.100, *et seq.* (§ 1798.150(a)). Plaintiffs filed the operative, first amended complaint on December 18, 2020, to assert a claim for monetary damages pursuant to the CCPA. (ECF No. 3.)

C. Settlement Negotiations

Shortly after the complaint was filed, the Parties agreed to explore resolution of the claims on a class wide basis. The Parties agreed to and did retain Benjamin Picker, Esq., of the law firm Stradley Ronon Stevens & Young, LLP, a highly experienced mediator, to assist the Parties in settlement negotiations. (Declaration of Jean Sutton Martin, filed concurrently herewith (“Martin Decl.”) ¶ 10, attached hereto as **Exhibit 2**). Before the mediation, cbdMD provided information relevant to Plaintiffs’ allegations, including details about the Security Incident and data regarding

the potential class. Moreover, counsel for Plaintiffs provided Defendants with a proposed settlement matrix, which was then used as the basis for negotiations. Additionally, the Parties briefed their respective positions on the facts, claims, defenses, and assessments of the risk of litigation and these were discussed with the mediator prior to mediation. *Id.* ¶ 11.

On February 3, 2021, the Parties attended a full day virtual mediation session with Mr. Picker. *Id.* ¶ 13. Attorneys for both parties attended the mediation, as well as two representatives for cbdMD and a representative for cbdMD's insurer. *Id.* ¶ 13. The negotiations were hard-fought throughout and the settlement process was conducted at arm's length. *Id.* ¶ 14. With the assistance of Mr. Picker, the Parties were able to reach a negotiated resolution on a class-wide basis that provides both injunctive and monetary relief to Settlement Class Members.

On March 4, 2021, the Parties filed a Joint Motion advising the court of a mediated settlement between the Parties and requesting an order from the Court setting March 31, 2021 as the deadline for Plaintiffs to file their Motion for Preliminary Approval. (ECF No. 9.) The Court granted the request, then the Parties requested an additional extension of 30 days, to April 30, 2021, to file the Motion for Preliminary Approval, which the Court also granted. (ECF Nos. 9-10.)

Since the mediation, the Parties have continued negotiating and finalizing the Settlement Agreement which is being presented to the Court. Martin Decl. ¶ 15. The Parties have worked together to refine the details of the proposed Notice Program and each document comprising the Class Notice, which are embodied in the Settlement Agreement and the Exhibits attached thereto. *Id.* ¶ 15.

III. THE TERMS OF THE PROPOSED SETTLEMENT

The valuable benefits made available pursuant to the Settlement squarely address the issues raised in the litigation and provide significant relief to the Settlement Class Members. The

Settlement provides monetary relief to compensate Settlement Class Members for inconveniences and losses as a result of the Security Incident, as well as equitable relief in the form of business practice changes, some of which cbdMD has already implemented.

A. The Proposed Settlement Class

The Settlement contemplates relief for the following proposed Settlement Class:

All persons residing in the United States who made a purchase online with cbdMD between March 30, 2020 at 00:03:12 UTC (Coordinated Universal Time) and the end of May 8, 2020, and or between May 14, 2020 at 21:02:57 UTC through the end of May 18, 2020.

SA § 1.26.

B. Cash Payment for Reimbursement of Expenses and Inconveniences

Defendants have agreed to make available the following relief to Settlement Class Members who submit valid Claim Forms as noted below. The two categories of monetary relief available to Settlement Class Members are: (1) Expense Reimbursement, and (2) Extraordinary Expense Reimbursement. Settlement Class Members may make claims under both categories of monetary relief. Total reimbursement under this Settlement is subject to an aggregate cap of \$300,000 for all claims. SA § 2.3.

1. Expenses Reimbursement

Class Members are eligible to receive reimbursement of up to \$210 (in total) each for out-of-pocket expenses resulting from the Security Incident such as: card replacement fees; late fees; overlimit or overdraft fees; interest; other bank or credit card fees; postage; mileage; incidental expenses resulting from lack of access to a payment card or account; up to \$80 in costs associated with obtaining credit monitoring and identity theft protection; reimbursement of up to three (3) hours of documented lost time (at \$20 per hour) spent dealing with replacement card issues or in

reversing fraudulent charges (only if at least one full hour was spent and if it can be documented with reasonable specificity); and an additional \$20 payment for each credit or debit card on which documented fraudulent charges were incurred that were later reimbursed.

2. Extraordinary Expense Reimbursement

Additionally, Class Members who had other extraordinary, unreimbursed monetary losses due to the Security Incident are eligible to make a claim for reimbursement of up to \$2,500. As part of the Extraordinary Expense claim, the Class Member must show that: (1) the loss is an actual, documented, and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Security Incident; (3) the loss occurred during the period from March 30, 2020 through and including the end of the Claims Deadline; (4) the loss is not an amount already covered by one or more of the categories in Section III.B.1, *supra*; and (5) a reasonable effort was made to avoid or seek reimbursement for the loss.

To receive payment for out-of-pocket expenses, the Class Member must complete the appropriate section of the Claim Form and provide documentation supporting a claim for out-of-pocket expenses. SA § 2.3.

C. Remedial Measures Attributable to the Settlement

An additional benefit of the Settlement is the business practice changes that Defendants have agreed to implement, continue, or maintain as a result of this Litigation. SA § 2.4. Some of these remedial measures have already been adopted by Defendants and all will be continued for a period of at least one year after the Settlement receives approval by the Court. These data security measures include among other things: 1) completing PCI Attestation of Compliance in conjunction with a Qualified Security Assessor; 2) implementing multifactor authentication for VPN access to the e-Commerce system; 3) employing a third-party expert to conduct a risk assessment of

cbdMD's data environment; 4) implementing additional intrusion detection and prevention applications; and, 5) designating a cyber-security specialist to oversee IT security for the company, including the e-Commerce system. SA § 2.4.

D. Claims Referee

The Claims Referee shall be responsible for deciding certain claims that may be rejected by the Claims Administrator, upon request of the Settlement Class Member submitting such Claims, as described in the Settlement Agreement. SA §§ 2.5.3-2.5.5. The Parties recommend Bennett G. Picker, Esq., of the law firm Stradley Ronon Stevens & Young, LLP, as Claims Referee.

E. Release

In exchange for the benefits provided under the Settlement, Settlement Class Members will release cbdMD and related entities from all known and unknown claims related to the alleged claims or events in the Complaint, as more fully described in the Settlement Agreement at § 6.

F. Exclusion and Objection Procedures

Members of the Settlement Class can opt-out of the class by sending a written request for exclusion to the Settlement Administrator postmarked no later than 120 days after the Notice Deadline. SA § 4. Also by that time, any Settlement Class Member who wishes to object to the Settlement Agreement must file with the Clerk of the Court a written notice of the objection, along with supporting papers setting forth the objector's grounds for objection. SA § 5. The Notices and website will include the procedures for Settlement Class Members to follow in order to exclude themselves from the Settlement Class or object to the Settlement.

G. Proposed Notice Plan

The Settlement provides a comprehensive Notice Plan which, subject to Court approval,

will be administered by the Settlement Administrator (for which Defendants will pay subject to Section § 3.2 of the Settlement Agreement). Since Defendants have the name and mailing addresses of all Settlement Class Members in their business records, the plan is for direct mail notice of the Settlement. For any mailed notices that are returned undeliverable without a forwarding address, the Settlement Administrator will email the notice to an email address provided by cbdMD for the Settlement Class Member.

The Settlement Administrator will also create a settlement website where Settlement Class Members can obtain information on the Settlement and file a Claim Form. The website will make available information and details on the Settlement, the Complaint, the long-form Notice, and Claim Form. The direct mail notice will include the website address and the fact that a more detailed Notice and a Claim Form are available through the website. Further, the Settlement Administrator will establish a toll-free help line to address Class Members' inquiries.

H. Notice and Settlement Administrator

The Settlement Administrator will have those responsibilities set forth in the Settlement Agreement, including: (a) establishing a post office box for purposes of communicating with Settlement Class Members; (b) disseminating Notice to the Class; (c) developing a website to enable Settlement Class Members to access documents; (d) accepting and maintaining documents sent from Settlement Class Members relating to claims administration; (e) determining validity of Claims in accordance with the Settlement Agreement; and (f) distributing settlement checks to Settlement Class Members. Pursuant to the Settlement Agreement, Defendants shall pay all related costs and expenses associated with the Notice, claims, and settlement administration. These payments to the Claims Administrator shall be made separate and apart from the relief being made available to Settlement Class Members under the Settlement.

The Parties recommend that RG/2 Claims Administration, an experienced claims administrator, be approved to serve as the Notice and Settlement Administrator. Defendants received project bids from multiple companies and concluded that RG/2 is well-suited to provide the notice and claims administration services needed for this Settlement. A declaration from William Wickersham of RG/2 Claims Administration LLC with additional details about the Notice Plan and RG/2's experience is attached to the Settlement Agreement (Ex. 1) as Exhibit E ("RG/2 Decl."). The Parties, therefore, respectfully request that the Court appoint RG/2 to serve as the Settlement Administrator with the authority to disseminate notice in accordance with the Settlement Agreement and to perform all other duties described in the Settlement Agreement.

I. Notice and Settlement Administration Costs

Defendants will pay the costs associated with providing notice to the Settlement Class and costs associated with administering the Settlement, including the costs of the Settlement Administrator. SA § 2.6. Defendants will also pay the costs associated with the Dispute Resolution process and the Claims Referee. *Id.* These costs will be paid separately by Defendants and will not reduce the relief provided for the Settlement Class. *Id.*

J. Attorneys' Fees and Expenses and Service Awards

After reaching agreement on benefits to Settlement Class Members, the Parties separately negotiated Proposed Class Counsel's claims for attorneys' fees, costs, and reimbursement of litigation expenses, as well as the Settlement Class Representatives' Service Awards. SA § 7; Martin Decl. ¶ 14. Defendants have agreed that Proposed Class Counsel is entitled to seek an award of reasonable attorneys' fees and expenses for prosecuting this action. Plaintiffs will apply to the Court for an award of no more than a total for both attorneys' fees and expenses of \$135,000. *Id.* Defendants have agreed to pay any attorneys' fees, costs, and expenses awarded by the Court,

not to exceed \$135,000, separately from the relief obtained for the Settlement Class. SA § 7.2. Proposed Class Counsel will also apply for a service award of no more than \$2,500 for each of the two named Plaintiffs. Defendants have also agreed to pay any service awards approved by the Court, not to exceed \$2,500 for each of the two named Plaintiffs. SA § 7.3.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS WARRANTED

Federal Rule of Civil Procedure 23(e) requires that any compromise of claims brought on a class basis be subject to judicial review and approval. The settlement of complex class action litigation is favored by public policy and strongly encouraged by the courts. *See Crandell v. U.S.*, 703 F.2d 74, 75 (4th Cir. 1983) (“Public policy, of course, favors private settlement of disputes.”); *Velazquez v. Burch Equip., LLC*, No. 7:14-CV-00303-FL, 2016 WL 917320, at *1 (E.D.N.C. Mar. 8, 2016) (emphasizing the strong judicial policy in favor of settlements, including class action. This is particularly true in class actions, which typically involve complex disputes, and where settlement “minimizes the litigation expenses of both parties and also reduces the strains such litigation imposes upon already scarce judicial resources.” *S.C. Nat’l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990) (quoting *Armstrong v. Bd. of School Directors*, 616 F.2d 305, 313 (7th Cir. 1980) (internal quotation marks omitted)).

A. Certification Of The Proposed Class For Settlement Purposes Is Appropriate

Prior to preliminarily approving a proposed settlement, the Court must first determine whether the proposed Settlement Class is appropriate for certification. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Hall v. Higher One Machines, Inc.*, No. 5-15-CV-670-F, 2016 WL 5416582, at *2 (E.D.N.C. Sept. 26, 2016). In granting preliminary settlement approval, the Court is also requested to certify the proposed Settlement Class for purposes of the Settlement under Fed. R. Civ. P. 23(a) and 23(b)(3). For the Court to certify a class, Plaintiffs must satisfy

all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b). *See Krakauer v Dish Network L.L.C.*, No. 14-cv-333, 311 FRD 384, 388 (M.D.N.C. 2015).

The four requirements of Fed. R. Civ. P. 23(a) are numerosity, commonality, typicality, and adequacy. Rule 23(b)(3) provides that certification is appropriate where “the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members [predominance], and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy [superiority].” *See* Fed. R. Civ. P. 23(b)(3). “[F]ederal courts should give Rule 23 a liberal rather than a restrictive construction” when considering a settlement. *Pender v. Bank of Am. Corp.*, 269 F.R.D. 589, 595–96 (W.D.N.C. 2010) (quoting *Gunnells v. Healthplan Services, Inc.*, 348 F.3d 417, 424 (4th Cir. 2003)); *see also In re A. H. Robins, Co., Inc.*, 880 F.2d 709, 740 (4th Cir. 1989) (holding that it was proper in determining certification to consider whether certification would “foster the settlement of the case with advantage to the Parties and with great savings in judicial time and services.”). Further, when considering “a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. at 620.

As discussed below, these requirements are met for purposes of settlement in this case. The Settlement Agreement proposes to give Settlement Class Members prompt and certain relief. This relief is particularly valuable given the litigation risks presented by this case. Under the circumstances, the settlement is more than fair, reasonable and adequate for Plaintiffs and Settlement Class Members.

B. The Proposed Settlement Class Meets the Requirement of Rule 23(a)

1. Numerosity under Rule 23(a)(1)

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is

impracticable.” Fed. R. Civ. P. 23(a)(1). As the Court has noted, there exists no “mechanical test” for determining numerosity has been satisfied, but rather the evaluation involves a number of factors, including “the size of the class, ease of identifying its numbers and determining their addresses, facility of making service on them if joined and their geographic dispersion.” *Hutson v CAH Acquisition Co. 10, LLC*, No. 1:15CV742, 2016 WL 4289473, at *2 (M.D.N.C. Aug. 15, 2016)(quoting *Adams v. Henderson*, 197 F.R.D. 162, 170 (D. Md. 2000)).

Defendants have confirmed that the proposed Settlement Class consists of approximately 44,541 members spread throughout the United States. Defendants have the name and mailing addresses for all Settlement Class Members in its business records. *See* RG/2 Decl. ¶ 8. When considering the number of class members necessary to satisfy the numerosity requirement, courts in the Fourth Circuit have determined that as few as 18 class members were sufficient to satisfy numerosity. *Cypress v. Newport News General & Nonsectarian Hospital Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967); *see also Holsey v. Armour & Co.*, 743 F.2d 199, 217 (4th Cir. 1984) (a class size of approximately 60 members sufficient).

2. Commonality Under Rule 23(a)(2)

Rule 23(a)(2) requires that there be “questions of law or fact common to the class” and that the class members have suffered the same injury from the alleged conduct of the defendant. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011); Fed. R. Civ. P. 23(a)(2). “[O]nly those plaintiffs . . . who can advance the same factual and legal arguments may be grouped together as a class.” *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 340 (4th Cir. 1998) (internal quotation marks and citation omitted). The Supreme Court has stated that Rule 23(a)(2)’s commonality requirement is satisfied where the plaintiffs assert claims that “depend upon a common contention” that is “of such a nature that it is capable of classwide resolution -- which

means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart*, 564 U.S. at 352. Both the majority and dissenting opinions in that case agreed that “for purposes of Rule 23(a)(2) even a single common question will do.” *Id.*

In this case, there are a myriad of common questions of law and fact, such as whether cbdMD owed a duty to protect and secure the PII of its customers, whether cbdMD breached that duty, whether cbdMD maintained reasonable security procedures and practices appropriate to the nature of storing Plaintiffs’ and Class members’ PII, and whether Plaintiffs have actionable claims. These common questions of law and fact arise from the same incident—the Security Incident.

3. Typicality Under Rule 23(a)(3)

Rule 23(a)(3) requires that a representative plaintiff’s claims be “typical” of those of other class members. Fed. R. Civ. P. 23(a)(3). Here, all of Plaintiffs’ claims arise out of the same alleged conduct by cbdMD related to the Security Incident. Like commonality, typicality is satisfied here.

4. Adequacy of Representation Under Rule 23(a)(4)

The final requirement of Rule 23(a) is that “the representative part[y] will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “This requirement examines possible conflicts of interest between the named plaintiffs and the proposed class, as well as the competency and conflicts of class counsel.” *Hutson*, 2016 WL 4289473, at *5 (internal citations omitted).

To adequately represent the class, the class representatives must be a part of the class, possess the same interest as the class, and suffer the same injury as the class members. *Amchem*, 521 U.S. at 625-26. Here, the two Class Representatives are each a cbdMD customer, were recognized by cbdMD as having their PII potentially compromised as a result of the Security

Incident, and allegedly suffered harm as a result of the Security Incident, as did all of the other Settlement Class Members. Plaintiffs' interests are not antagonistic with the Settlement Class and no fundamental conflict exists. They have also each actively participated in the litigation of this case, and have been in regular communication with their attorneys regarding these proceedings. Plaintiffs have had, and continue to have, every incentive to litigate this case to the fullest extent and maximize the amount recovered for the entire Settlement Class.

With respect to the adequacy of Class Counsel, they have invested considerable time and resources into the investigation of the facts underlying the claims, including the interviews of numerous class members who contacted Class Counsel, and the prosecution of this action. Class Counsel have a wealth of experience in litigating complex class action lawsuits, and were able to negotiate a settlement for the Settlement Class that is fair, reasonable, and adequate. The respective firm resumes for each of the attorneys seeking to be appointed Class Counsel is attached as Exhibits A and B to the Declaration of Jean Martin submitted herewith (as Exhibit 2).

C. The Requirements of Rule 23(b)(3) Are Met

Plaintiffs seek to certify the Settlement Class under Rule 23(b)(3), which has two components: predominance and superiority. *See* Fed. R. Civ. P. 23(b)(3). “The Rule 23(b)(3) predominance requirement parallels the Rule 23(a)(2) commonality requirement in that both require that common questions exist, but subdivision (b)(3) contains the more stringent requirement that common issues ‘predominate’ over individual issues.” *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, 2009 U.S. Dist. LEXIS 119870, at *25(W.D. Ky. Dec. 22, 2009) (internal quotations omitted) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1084 (6th Cir. 1996)). Plaintiffs allege that Rule 23(b)(3) is satisfied because, as shown by the multiple common questions of law and fact described above, “[common] questions of law or fact ...

predominate over any questions affecting only individual members” *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 147 (4th Cir. 2001). The “main concern in the predominance inquiry” is “the balance between individual and common issues.” *Brown v. Nucor Corp.*, 785 F.3d 895, 922 (4th Cir. 2015) (quoting *Myers v. Hertz Corp.*, 624 F.3d 537, 549 (2d Cir. 2010)). When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *See Amchem*, 521 U.S. at 618 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. R. Civ. P. 23(b)(3)(D), for the proposal is that there be no trial.”).

The second prong of Rule 23(b)(3) – that a class action be superior to other available methods for the fair and efficient adjudication of the controversy – is also readily satisfied for settlement purposes. *See* Fed. R. Civ. P. 23(b)(3). The Settlement Agreement provides members of the Settlement Class with the ability to obtain prompt, predictable, and certain relief, and contains well-defined administrative procedures to ensure due process. This includes the right of any Settlement Class Members who are dissatisfied with the settlement to object to the Settlement or to exclude themselves. The Settlement also would relieve the substantial judicial burdens that would be caused by repeated adjudication of the same issues in thousands of individualized trials against Defendants.

In sum, because the requirements of Rule 23(a) and Rule 23(b)(3) are satisfied for settlement purposes, certification of the proposed Settlement Class is appropriate.

D. The Proposed Settlement is Fair, Reasonable, and Adequate and Should Be Preliminarily Approved

Federal Rule of Civil Procedure 23(e) requires that any compromise of claims brought on a class basis be subject to judicial review and approval. Rule 23(e) provides that a court may

approve a proposed class settlement “on a finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). The procedure for review of a proposed class action settlement is a well-established two-step process. For the first stage, a court preliminarily approves the settlement pending a fairness hearing, certifies the class for settlement purposes and authorizes notice to be given to the settlement class. *Manual for Complex Litig. (Fourth)* §21.632 at 320 (2004). Once the class has received notice and has an opportunity to object to or opt-out of the settlement, the court then holds a final settlement hearing. *Id.* §21.633 at 321-22.

The general standard by which courts are guided when deciding whether to grant preliminary approval of a class action settlement is whether the proposed settlement falls within the range of what could be found “fair, reasonable and adequate.” *Id.*; *see also* Fed. R. Civ. P. 23(e)(2). Approval is proper under the amended Rule 23(e)(1)(B)(i) upon a finding that the settlement is “fair, reasonable, and adequate” after considering whether:

- (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). Evaluating these factors, the proposed Settlement satisfies the standard for preliminary approval.

1. Adequacy of Representation

Plaintiffs have retained attorneys with extensive experience prosecuting class actions, particularly data breach and data disclosure cases, throughout the nation and who have zealously represented the Class at all times. Proposed Class Counsel have litigated numerous data breach

cases and complex class actions and have the experience to evaluate the merits of the case, the defenses lodged, risks of the litigation, and the benefits of the proposed settlement.

For more than 20 years, Jean Martin of Morgan and Morgan Complex Litigation Group has concentrated her practice on complex litigation, including consumer protection and data breach class action. Ms. Martin presently serves by appointment as interim co-lead counsel in *In re: Warner Music Group Data Breach* (Case No. 1:20-cv-07473-PGG) (S.D.N.Y.), *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.), *In Re: Ambry Genetics Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.), and *In re Brinker Data Incident Litigation*, No. 18-cv-686 (M.D. Fla.). Ms. Martin has been appointed to leadership positions in many consumer class actions and consolidated proceedings in federal courts around the country, including inter alia: *Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415 (D. Colo.) (data breach) (co-lead counsel); *Linnins v. HAECO Americas, Inc., et al.*, No. 16-cv-486 (M.D.N.C.) (employee data disclosure) (co-lead counsel); *In Re: Outer Banks Power Outage Litigation*, No. 4:17-cv-141 (E.D.N.C.) (extended island power outage due to construction practices) (class counsel); and, *McCoy v. North State Aviation, LLC, et al.*, No. 17- cv-346 (M.D.N.C.) (WARN Act violations) (class counsel). Ms. Martin graduated from Wake Forest University with a Bachelor of Science in Mathematical Economics and earned her Juris Doctor degree from Wake Forest University School of Law, where she served as Editor-in-Chief of the *Wake Forest Law Review*.

M. Anderson Berry attended the University of California, Berkeley, where he majored in English and graduated with highest honors. He was inducted into the Phi Beta Kappa Honor Society and served as President of the English Undergraduate Associate. After working as a private investigator for both criminal and civil investigations in the San Francisco Bay Area, Mr. Berry graduated from U.C. Berkeley School of Law, where he was a Senior Editor for both the *Berkeley*

Journal of Criminal Law and *Berkeley Journal of International Law*. Before joining the Arnold Law Firm in 2017, Mr. Berry worked as an Assistant United States Attorney for the Eastern District of California. Mr. Berry has experience in privacy and consumer/government fraud litigation, actively participating in a currently sealed False Claims Act case involving widespread cybersecurity fraud upon the United States, and numerous class action litigations, including: *In Re: Hanna Andersson and Salesforce.com Data Breach Litigation*, 3:20-cv-00812-EMC (N.D. Cal.) (Lead Class Counsel); *Alex Pygin v. Bombas, LLC and Shopify, et al.*, 3:20-cv-04412 (N.D. Cal.)(Co-Lead Counsel); and *Delilah Parker, et al. v. Claire's Stores, Inc. et al.*, 1:20-cv-05574 (NDIL) (Co-Lead Class Counsel).

2. Arm's Length Negotiations

The proposed Settlement resulted from arm's-length negotiations between experienced counsel with an understanding of the strengths and weaknesses of their respective positions in this Action, under the supervision of a neutral and experienced mediator. Martin Decl. ¶¶ 13-15, 32. In addition to a full day in mediation, the Parties spent significant time negotiating the terms of the business practice changes, notices, and final written Settlement Agreement which is now presented to the Court for approval. Martin Decl. ¶¶ 14-15. At all times, these negotiations were at arm's length and, while courteous and professional, the negotiations were intense and hard-fought on all sides. *Id.* ¶¶ 14, 32. These circumstances weigh in favor of approval. *See Manual for Complex Litig.* at §30.42 ("A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.") (internal quotation marks omitted).

3. The Relief Provided for The Class Is Adequate

The relief offered by the Settlement (both monetary and equitable) is adequate considering the risks of continued litigation. Although Plaintiffs are confident in the merits of their claims, the

risks involved in prosecuting a class action through trial cannot be disregarded. Martin Decl. ¶¶ 21-22. Plaintiffs' claims would still need to survive likely motions practice (e.g., a motion to dismiss and motion for summary judgment) and succeed at class certification.

Almost all class actions involve a high level of risk, expense, and complexity, which is one reason that judicial policy so strongly favors resolving class actions through settlement, “[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged,” especially in complex cases that have the potential to last for years. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004); *see also In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) (“Public policy strongly favors the pretrial settlement of class action lawsuits”).

This is not only a complex case, but it is in an especially risky field of litigation: data breach. *See, e.g., In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are always unpredictable.”). Although data breach law is continuously developing, data breach cases are still relatively new, and courts around the country are still grappling with what legal principles apply to the claims. *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 315 (N.D. Cal. 2018) (noting that “many of the legal issues presented in [] data-breach case[s] are novel”). Because the “legal issues involved in [data breach litigation] are cutting-edge and unsettled ... many resources would necessarily be spent litigating substantive law as well as other issues.” *In re Target Corp. Customer Data Security Breach Litig.*, No. 14-2522 (PAM/JJK), 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015). Through the Settlement, Plaintiffs and Class Members gain significant and immediate benefits without having to face further risk.

While Plaintiffs believe that they would prevail on their claims, there is little directly analogous precedent to rely upon. Martin Decl. ¶ 22. Beyond the merits, class certification is challenging in any case. Class certification has been denied in other consumer data breach cases and to date only one (b)(3) class has been certified in a consumer payment card data breach case. *See In re Brinker Data Incident Litig.*, No. 3:18-CV-686-J-32MCR, 2020 WL 691848 (M.D. Fla. Jan. 27, 2020).

The Settlement will provide Class Members with significant and timely benefits which compare favorably to what Class Members could recover were they to secure a favorable judgment at trial. In the experience of Proposed Class Counsel, the monetary relief provided by this Settlement is an outstanding result, and is fair and reasonable in light of reported average out-of-pocket expenses due to a data breach.² In addition, the monetary benefits provided by the Settlement are in line with, or superior to, those of other settlements in data breach class actions that have been approved by other courts. *See, e.g., Bray, et. al. v. GameStop Corp.*, No. 1:17-cv-01365 (D. Del. Dec. 19, 2018) (approving claims made settlement that would reimburse up to \$235/claim including, *inter alia*, expenses for lost time, payment for each card on which fraudulent charges incurred, costs of obtaining credit report, costs of credit monitoring and identity theft protection, as well as up to \$10,000/claim for extraordinary expenses); *T.A.N. v. PNI Digital Media, Inc.*, No. 2:16-cv 00132, Doc. 46 (S.D. Ga. Oct. 20, 2017) (approving settlement for reimbursement up to \$250/claim for out-of-pocket expenses plus up to \$10,000/claim for reimbursement of extraordinary expenses).

Furthermore, the injunctive relief provided for in this Settlement is significant and ensures

² For individuals who experienced actual identity theft, a 2014 Congressional Report stated that these victims incurred an average of \$365.00 in expenses in dealing with the fraud. *See* Kristin Finklea, Congressional Research Service, *Identity Theft: Trends and Issues* (January 16, 2014), p. 2, available at: <https://fas.org/sgp/crs/misc/R40599.pdf> (last visited April 29, 2021).

the rights of the class because it swiftly commits Defendants to certain security measures and protection of personal information. These remedial measures are attributable to the Settlement and are squarely consistent with the claims on presented by Plaintiffs in the Litigation. Martin Decl. ¶¶ 16. These commitments will ensure the adequacy of Defendants’ data security practices, as well as providing protection for consumers in the future. Without this Settlement, there is little Class Members could do individually to achieve similar promises from Defendants regarding data security going forward. The Settlement is calculated to ensure that Defendants not only employs the necessary, immediate resources to address existing data security vulnerabilities, but also employs the consistent best practices and accountabilities needed for long-term, proactive data security. Accordingly, the Settlement benefits present a substantial recovery, especially considering the litigation risks described above.

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

Finally, Rule 23(e) requires that the Settlement “treat[] class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). Here, the Settlement treats all Class Members equitably relative to one another because all who have been damaged are eligible to receive reimbursement based on expenses incurred, not on any unequitable basis. SA § 2. Because there is no disparate treatment amongst the members of the proposed Settlement Class, the Settlement merits preliminary approval.

V. THE COURT SHOULD ORDER DISSEMINATION OF THE NOTICE

“Rule 23(e)(1)(B) requires the court to direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise regardless of whether the class was certified under Rule 23(b)(1), (b)(2), or (b)(3).” Manual for Compl. Litig. § 21.312 (internal quotation marks omitted). The best practicable notice is that

which is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The proposed Settlement provides for direct mail notice to all Settlement Class Members using contact information from Defendants’ business records. This same information was used by Defendants to provide notice of the Security Incident to affected customers. Additionally, a Settlement website will be established through which Settlement Class Members can access relevant case documents, including the Complaint and notices, and file a Claim Form. As shown on Exhibit B to the Settlement Agreement (Exhibit 1), the direct mail notice that will be delivered to each Settlement Class Member will identify the website address, advise that more information regarding the Settlement may be found on the website, and give the mailing address and toll-free number of the Settlement Administrator.

The proposed Notice is designed to provide “direct notice in a reasonable manner to all class members who would be bound by the proposal....” Fed. R. Civ. P. 23(e)(1)(B). The Notice Plan is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the case, the proposed Settlement and its terms, any request for attorneys’ fees and expenses and Service Awards, and the Class Members’ rights to opt-out of or object to the Settlement, as well as the other information required by Fed. R. Civ. P. 23(c)(2)(B). *See* RG/2 Decl. ¶¶ 9-10.

VI. PLAINTIFFS’ COUNSEL SHOULD BE APPOINTED AS SETTLEMENT CLASS COUNSEL

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

or investigating potential claims; (2) experience in handling class actions or other complex litigation and the types of claims asserted in the case; (3) knowledge of the applicable law; and (4) resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv). As discussed above, and as fully explained in Ms. Martin's Declaration, Proposed Class Counsel have extensive experience prosecuting similar class actions and other complex litigation. Martin Decl. ¶ 28. Proposed Class Counsel thoroughly investigated and analyzed the facts and circumstances relevant to the claims brought by Plaintiffs in this case. The proposed Settlement Class Counsel have diligently and efficiently prosecuted the claims in this matter, dedicated substantial resources toward the endeavor, and have successfully and fairly negotiated the Settlement of this matter to the benefit of Plaintiffs and the Settlement Class. *Id.* ¶¶ 29-32. Therefore, Plaintiffs request that the Court appoint Jean Martin of Morgan & Morgan Complex Litigation Group, and M. Anderson Berry of Clayco C. Arnold, P.C. as Settlement Class Counsel.

VII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

Finally, the Court should schedule a final approval hearing to decide whether to grant final approval to the Settlement, address Class Counsel's request for attorneys' fees, expenses and a service award for the Class Representatives, consider any objections and exclusions, and determine whether to dismiss this action with prejudice. *See Manual for Complex Litig.* § 30.44. Plaintiffs respectfully request that the final approval hearing be scheduled for 150 days after the commencement of the Notice Program.

Toward these ends, the Parties have provided the Court with a proposed order that provides for the following schedule:

Event	Date
cbdMD Provides CAFA Notice required by 28 U.S.C. § 1715(b)	Within 10 days after the filing of Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement
cbdMD Provides Notice to Class Counsel and the Court of Compliance with CAFA Requirements	Within 10 days of providing notice to Attorneys General under CAFA
Class Notice Program Commences	Within 30 days after entry of this Preliminary Approval Order
Compliance with CAFA Waiting Period under 28 U.S.C. § 1715(d)	90 days after the Appropriate Governmental Officials are Served with CAFA Notice
Motion for Attorney's Fees, Reimbursement of Costs and Expenses, and Service Awards to be Filed by Class Counsel	At Least 14 days before the Objection Deadline
Postmark Deadline for requests for Exclusion (Opt-Out) or Objections	120 days after Commencement of Notice Program
Postmark/Filing Deadline for Filing Claims	120 days after Commencement of Notice Program
Motion for Final Approval to be Filed by Class Counsel	At Least 21 days before the Final Approval Hearing
Final Approval Hearing	Approximately 150 days after Commencement of Notice Program, or _____

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an Order: (1) provisionally certifying this case as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(3) and 23(e) for the purpose of effectuating a class action settlement of the claims against Defendants; (2) preliminarily approving the settlement as fair, adequate, and reasonable; (3) directing notice to Settlement Class Members consistent with the Notice Program and approving the form and content

of the Notices; (4) approving the procedures set forth in the Settlement Agreement for Settlement Class Members to exclude themselves from the Settlement Class; (5) staying the Action pending Final Approval of the Settlement; (6) appointing Plaintiffs as Class Representatives and Plaintiffs' attorneys as Class Counsel; (7) appointing RG/2 Claims Administration as the Notice and Settlement Administrator; and (8) scheduling a Final Approval Hearing.

Plaintiffs' Motion for Preliminary Approval is unopposed by Defendants.

Dated: April 30, 2021

Respectfully submitted,

/s/ Jean S. Martin
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*Proposed Class Counsel for Plaintiffs and the
Settlement Class*

CERTIFICATE OF SERVICE

I, Jean Sutton Martin, certify that I caused the foregoing to be electronically filed in this case on April 30, 2021 using the Court's CM/ECF System, thereby serving it upon all counsel of record in this case.

/s/ Jean Sutton Martin

JEAN MARTIN

MORGAN & MORGAN

COMPLEX LITIGATION GROUP

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Tampa, Florida 33602

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Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

MICHAEL WARSHAWSKY and)	
MICHAEL STEINHAUSER, on behalf of)	Case No. 20-cv-00562
themselves and all others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CBDMD, INC. and CBD INDUSTRIES LLC,)	
)	
Defendants.)	

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of April 30, 2021, is made and entered into by and among the following Settling Parties (as defined below): (i) Michael Warshawsky and Michael Steinhauser (“Representative Plaintiffs”), individually and on behalf of the Settlement Class (as defined below), by and through their counsel at MORGAN & MORGAN COMPLEX LITIGATION GROUP and CLAYEO C. ARNOLD, P.C. (“Proposed Class Counsel”); and (ii) cbdMD, Inc. and CBD Industries, LLC (collectively “cbdMD” or “Defendants”), by and through its counsel of record, Baker & Hostetler LLP. The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

I. THE LITIGATION

Between March 30, 2020 and May 8, 2020, and also between May 14, 2020 and May 18, 2020, cbdMD suffered a cyberattack on its eCommerce platform that accepts payment cards. Through the operation of unauthorized JavaScript code, the unauthorized JavaScript code directed

customer-input HTML elements to a third-party server unaffiliated with cbdMD between March 30, 2020 at 00:03:12 UTC (Coordinated Universal Time) and the end of May 8, 2020, and again between May 14, 2020 at 21:02:57 UTC through the end of May 18, 2020. Those elements consisted of first and last names, shipping addresses, billing addresses, credit or debit card numbers including expiration dates and card verification values, and/or bank account numbers. Subsequently, Representative Plaintiffs filed a class action lawsuit asserting claims against cbdMD relating to the Security Incident (as defined below) (the “Litigation”).

Pursuant to the terms set out below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against cbdMD and the Released Persons (as defined below) relating to the Security Incident, by and on behalf of Representative Plaintiffs and Settlement Class Members (as defined below), and any other such actions by and on behalf of any other consumers and putative classes of consumers originating, or that may originate, in jurisdictions in the United States against cbdMD relating to the Security Incident.

II. CLAIMS OF REPRESENTATIVE PLAINTIFFS AND BENEFITS OF SETTLING

Representative Plaintiffs believe the claims asserted in the Litigation, as set forth in the Complaint, have merit. Representative Plaintiffs and Proposed Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against cbdMD through motion practice, trial, and potential appeals. They have also taken into account the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Proposed Class Counsel are highly experienced in class action litigation and very knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Litigation. They have determined that the settlement

set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of Plaintiffs and the Settlement Class.

III. DENIAL OF WRONGDOING AND LIABILITY

cbdMD denies each and all of the claims and contentions alleged against it in the Litigation. cbdMD denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Litigation. Nonetheless, cbdMD 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. cbdMD also has taken into account the uncertainty and risks inherent in any litigation. cbdMD 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 Representative Plaintiffs, individually and on behalf of the Settlement Class, Proposed Class Counsel, and cbdMD that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties, the Settlement Class, and the Settlement Class Members, except those Settlement Class Members who timely opt-out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. Definitions

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

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

1.2 “Approved Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the Dispute Resolution process.

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

1.4 “Claims Administrator” means a company experienced in administering class action claims generally and specifically those of the type provided for and made in data breach litigation, to be jointly agreed upon by the Settling Parties and approved by the Court.

1.5 “Claims Deadline” means the postmark deadline for valid claims pursuant to ¶ 2.3.

1.6 “Claim Form” means the form that the Settlement Class Member must complete and submit on or before the Claim Deadline in order to be eligible for the benefits described herein. The Claim Form shall be reformatted by the Settlement Administrator in order to permit the option of filing of claims electronically. The Claim Form shall require a sworn signature or electronic verification under penalty of perjury, but shall not require a notarization. The Claim Form template is attached as Exhibit A to this Settlement Agreement.

1.7 “Claims Referee” means a third party designated by agreement of the Settling Parties and approved by the Court to make final decisions about disputed claims for settlement benefits.

1.8 “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration.

1.9 “Court” means the United States District Court for the Western District of North Carolina, Charlotte Division.

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

1.11 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 1.12 and ¶ 9.1 herein have occurred and been met.

1.12 “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 that term is defined herein); 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’ fee award or service award made in this case shall not affect whether the Judgment is “Final” as defined herein or any other aspect of the Judgment.

1.13 “Judgment” means a judgment rendered by the Court, in the form attached hereto as Exhibit G, or a judgment substantially similar to such form.

1.14 “Notice” means the written notice to be sent to the Settlement Class Members pursuant to the Preliminary Approval Order.

1.15 “Objection Date” means the date by which objections to the settlement from Settlement Class Members must be filed with the Clerk of Court in order to be effective and timely.

1.16 “Opt-Out Date” means the date by which requests for exclusion from settlement must be postmarked in order to be effective and timely.

1.17 “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.

1.18 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling Parties’ proposed form of Preliminary Approval Order is attached hereto as Exhibit F.

1.19 “Plaintiffs’ Counsel” and “Proposed Class Counsel” means Jean Martin of MORGAN & MORGAN COMPLEX LITIGATION GROUP, and M. Anderson Berry of CLAYEO C. ARNOLD, P.C.

1.20 “Related Entities” means cbdMD’s past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of cbdMD’s and their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, 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 Security Incident or who pleads nolo contendere to any such charge.

1.21 “Released Claims” shall collectively mean any and all claims and causes of action that were or could have been brought in the Litigation based on, relating to, concerning or arising out of the Security Incident and alleged theft or misuse of payment card data or other personal information or the allegations, facts, or circumstances related to the Security Incident as described in the Litigation including, without limitation, any violations of the California, North Carolina, Florida, and similar state consumer protection statutes; any violation of the California Customer Records Act, California Unfair Competition Law, California Consumers Legal Remedies Act; Florida Deceptive and Unfair Trade Practices Act; negligence; negligence per se; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of

privacy; 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, 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, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Security Incident and alleged theft or misuse of payment card data or other personal information or the allegations, facts, or circumstances related to the Security Incident as described in the Litigation. Released Claims shall include Unknown Claims as defined in ¶ 1.29. Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

1.22 "Released Persons" means cbdMD, Inc. and CBD Industries, LLC (collectively "cbdMD"), 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.

1.23 "Representative Plaintiffs" means Michael Warshawsky and Michael Steinhauser.

1.24 "Security Incident" means the cyberattack against cbdMD's eCommerce platform which involved implementation of unauthorized JavaScript code directing customer-input HTML elements to a third-party server unaffiliated with cbdMD between March 30, 2020 at 00:03:12

UTC (Coordinated Universal Time) and the end of May 8, 2020, and again between May 14, 2020 at 21:02:57 UTC through the end of May 18, 2020. Those elements consisted of first and last names, shipping addresses, billing addresses, credit or debit card numbers including expiration dates and card verification values, and/or bank account numbers.

1.25 “Settlement Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.26 “Settlement Class” means all persons residing in the United States who made a purchase online with cbdMD between March 30, 2020 at 00:03:12 UTC (Coordinated Universal Time) and the end of May 8, 2020, or between May 14, 2020 at 21:02:57 UTC through the end of May 18, 2020. The Settlement Class specifically excludes: (i) cbdMD and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; (v) banks and other entities that issued payment cards which were utilized at cbdMD during the Security Incident; and (vi) 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 Security Incident or who pleads *nolo contendere* to any such charge.

1.27 “Settlement Class Member(s)” means a Person(s) who falls within the definition of the Settlement Class.

1.28 “Settling Parties” means, collectively, cbdMD and Representative Plaintiffs, individually and on behalf of the Settlement Class.

1.29 “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including any Representative Plaintiffs, does not know or suspect to exist in his/her favor

as of the date of the entry of the Preliminary Approval Order 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, Representative Plaintiffs expressly shall have, and each of the other Settlement Class Members 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 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), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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

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

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

2. Settlement Benefits

2.1 Expense Reimbursement Capped at \$210. All Settlement Class Members who submit a valid claim using the Claim Form (Exhibit A to this Settlement Agreement) are eligible to receive reimbursement for documented out-of-pocket losses, if plausibly caused by the Security Incident, not to exceed \$210 per Settlement Class Member, that were incurred as a result of the Security Incident, including: (i) card replacement fees; (ii) late fees; (iii) overlimit fees; (iv) interest; (v) other bank or credit card fees; (vi) postage, mileage, and other incidental expenses resulting from lack of access to a payment card or account resulting from the Security Incident; (vii) up to three (3) hours of documented lost time spent monitoring accounts, reversing fraudulent charges, or otherwise dealing with the aftermath/clean-up of the Security Incident (calculated at the rate of \$20 per hour for up to 3 hours), but only if at least one full hour was spent, and only if the time can be documented on the Claim Form with a narrative description of the activities performed during the time claimed and their connection to the Security Incident; (viii) an additional payment of \$20 for each payment card on which a Class Member incurred one or more actual, documented fraudulent charge(s) to compensate the claimant for lost time associated with seeking reimbursement for the fraud; and (ix) up to \$80 in costs associated with credit monitoring or identity theft insurance, if purchased primarily as a result of the Security Incident and if purchased between March 30, 2020 and the Claims Deadline (with reasonable documentation and an affirmative statement by Settlement Class Member that it was purchased primarily because of the Security Incident, and with proof of purchase).

2.2 Other Extraordinary Expense Reimbursement. cbdMD shall reimburse, as provided for below, each Settlement Class Member in the amount of his or her proven loss, but not to exceed \$2,500 per claim, for monetary out-of-pocket losses that occurred more likely than not as a result of the Security Incident if: (a) it is an actual, documented, and unreimbursed monetary loss; (b) was more likely than not caused by the Security Incident; (c) occurred during the time period from March 30, 2020, through and including the end of the Claims Deadline (see ¶ 2.3); (d) is not an amount already covered by one or more of the categories in ¶ 2.1; and (e) the claimant made reasonable efforts to avoid, or seek reimbursement for the loss. Settlement Class Members may only submit one claim for benefits under this paragraph ¶ 2.2 regardless of the number of payment cards the Settlement Class Member had compromised as a result of the Security Incident and the total of all amounts recovered under this paragraph shall not exceed \$2,500.00 per Settlement Class Member. Settlement Class Members with claims under this paragraph may also submit claims for benefits under ¶ 2.1.

2.3 The total reimbursement provided under ¶ 2.1 and ¶ 2.2 is subject to an aggregate cap of \$300,000 for all claims of any kind. Additionally, Settlement Class Members seeking reimbursement under ¶¶ 2.1 or 2.2 must complete and submit a written Claim Form to the Claims Administrator, postmarked on or before the 120th day after the deadline for the completion of Notice to Settlement Class Members as set forth in ¶ 3.2 (the “Claims Deadline”). The Notice to the class will specify this deadline and other relevant dates described herein.

2.3.1 As proof of class membership, any Settlement Class Member filing a claim must certify that he or she is a Settlement Class Member, and also submit one of the following (1) a unique code to be provided by the Settlement Administrator based on the approved list of class members to be sent direct Notice; (2) a document or documents

reflecting his or her use of a payment card at cbdMD during the Security Incident, which could include (but is not limited to): a receipt from cbdMD reflecting payment by a payment card during the Security Incident, a payment card statement or bill reflecting that the payment card was used in connection with an online purchase with cbdMD during the Security Incident, notification from a bank or financial institution stating that the payment card was compromised during the Security Incident, or other reasonable documentation that the Settlement Class Member used a payment card in connection with an online purchase with cbdMD during the Security Incident; or (3) the number associated with the credit or debit card claimed to have been used by the Settlement Class Member during the Security Incident, which the Claims Administrator (or a designee) will use to confirm class membership based on whether that card number matches a credit or debit card number used at cbdMD during the Security Incident.

2.3.2 The Claim Form must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief, and is being made under penalty of perjury. Notarization shall not be required. The Settlement Class Member must reasonably attest that the out-of-pocket expenses and charges claimed were both actually incurred and plausibly arose from the Security Incident. Failure to provide supporting attestation and documentation as requested on the Claim Form shall result in denial of a claim. Disputes as to claims submitted under this paragraph are to be resolved pursuant to the provisions stated in ¶ 2.5.

2.3.3 Claimants seeking reimbursement for expenses or losses described in ¶¶ 2.1 or 2.2 must complete and submit the appropriate section of the Claim Form to the Claims Administrator, together with proof of such losses.

2.3.4 Nothing in this Settlement Agreement shall be construed to provide for a double payment for the same loss or injury that was reimbursed or compensated by any other source.

2.3.5 To be valid, claims must be complete and submitted to the Claims Administrator on or before the Claims Deadline.

2.3.6 No payment shall be made for emotional distress, personal/bodily injury, or punitive damages, as all such amounts are not recoverable pursuant to the terms of the Settlement Agreement.

2.4 Equitable Relief.

cbdMD agrees to implement, continue or maintain, the following data security measures for a period of at least one year after the settlement receives approval by the Court:

2.4.1 Complete PCI Attestation of Compliance (AOC) in conjunction with a PCI-certified Qualified Security Assessor (QSA).

2.4.2 Implement and maintain multifactor authentication for VPN access to the e-Commerce system.

2.4.3 Implement and maintain 60-day password life limits for both e-Commerce systems and email accounts.

2.4.4 Implement and adhere to a policy requiring that any changes to the e-Commerce system require digital concurrence of two lead system developers facilitated by an automated process that cannot be overridden.

2.4.5 Employ a third-party expert to conduct a risk assessment of cbdMD's data assets and environment consistent with the NIST Risk Management Framework, and to conduct phishing and penetration testing of the cbdMD enterprise environment and

enterprise user base.

2.4.6 Implement and maintain additional intrusion detection and prevention, malware and anti-virus, and monitoring applications within the cbdMD environment.

2.4.7 Designation of a cyber-security specialist to oversee IT security for the company, including the e-Commerce system.

2.4.8 Implement and follow a revised, nationwide and company-wide written information security program to replace the Massachusetts-based WISP that became effective on 11/11/2019.

2.5 Dispute Resolution for Claims.

2.5.1 The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the claimant's class membership and the expenses described in ¶¶ 2.1 through 2.3; and (3) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses as a result of the Security Incident (collectively, "Facially Valid"). The Claims Administrator may, at any time, request from the claimant, in writing, additional information ("Claim Supplementation") as the Claims Administrator may reasonably require in order to evaluate the claim, *e.g.*, documentation requested on the Claim Form, information regarding the claimed losses, available insurance and the status of any claims made for insurance benefits, and claims previously made for identity theft and the resolution thereof.

2.5.2 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 Claims Administrator shall request additional information (“Claim Supplementation”) and give the claimant thirty (30) days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such Claim Form or thirty (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances interfering with compliance during the 30-day period, the claimant may request and, for good cause shown (illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the 30-day deadline in which to comply; however, in no event shall the deadline be extended to later than one year from the Effective Date. If the defect is not cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

2.5.3 Following receipt of additional information requested as Claim Supplementation, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is Facially Valid, then the claim shall be paid. If the claim is not Facially Valid because the claimant has not provided all information needed to complete the Claim Form and evaluate the claim, then the Claims Administrator may reject the claim without any further action. If the claim is rejected for other reasons, then the claim shall be referred to the Claims Referee upon request of the Settlement Class Member.

2.5.4 Settlement Class Members shall have thirty (30) days from receipt of the offer to accept or reject any offer of partial payment received from the Claims Administrator. If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a final determination. If the claimant approves the final determination, then the approved amount shall be the amount to be paid. If the claimant rejects the final determination within thirty (30) days, then the dispute will be submitted to the Claims Referee within an additional ten (10) days.

2.5.5 If any dispute is submitted to the Claims Referee, the Claims Referee may approve the Claims Administrator's determination by making a ruling within fifteen (15) days. The Claims Referee may make any other final determination of the dispute or request further supplementation of a claim within thirty (30) days. The Claims Referee's determination shall be based on whether the Claims Referee is persuaded that the claimed amounts are reasonably supported in fact and were more likely than not caused by the Security Incident. The Claims Referee shall have the power to approve a claim in full or in part. The Claims Referee's decision will be final and non-appealable. Any claimant referred to the Claims Referee shall reasonably cooperate with the Claims Referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the Claims Referee to verify the claim through third party sources, and failure to cooperate shall be grounds for denial of the claim in full. The Claims Referee shall make a final decision within thirty (30) days of receipt of all supplemental information requested. The Settlement Administrator shall provide notice of all communications pursuant to this Paragraph to all Counsel.

2.6 Settlement Expenses. All costs for notice to the Settlement Class as required under ¶¶ 3.1 and 3.2, Costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, and the costs of Dispute Resolution described in ¶ 2.5, shall be paid by cbdMD.

2.7 Settlement Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any 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 Settlement 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.

2.8 Confidentiality of Information Submitted by Settlement Class Members. Information submitted by Settlement Class Members pursuant to this Settlement Agreement shall be deemed confidential and protected as such by cbdMD, the Claims Administrator, and the Claims Referee.

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

3.1. As soon as practicable after the execution of the Settlement Agreement, Proposed Class Counsel and counsel for cbdMD 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 attached hereto as Exhibit F, or an order substantially similar to such form in both terms and cost, requesting, *inter alia*:

- a) certification of the Settlement Class for settlement purposes only pursuant to ¶ 2.7;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) the scheduling of a Final Fairness Hearing and briefing schedule for Motion For Final Hearing and Application for Class Representative Service Awards and Attorneys' Fees and Costs;
- d) appointment of Proposed Class Counsel as Class Counsel;
- e) appointment of Representative Plaintiffs as Class Representatives;
- f) approval of a customary form of short notice to be mailed to Settlement Class Members ("Short-Form Notice") in a form substantially similar to the one attached hereto as Exhibit B (postcard) and Exhibit C (by email only if postcards are undeliverable), and a customary long form notice ("Long-Form Notice") in a form substantially similar to the one attached hereto as Exhibit D which together shall include a fair summary of the parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing;
- g) appointment of a Claims Administrator, or such other provider of claims administrative service, as may be jointly agreed to by the Settling Parties;
- h) approval of a claim form substantially similar to that attached hereto as Exhibit A; and
- i) appointment of a Person proposed by the Settling Parties to serve as Claims Referee.

The Notice and Claim Form shall be reviewed by the Claims Administrator and may be revised as agreed upon by the Settling Parties prior to such submission to the Court for approval.

3.2 cbdMD shall pay for all of the costs associated with the Claims Administrator, and for providing Notice to the Settlement Class in accordance with the Preliminary Approval Order, as well as the costs of such notice. Attorneys' fees, costs, and expenses of Proposed Class Counsel, and service awards to Class Representatives, shall be paid by cbdMD as set forth in ¶ 7 below, subject to Court approval. Notice shall be provided to class members in accordance with

the Notice plan set forth in Exhibit E. The Notice plan shall be subject to approval by the Court as meeting constitutional due process requirements. The Claims Administrator shall establish a dedicated settlement website and shall maintain and update the website throughout the claim period, with the Notice and Claim Form approved by the Court, as well as this Settlement Agreement. A toll-free help line staffed with a reasonable number of live operators shall be made available to address Settlement Class Members' inquiries. The Claims Administrator also will provide copies of the forms of the Notice and Claim Form approved by the Court, as well as this Settlement Agreement, upon request. Prior to the Final Fairness Hearing, Proposed Class Counsel and cbdMD shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of Notice. The Notice and Claim Form approved by the Court may be adjusted by the Claims Administrator, respectively, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. The Notice Program shall commence within thirty (30) days after entry of the Preliminary Approval Order and shall be completed within forty-five (45) days after entry of the Preliminary Approval Order.

3.3 Proposed Class Counsel and cbdMD's counsel shall request that after notice is completed, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the settlement set forth herein.

3.4 cbdMD will also cause the Claims Administrator to provide (at cbdMD's expense) notice to the relevant state and federal governmental officials as required by the Class Action Fairness Act.

4. Opt-Out Procedures

4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. Settlement Class members will only be able to submit an opt-out request on their own behalf; mass or class opt-outs will not be permitted. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than one hundred twenty (120) days after the date on which the Notice Program commences pursuant to ¶ 3.2.

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

4.3 In the event that within ten (10) days after the Opt-Out Date as approved by the Court, there have been more Opt-Outs (exclusions) than listed in a separate letter agreement (to be shared with the Court under seal, if requested), cbdMD may, by notifying Proposed Class Counsel in writing, void this Settlement Agreement. If cbdMD voids the Settlement Agreement pursuant to this paragraph, cbdMD shall be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Proposed Class Counsel and incentive awards and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

5. Objection Procedures

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall

state: (i) the objector's full name, address, telephone number, and e-mail 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., the number associated with the payment card claimed to have been used by the Settlement Class Member during the Security Incident, or a cbdMD receipt or credit card statement); (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 all counsel representing the objector; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) 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); and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court no later than one hundred twenty (120) days from the date on which the Notice Program commences pursuant to ¶ 3.2, and served concurrently therewith upon Proposed Class Counsel and counsel for cbdMD via the Court's electronic filing system.

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, 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. Releases

6.1 Upon the Effective Date, each Settlement Class Member, including Representative Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Representative Plaintiffs, 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 Released Claim is asserted.

6.2 Upon the Effective Date, cbdMD shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Representative Plaintiffs, each and all of the Settlement Class Members, Proposed Class Counsel and Plaintiffs' Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses cbdMD may have against such Persons including, without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

6.3 Notwithstanding any term herein, neither cbdMD, nor its Related Parties, shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Representative Plaintiffs, each and all of the Settlement Class Members, Proposed Class Counsel and Plaintiffs' Counsel.

7. Plaintiffs' Counsel's Attorneys' Fees, Costs, and Expenses; Service Award to Representative Plaintiffs

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Representative Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon, other than that cbdMD would pay reasonable attorneys' fees, costs, expenses, and an service award to Representative Plaintiffs as may be agreed to by cbdMD and Proposed Class Counsel and/or as ordered by the Court, or in the event of no agreement, then as ordered by the Court. cbdMD and Proposed Class Counsel have agreed to the following:

7.2 Proposed Class Counsel has agreed to request, and cbdMD has agreed to pay, subject to Court approval, the amount of \$135,000 to Proposed Class Counsel for attorneys' fees and costs and expenses. Proposed Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court among Plaintiffs' Counsel.

7.3 Subject to Court approval, cbdMD has agreed to pay a service award in the amount of \$2,500 to each of the Representative Plaintiffs.

7.4 cbdMD shall pay the Court-approved amount of attorneys' fees, costs, expenses, and service awards to Representative Plaintiffs to an account established by Proposed Class Counsel within thirty (30) days after the entry of an order of Final Approval, regardless of any appeal that may be filed or taken by any Class Member or third party. Class Counsel will repay

to cbdMD the amount of the award of attorneys' fees and costs in the event that the final approval order and final judgment are not upheld on appeal and, if only a portion of fees or costs (or both) is upheld, Class Counsel will repay to cbdMD the amount necessary to ensure the amount of attorneys' fees or costs (or both) comply with any court order.

7.5 Proposed Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Plaintiffs' Counsel and service award to Representative Plaintiffs consistent with ¶¶ 7.2 and 7.3. If this Settlement Agreement is terminated or otherwise does not become Final (e.g., disapproval by the Court or any appellate court), cbdMD shall have no obligation to pay attorneys' fees, costs, expenses, or service awards and shall only be required to pay costs and expenses related to notice and administration that were already incurred. Under no circumstances will Proposed Class Counsel or any Class Member be liable for any costs or expenses related to notice or administration.

7.6 The amount(s) of any award of attorneys' fees, costs, and expenses, and the service award to Representative Plaintiffs, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. 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, expenses, and/or service award ordered by the Court to Proposed Class Counsel or Representative Plaintiffs shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

8. Administration of Claims

8.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶ 2. Proposed Class Counsel and cbdMD shall be given reports as to both claims and distribution, and have the right to review and obtain supporting

documentation and challenge any such claim if they believe it to be inaccurate or inadequate. The Claims Administrator's and Claims Referee's, as applicable, determination of the validity or invalidity of any such claims shall be binding, subject to the dispute resolution process set forth in ¶ 2.5. All claims agreed to be paid in full by cbdMD shall be deemed valid.

8.2 Checks for approved claims shall be mailed and postmarked within sixty (60) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later. No approved 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 approved claims, cbdMD shall have no obligation to pay such claims and shall only be required to pay costs and expenses related to notice and administration that were already incurred.

8.3 All Settlement Class Members who fail to timely submit a 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.

8.4 No Person shall have any claim against the Claims Administrator, Claims Referee, cbdMD, Proposed Class Counsel, Plaintiffs, Plaintiffs' Counsel, and/or cbdMD's counsel based on distributions of benefits to Settlement Class Members.

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

9.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

- a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing, as required by ¶ 3.1;

- b) cbdMD has not exercised its option to terminate the Settlement Agreement pursuant to ¶ 4.3;
- c) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and
- d) the Judgment has become Final, as defined in ¶ 1.12.

9.2 If all of the conditions specified in ¶ 9.1 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated subject to ¶ 9.4 unless Proposed Class Counsel and cbdMD's counsel mutually agree in writing to proceed with the Settlement Agreement.

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

9.4 In the event that the Settlement Agreement is 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 (b) 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, expenses, and/or service awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, cbdMD shall be obligated to pay amounts already

billed or incurred for costs of notice to the Settlement Class, Claims Administration, and Dispute Resolution above and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

10. Miscellaneous Provisions

10.1 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.

10.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any 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 neither Party shall have any liability to one another as it relates to the Litigation, except as set forth herein.

10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence

of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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

10.5 The Settlement Agreement, together with the Exhibits attached 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 in such document. Except as otherwise provided herein, each party shall bear its own costs. This agreement supersedes all previous agreements made by the parties.

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

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

10.8 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 executed counterparts shall be filed with the Court.

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

10.10 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.

10.11 The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of North Carolina, 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 North Carolina.

10.12 The obligations of cbdMD under the Settlement Agreement shall continue and not be affected by any change to cbdMD's corporate name and/or corporate structure.

10.13 As used herein, "he" means "he, she, or it;" "his" means "his, hers, or its," and "him" means "him, her, or it."

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

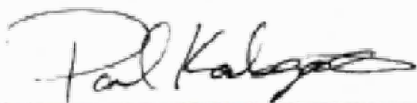
10.15 Cashing a settlement check is a condition precedent to any Settlement Class Member's right to receive settlement benefits. All settlement checks shall be void sixty (60) days after issuance and shall bear the language: "This check must be cashed within 60 days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until six months after the Effective Date to request re-issuance. If no request for re-issuance is made within this

period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and cbdMD shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under ¶ 2.1 or ¶ 2.2 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 one hundred eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

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

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

AGREED TO BY:



Paul G. Karlsgodt
Michelle R. Gomez
BAKER & HOSTETLER LLP
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Denver, CO 80202
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AND

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*Counsel for Defendants cbdMD, Inc. and
CBD Industries LLC*

Sacramento, CA 95825

Tel: (916) 777-7777

Email: aberry@justice4you.com

lguillon@justice4you.com

*Counsel for Plaintiffs Michael Warshawsky
and Michael Steinhauser*

EXHIBIT A CLAIM FORM

cbdMD SETTLEMENT CLAIM FORM

This Claim Form should be filled out online or submitted by mail if you used a payment card to make an online purchase with cbdMD during the time period between March 30, 2020 and May 8, 2020, or between May 14, 2020 through May 18, 2020, and you had out-of-pocket expenses, fraudulent charges, lost time spent dealing with fraudulent charges or card replacement issues, or unreimbursed extraordinary monetary losses as a result of the cbdMD Security Incident. You may get a check if you fill out this Claim Form, if the Settlement is approved, and if you are found to be eligible for a payment.

The Settlement Notice describes your legal rights and options. To obtain the Settlement Notice and find more information regarding your legal rights and options, please visit the official Settlement website, [INSERT WEBSITE], or call toll-free [INSERT PHONE #].

If you wish to submit a claim for a settlement payment electronically, you may go online to the Settlement Website, [INSERT], and follow the instructions on the "Submit a Claim" page.

If you wish to submit a claim for a settlement payment via standard mail, you need to provide the information requested below and mail this Claim Form to [INSERT], postmarked by _____, 2021. Please print clearly in blue or black ink.

1. CLASS MEMBER INFORMATION

Required Information:

First: _____ M: _____ Last: _____

Address 1: _____

Address 2: _____

City: _____ State: _____ ZIP: _____

Country: _____

Phone: _____

Optional Information:

Email: _____

2. PAYMENT ELIGIBILITY INFORMATION

To prepare for this section of the Claim Form, please review the Settlement Notice and Sections 2.1 through 2.3 of the Settlement Agreement (available for download at [INSERT]) for more information on who is eligible for a payment and the nature of the expenses or losses that can be claimed.

To help us determine if you are entitled to a settlement payment, please provide as much information as possible.

A. Verification of Class Membership

You are only eligible to file a claim if you used a credit or debit card in connection with an online purchase with cbdMD during the time of the cbdMD Security Incident. **Specifically, your online purchase must have been made between March 30, 2020 at 00:03:12 UTC (Coordinated Universal Time) (March 29, 2020 at 8:03 pm ET) and the end of May 8, 2020, or between May 14, 2020 at 21:02:57 UTC (6:02:57 pm ET) through the end of May 18, 2020.**

By submitting a claim and signing the certification below, you are verifying that you used a credit or debit card in connection with an online purchase with cbdMD during the time of the cbdMD Security Incident.

In addition, to allow the Settlement Administrator to confirm your membership in the Class, you must provide either:

(1) The unique identifier provided in the Notice you received by postcard or email;

or

(2) the first four and last four digits of the number associated with the credit or debit card you claim to have used in connection with your online cbdMD purchase,

or

(3) a document or documents reflecting your use of a payment card in connection with your online cbdMD purchase during the Security Incident, which could include, for example, a receipt from cbdMD reflecting payment by a payment card, a payment card statement or bill, or notification from a bank or financial institution stating that the payment card was compromised during the Security Incident with the dates and times noted above.

Thus, please **EITHER**:

(1) Provide the unique identifier provided in the Notice you received: _____.

OR

(2) In the boxes provided below, please provide the first four and last four digits of the card number for each credit or debit card that you used in connection with your online cbdMD purchase during the dates and times of the Security Incident. For each credit or debit card number, provide the date(s) of the transaction(s).

FIRST FOUR DIGITS

LAST FOUR DIGITS [SETTLEMENT ADMINISTRATOR TO ADD BOXES]

cbdMD Settlement Claim Form

Questions? Call [INSERT PHONE #] or visit [INSERT WEBSITE]

OR

- (3) Attach and identify the documentation that reflects your use of a payment card in connection with your online cbdMD purchase during the Security Incident. Please note that the documentation must reflect the use of a payment card and the date of the transaction.

UPLOAD DOCUMENT [SETTLEMENT ADMINISTRATOR TO ADD]

B. Out-Of-Pocket Expenses

Check the box for each category of out-of-pocket expenses, fraudulent charges, or lost time that you incurred as a result of the cbdMD Security Incident. Please be sure to fill in the total amount you are claiming for each category and attach the required documentation as described in **bold type** (if you are asked to provide account statements as part of required proof for any part of your claim, you may redact unrelated transactions and all but the first four and last four digits of any account number, if you wish). Please round total amounts to the nearest dollar.

I. Ordinary Expenses Resulting from the cbdMD Security Incident

- Fees or other charges from your bank or credit card company due to fraudulent activity on your card incurred between March 30, 2020 and the Claims Deadline due to the cbdMD Security Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Overdraft fees, over-the-limit fees, late fees, or charges due to insufficient funds or interest.

[UPLOAD DOCUMENTS] Required: A copy of a bank of credit card statement or other proof of claimed fees or charges (you may redact unrelated transactions and all but the first four and last four digits of any account number).

- Fees or other charges relating to the reissuance of your credit or debit card incurred between March 30, 2020 and the Claims Deadline due to the cbdMD Security Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Fees that your bank charged you because you requested a new credit or debit card.

[UPLOAD DOCUMENTS] Required: Attach a copy of a bank or credit card statement or other receipt showing these fees (you may redact unrelated transactions and all but the first

four and last four digits of any account number).

- Fees relating to your account being frozen or unavailable incurred between March 30, 2020 and the Claims Deadline due to the cbdMD Security Incident.

DATE	DESCRIPTION	AMOUNT

Examples: You were charged interest by a payday lender due to card cancellation or due to over-limit situation. You had to pay a fee for a money order or other form of alternative payment because you could not use your debit or credit card.

[UPLOAD DOCUMENTS]Required: Attach a copy of receipts, bank statements, credit card statements, or other proof that you had to pay these fees (you may redact unrelated transactions and all but the first four and last four digits of any account number).

- Other incidental expenses, including telephone, internet, or postage expenses, directly related to the cbdMD Security Incident incurred between March 30, 2020 and the Claims Deadline due to the cbdMD Security Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Other out of pocket expenses, long distance phone charges, cell phone charges (only if charged by the minute), or data charges (only if charged based on the amount of data used).

[UPLOAD DOCUMENTS]Required: Attach a copy of the bill from your telephone company, mobile phone company, or internet service provider or other documentation that shows the expenses (you may redact unrelated transactions and all but the first four and last four digits of any account number).

- Credit Reports or credit monitoring charges purchased between March 30, 2020 and the Claims Deadline due to the cbdMD Security Incident. This category is limited to a maximum of \$80 in costs associated with credit monitoring or identity theft insurance, if purchased primarily as a result of the Security Incident and if purchased between March 30, 2020 and the Claims Deadline.

To obtain reimbursement under this category, you must attest to the following:

- I purchased credit reports between March 30, 2020 and the Claims Deadline, primarily due to the Security Incident and not for other purposes.

cbdMD Settlement Claim Form
Questions? Call [INSERT PHONE #] or visit [INSERT WEBSITE]

DATE	COST

Examples: The cost of a credit report(s) that you purchased after hearing about the Security Incident.

[UPLOAD DOCUMENT]Required: Attach a copy of a receipt or other proof of purchase for each product purchased (you may redact unrelated transactions).

Between one (1) and three (3) hours of documented time spent dealing with replacement card issues or in reversing fraudulent charges between March 30, 2020 and the Claims Deadline that occurred as a result of the cbdMD Security Incident (round to the nearest hour and check only one box).

1 Hour

2 Hours

3 Hours

Examples: You spent at least one (1) full hour calling customer service lines, writing letters or emails, or on the internet in order to get fraudulent charges reversed or in updating automatic payment programs because your card number changed. Please note that the time that it takes to fill out this Claim Form is not reimbursable and should not be included in the total number of hours claimed.

Required: If time was spent on the telephone or online, in the space below, describe what you did, or attach a copy of any letters or emails that you wrote. Examples: If the time was spent trying to reverse fraudulent charges, describe what you did. If the time was spent updating accounts due to your card being reissued, identify the other accounts that had to be updated.

II. Reimbursed Fraudulent Charges

Did you also have fraudulent charges to a credit or debit card account that were reversed or repaid as a result of the Security Incident? If so, in addition to your out-of-pocket expenses, you are eligible to claim a \$20 cash payment for each debit or credit card on which fraudulent charges were made and reversed or repaid, to compensate for lost time associated with seeking reimbursement for the fraud. (*See* Section 2.1 of the Settlement Agreement.)

FIRST FOUR AND LAST FOUR DIGITS OF CARD	DATE CHARGES REVERSED (ONLY 1 PER CARD REQUIRED)

cbdMD Settlement Claim Form

Questions? Call [INSERT PHONE #] or visit [INSERT WEBSITE]

[UPLOAD DOCUMENTS]Required: For each card, provide a card statement or other documentation showing (1) one or more fraudulent charges were posted to your account that you believe were caused by the cbdMD Security Incident, and (2) the charges were later reversed or reimbursed by the bank or credit card company (you may redact unrelated transactions and all but the first four and last four digits of any account number).

III. Extraordinary Expenses

If you have expenses related to the Security Incident that are more than the value or different than the type of ordinary expenses covered in the categories in Sections I and II above, you may be entitled to compensation for your extraordinary expenses. To obtain reimbursement under this category, you must attest to the following:

I incurred out-of-pocket unreimbursed expenses that occurred more likely than not as a result of the cbdMD Security Incident during the time period from March 30, 2020 through the end of the Claims Deadline other than those expenses covered by one or more of the categories above, and I made reasonable efforts to avoid, or seek reimbursement for the losses.

Unreimbursed fraudulent charges incurred between March 30, 2020 and the Claims Deadline due to the cbdMD Security Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Fraudulent charges that were made on your credit or debit card account and that were not reversed or repaid even though you reported them to your bank or credit card company. *Note: most banks are required to reimburse customer in full for fraudulent charges on payment cards that they issue.*

[UPLOAD DOCUMENTS]Required: The bank statement or other documentation reflecting the fraudulent charges, as well as documentation reflecting the fact that the charge was fraudulent (you may redact unrelated transactions and all but the first four and last four digits of any account number). If you do not have anything in writing reflecting the fact that the charge was fraudulent (e.g., communications with your bank or a police report), please identify the approximate date that you reported the fraudulent charge, to whom you reported it, and the response.

Date reported:

Description of the person(s) to whom you reported the fraud:

cbdMD Settlement Claim Form

Questions? Call [INSERT PHONE #] or visit [INSERT WEBSITE]

Other unreimbursed out-of-pocket expenses that were incurred between March 30, 2020 and the Claims Deadline as a result of the cbdMD Security Incident that are not accounted for in your response above.

DATE	DESCRIPTION	AMOUNT

Examples: This category includes any other unreimbursed expenses or charges that are not otherwise accounted for in your answers to the questions above, including any expenses or charges that you believe were the result of an act of identity theft.

[UPLOAD DOCUMENTS]Required: Describe the expense, why you believe that it is related to the cbdMD Security Incident, and provide as much detail as possible about the date you incurred the expense(s) and the company or person to whom you had to pay it. Please provide copies of any receipts, police reports, or other documentation supporting your claim. For claims of reimbursement for lost time, you must provide actual documentation reflecting the amount of time you spent dealing with replacement card issues or in reversing fraudulent charges sufficient to prove how much time was spent, on what, and that the time was spent on issues related to the cbdMD Security Incident. The Settlement Administrator may contact you for additional information before processing your claim.

C. Certification

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

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

Print Name: _____

Signature: _____

Date: _____

cbdMD Settlement Claim Form
Questions? Call [INSERT PHONE #] or visit [INSERT WEBSITE]

D. Submission Instructions

Once you've completed all applicable sections, please mail this Claim Form and all required supporting documentation to the address provided below, postmarked by _____, **20**_____.

Warshawsky, et al. v. cbdMD et al.
[INSERT CLAIMS ADMINISTRATOR
MAILING INFORMATION]

cbdMD Settlement Claim Form
Questions? Call [INSERT PHONE #] or visit [INSERT WEBSITE]

EXHIBIT B
SHORT FORM
POST CARD NOTICE

If you made a purchase with cbdMD between March 30, 2020 and May 18, 2020 using a credit, debit, or other payment card, you may be eligible for a payment from a class action settlement.

A Settlement has been reached with cbdMD, Inc. and CBD Industries, LLC (collectively “cbdMD”) in a class action lawsuit about a data Security Incident that occurred between March 30, 2020 and May 8, 2020, and also between May 14, 2020 through May 18, 2020 which potentially exposed payment card data of customers. The lawsuit alleges that cbdMD was responsible for the Security Incident because cbdMD did not take appropriate care to protect its eCommerce platform from hacking. cbdMD denies the claims and denies any wrongdoing.

cbdMD records show you are a likely member of the Settlement Class. The Settlement will reimburse people who submit claims for: (1) Out-of-pocket expenses and compensation for documented lost time that resulted from the Security Incident up to \$210; and (2) Extraordinary expenses up to \$2,500 that were likely caused by the Security Incident. Total reimbursement under this Settlement is subject to an aggregate cap of \$300,000 for all claims.

If you are a Settlement Class Member and you want to receive an Award, you must complete and submit a Claim Form along with any required supporting information. Claim Forms can be found and completed on this website: www.xxx.com. The deadline to submit a Claim Form is

_____.

As part of the Settlement, cbdMD has also committed to establish and maintain data security enhancements related to its eCommerce platform and customer data.

Settlement Class Members may also request exclusion from the Settlement or object to it. Requests for exclusion are due by _____. Settlement Class Members who do not request exclusion can object to the Settlement. Objections are due by _____. The Court will hold a Final Settlement Approval Hearing on **Month 00, 2021 at 00:00 a.m.** at the United States District Court for the Western District of North Carolina (Charlotte Division) located at Charles R. Jonas Federal Bldg., 401 West Trade Street, Charlotte, NC 28202, to consider whether to approve the settlement. The Court will hear objections, determine if the Settlement is fair, and consider Class Counsel’s request for attorneys’ fees, costs, and expenses of \$135,000 and service awards of \$2,500 for each of the Representative Plaintiffs. You or your own lawyer may ask to appear at the hearing to be heard by the Court, but you do not have to. The Motion for attorneys’ fees and costs and service awards for the Representative Plaintiffs will be posted on the website after it is filed with the Court.

The Court has appointed the following Class Counsel to represent the Settlement Class in this Lawsuit: M. Anderson Berry of Clayco C. Arnold, A Professional Law Corporation, 865 Howe Avenue, Sacramento, CA 95825, 916-777-7777; and Jean S. Martin of Morgan & Morgan Complex Litigation Group, 201 N. Franklin St., 7th Fl., Tampa, FL 33602, 813-559-4908.

This is only a summary. For detailed information visit www.SettlementURL.com or call **1-000-000-0000**. You may contact the Settlement Administrator at cbdMD Settlement, c/o Settlement Administrator, PO Box 0000, City, State, Zip.

www.SettlementURL.com 1-000-000-0000

EXHIBIT C
SHORT FORM
EMAIL NOTICE

If you made a purchase with cbdMD between March 30, 2020 and May 18, 2020 using a credit, debit, or other payment card, you may be eligible for a payment from a class action settlement.

A Settlement has been reached with cbdMD, Inc. and CBD Industries, LLC (collectively “cbdMD”) in a class action lawsuit about a data Security Incident that occurred between March 30, 2020 and May 8, 2020, and also between May 14, 2020 through the end of May 18, 2020 which potentially exposed payment card data of customers. The lawsuit alleges that cbdMD was responsible for the Security Incident because cbdMD did not take appropriate care to protect its eCommerce platform from hacking. cbdMD denies the claims and denies any wrongdoing.

Who Is Included?

cbdMD records show you are a likely member of the Settlement Class. The Settlement includes all persons residing in the United States who used a credit, debit, or other payment card to make an online purchase with cbdMD between March 30, 2020 at 00:03:12 UTC (Coordinated Universal Time) (March 29, 2020 at 8:03 pm ET) and the end of May 8, 2020, and between May 14, 2020 at 21:02:57 UTC (6:02:57 pm ET) through the end of May 18, 2020.

What Can I Get?

The Settlement will reimburse people who submit claims for:

- (1) Out-of-pocket expenses and documented lost time that resulted from the Security Incident up to \$210; and
- (2) Extraordinary expenses up to \$2,500 that were likely caused by the Security Incident.

Total reimbursement under this Settlement is subject to an aggregate cap of \$300,000 for all claims.

If you are a Settlement Class Member and you want to receive an Award, you must complete and submit a Claim Form along with any required supporting information. Claim Forms can be found and completed on this website: www.xxx.com. The deadline to submit a Claim Form is

_____.

As part of the Settlement, cbdMD has also committed to establish and maintain security enhancements.

What are my rights?

Do Nothing. You will be legally bound by decisions of the Court and you give up the right to sue cbdMD for the claims in this case.

Exclude Yourself. If you exclude yourself, you are not be legally bound by the Settlement and you keep your right to sue. However, you will not get any money. You must submit your exclusion by Month 00, 2021.

Object. You can stay in the Settlement and tell the Court why you do not like the Settlement. Objections must be submitted by **Month 00, 2021**. Detailed instructions on how to exclude yourself or object to the Settlement are found in the long notice on the website or by calling **000-000-0000**.

When Will the Court Approve the Settlement?

The Court will hold a Final Settlement Approval Hearing on **Month 00, 2021 at 00:00 a.m.** at the United States District Court for the Western District of North Carolina (Charlotte Division) located at Charles R. Jonas Federal Bldg., 401 West Trade Street, Charlotte, NC 28202, to consider whether to approve the settlement. The Court will hear objections, determine if the Settlement is fair, and consider Class Counsel's request for attorneys' fees, costs, and expenses of \$135,000 and service awards of \$2,500 for each of the Representative Plaintiffs. You or your own lawyer may ask to appear at the hearing to be heard by the Court, but you do not have to. The Motion for attorneys' fees and costs will be posted on the website after it is filed with the Court.

Who Represents The Settlement Class?

The Court has appointed the following Class Counsel to represent the Settlement Class in this Lawsuit: M. Anderson Berry, Clayeo C. Arnold, A Professional Law Corporation, 865 Howe Avenue, Sacramento, CA 95825, 916-777-7777; and Jean S. Martin, Morgan & Morgan Complex Litigation Group, 201 N. Franklin St., 7th Fl., Tampa, FL 33602, 813-559-4908.

Where Can I Find More Information?

This is only a summary. You can find the full Class Notice, along with a full description of the proposed Settlement, related Court documents, dates and forms, and additional information on how Settlement Class Members can exclude themselves from the Settlement or object to it by visiting **www.SettlementURL.com** or calling **1-000-000-0000**. You may contact the Settlement Administrator at cbdMD Settlement, c/o Settlement Administrator, PO Box 0000, City, State, Zip. **DO NOT CONTACT THE JUDGE, THE COURT, OR THE DEFENDANTS.**

www.SettlementURL.com

1-000-000-0000

EXHIBIT D
LONG FORM NOTICE

If you made an online purchase with cbdMD between March 30, 2020 and May 18, 2020 using a credit, debit, or other payment card, you may be eligible for a payment from a class action settlement.

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

- A Settlement has been reached with cbdMD, Inc. and CBD Industries, LLC (collectively “cbdMD”) in a class action lawsuit about a data security incident that occurred between March 30, 2020 and May 8, 2020, and also between May 14, 2020 through May 18, 2020 (“Security Incident”).
- During the Security Incident, cbdMD suffered a cyberattack on its eCommerce platform that accepts payment cards. The Security Incident potentially resulted in unauthorized access to customer payment card data, including first and last names, shipping addresses, billing addresses, credit or debit card numbers including expiration dates and card verification values, and/or bank account numbers. Subsequently, a class action lawsuit was filed asserting claims against cbdMD relating to the Security Incident.
- The Settlement includes all persons residing in the United States who used a credit, debit, or other payment card to make an online purchase with cbdMD between March 30, 2020 at 00:03:12 UTC (Coordinated Universal Time) (March 29, 2020 at 8:03 pm ET) and the end of May 8, 2020, or between May 14, 2020 at 21:02:57 UTC (6:02:57 pm ET) through the end of May 18, 2020.
- The Settlement provides payments to people who submit valid claims for out-of-pocket expenses and charges that were incurred and plausibly arose from the Security Incident, and for other extraordinary unreimbursed monetary losses.

Your legal rights are affected even if you do nothing. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Submit a Claim	The only way to get a payment. You must submit a claim by Month Day, 2021 .
Ask to be Excluded	Get no payment. The only option that allows you to sue cbdMD over the claims resolved by this Settlement. You must exclude yourself by Month Day, 2021 .
Object	Write to the Court about why you do not like the Settlement. You must object by Month Day, 2021 .
Do Nothing	Get no payment. Give up rights.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.

Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments will only be made after the Court grants final approval of the Settlement and after any appeals are resolved.

Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

2

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION	Page 4
1. Why was this Notice issued?	
2. What is this lawsuit about?	
3. Why is this lawsuit a class action?	
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Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

BASIC INFORMATION

1. Why was this Notice issued?

The Court authorized this notice because you have a right to know about the proposed Settlement in this class action lawsuit and about all of your options before the Court decides whether to give “final approval” to the Settlement. This notice explains the legal rights and options that you may exercise before the Court decides whether to approve the Settlement.

Judge Robert J. Conrad, Jr. of the United States District Court for the Western District of North Carolina (Charlotte Division) is overseeing this case. The case is known as *Warshawsky et. al. v. cbdMD, Inc. et. al.*, Case No. 3:20-cv-00562-RJC-DSC. The persons who sued are called the Plaintiffs. cbdMD, Inc. and CBD Industries, LLC (collectively “cbdMD”) are called the Defendants.

2. What is this lawsuit about?

The Lawsuit is a proposed class action lawsuit brought on behalf of U.S. residents whose Personal Information may have been accessed and/or compromised by unauthorized individuals as part of the Security Incident. The Security Incident resulted in the potential exposure of payment card data of customers who used a credit or debit card to make a purchase from the cbdMD website. The potentially-exposed information may include customers’ names, billing and shipping addresses, payment card numbers, CVV security codes, and credit card expiration dates.

The lawsuit claims that cbdMD was responsible for the Security Incident and asserts claims such as: negligence, declaratory judgment, violation of the Florida Deceptive and Unfair Trade Practices Act, violation of the California Consumer Protection Act, and unjust enrichment. The lawsuit seeks compensation for people who had out-of-pocket expenses, fraudulent charges, lost time spent dealing with fraudulent charges or card replacement issues, or unreimbursed extraordinary monetary losses as a result of the Security Incident. cbdMD denies all of the Plaintiffs’ claims and maintains that it did not do anything wrong.

3. Why is this lawsuit a class action?

In a class action, one or more people called “Representative Plaintiffs” sue on behalf of all people who have similar claims. All of these people together are the “Class” or “Class Members.” In this case, the Representative Plaintiffs are Michael Warshawsky and Michael Steinhauer. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class and this Settlement.

4. Why is there a Settlement?

By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid claims will get compensation. The Representative Plaintiffs and their attorneys believe the Settlement is fair, reasonable, and adequate and, thus, best for the Class and its members. The Settlement does NOT mean that cbdMD did anything wrong.

Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

WHO IS IN THE SETTLEMENT?

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

You are included in the Settlement Class if you reside in the United States and used a credit, debit or other payment card if you used a payment card to make an online purchase with cbdMD during the time of the Security Incident and you had out-of-pocket expenses, fraudulent charges, lost time spent dealing with fraudulent charges or card replacement issues, or unreimbursed extraordinary monetary losses as a result of the cbdMD Security Incident. Your online purchase must have been made between March 30, 2020 at 00:03:12 UTC (Coordinated Universal Time) (March 29, 2020 at 8:03 pm ET) and the end of May 8, 2020, and between May 14, 2020 at 21:02:57 UTC (6:02:57 pm ET) through the end of May 18, 2020.

Specifically excluded from the Settlement Class are: (i) cbdMD and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; (v) banks and other entities that issued payment cards which were utilized at cbdMD during the Security Incident; and (vi) 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 Security Incident or who pleads *nolo contendere* (a no-contest plea, while not technically a guilty plea, has the same immediate effect as a guilty plea and is often offered as part of a plea bargain) to any such charge.

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 1-XXX-XXX-XXXX with questions or visit [WEBSITE]. You may also write with questions to cbdMD Claims Administrator, PO Box XXXX, City, State zip code. Please do not contact the Court with questions.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

The Settlement will provide payments to people who submit valid claims.

There are two types of payments that are available:

- (1) Expense Reimbursement (Question 8) and
- (2) Extraordinary Expense Reimbursement (Question 9).

You may submit a claim for either or both types of payments. You must also provide proof of your class membership in the form of either (1) the unique identifier provided in the notice you received by postcard or email; or (2) the first four and last four digits of the number associated with the credit or debit card you claim to have used in connection with your online purchase with cbdMD during the Security Incident; or (3) a document or documents reflecting your use of a payment card in connection with a cbdMD online purchase during the Security Incident, which could include, for example, a receipt from cbdMD reflecting payment by a payment card, a

Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

payment card statement or bill, notification from a bank or financial institution stating that the payment card was compromised during the Security Incident. In order to claim each type of payment, you must provide related documentation with the Claim Form.

Total reimbursement under this Settlement is subject to an aggregate cap of \$300,000 for all claims.

As part of the Settlement, cbdMD has also committed to establish and maintain security enhancements.

8. What payments are available for Expense Reimbursement?

Class Members are eligible to receive reimbursement of up to \$210 (in total) for out-pocket expenses resulting from the Security Incident such as:

- card replacement fees;
- late fees;
- overlimit or overdraft fees;
- interest;
- other bank or credit card fees;
- postage;
- mileage;
- incidental expenses resulting from lack of access to a payment card or account;
- up to \$80 in costs associated with obtaining credit monitoring and identity theft protection (if purchased between March 30, 2020 and the Claims Deadline, with reasonable documentation and an affirmative statement that it was purchased primarily because of the Security Incident, and with proof of purchase);
- reimbursement of up to four (3) hours of documented lost time (at \$20 per hour) spent dealing with replacement card issues or in reversing fraudulent charges (only if at least one full hour was spent and if it can be documented with reasonable specificity); and
- an additional \$20 payment for each credit or debit card on which documented fraudulent charges were incurred that were later reimbursed.

9. What payments are available for Extraordinary Expense Reimbursement?

Class Members who had other extraordinary unreimbursed monetary losses because of payment card information compromised as part of the Security Incident are eligible to make a claim for reimbursement of up to \$2,500. As part of the claim, the Class Member must show that:

- (1) it is an actual, documented, and unreimbursed monetary loss;
- (2) the loss was more likely than not caused by the Security Incident;
- (3) the loss occurred during the time period from March 30, 2020 through and including the end of the Claims Deadline;

Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

(4) the loss is not an amount already covered by one or more of the categories in Question 8; and

(5) a reasonable effort was made to avoid or seek reimbursement for the loss .

More details are provided in the Settlement Agreement, which is available at [WEBSITE].

HOW TO GET BENEFITS

10. How do I get benefits?

To make a claim under the Settlement, you must complete and submit a Claim Form. Claim Forms are available at [WEBSITE], or you may request one by mail by calling [PHONE #]. Read the instructions carefully, fill out the Claim Form, and mail it postmarked no later than **Month Day, 2021** to:

cbdMD Claims Administrator
PO Box XXXXX
City, State zip code

11. How will claims be decided?

The Claims Administrator will initially decide whether the information provided on a Claim Form is complete and valid. The Claims Administrator may require additional information from any claimant. If the required information is not provided timely, the claim will be considered invalid and will not be paid.

If the claim is complete and the Claims Administrator denies the claim entirely or partially, the claimant will be provided an opportunity to have their claim reviewed by an impartial Claim Referee who has been appointed by the Court.

REMAINING IN THE SETTLEMENT

12. Do I need to do anything to remain in the Settlement?

You do not have to do anything to remain in the Settlement, but if you want a payment you must submit a Claim Form postmarked by **Month Day, 2021**.

13. What am I giving up as part of the Settlement?

If the Settlement becomes final, you will give up your right to sue cbdMD for the claims being resolved by this Settlement, which include claims related to the Security Incident. The specific claims you are giving up against cbdMD are described in Section 1.19 of the Settlement Agreement. You will be “releasing” cbdMD and all related people or entities as described in Section 6 of the Settlement Agreement. The Settlement Agreement is available at [WEBSITE].

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the law firms listed in Question 17 for free or you can, of course, talk to your own lawyer at your own expense if you have questions about what this means.

Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep the right to sue cbdMD about issues related to the Security Incident, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

14. If I exclude myself, can I get a payment from this Settlement?

No. If you exclude yourself, you will not be entitled to any benefits of the Settlement, but you will not be bound by any judgment in this case.

15. If I do not exclude myself, can I sue cbdMD for the same thing later?

No. Unless you exclude yourself, you give up any right to sue cbdMD for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment.

16. How do I exclude myself from the Settlement?

To exclude yourself, send a letter that says you want to be excluded from the Settlement in *Warsawsky et. al. v. cbdMD, Inc. et. al.*, Case No. 3:20-cv-00562-RJC-DSC. Include your name, address, and signature. You must mail your Exclusion Request postmarked by **Month Day, 2021**, to:

cbdMD Settlement Exclusions
PO Box XXXXX
City, State zip code

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in this case?

Yes. The Court appointed the following lawyers as “Class Counsel”: Jean Martin of MORGAN & MORGAN COMPLEX LITIGATION GROUP, 201 N. Franklin Street, 7th Floor, Tampa, Florida 33602; and M. Anderson Berry of CLAYEO C. ARNOLD, P.C., 865 Howe Avenue, Sacramento, CA 95825.

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

18. How will the lawyers be paid?

Class Counsel will request the Court’s approval of an award for attorneys’ fees and reasonable costs and expenses of \$135,000. Class Counsel will also request approval of service award of \$2,500 for each of the Representative Plaintiffs. Any amount that the Court awards for

Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

attorneys' fees, costs, expenses, and an incentive award will be paid separately by cbdMD and will not reduce the amount of payments to Class Members who submit valid claims.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

19. How do I tell the Court that I do not like the Settlement?

You can object to the Settlement if you do not like it or some part of it. The Court will consider your views. To do so, you must file a written objection in this case, *Warshawsky et. al. v. cbdMD, Inc. et. al.*, Case No. 3:20-cv-00562-RJC-DSC, with the Clerk of the Court at the address below.

Your objection must include all of the following:

- your full name, address, telephone number, and e-mail address (if any);
- information identifying you as a Settlement Class Member, including proof that you are a member of the Settlement Class, which is described in response to question number 7;
- a written statement of all grounds for the objection, accompanied by any legal support for the objection that you believe is applicable;
- the identity of all counsel representing you, if any, in connection with your objection;
- the identity of all counsel representing you who will appear at the Final Fairness Hearing;
- a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection;
- a statement confirming whether you intend to personally appear and/or testify at the Final Fairness Hearing;
- your signature and the signature of your duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation);
- a list, by case name, court, and docket number, of all other cases in which you (directly or through counsel) have filed an objection to any proposed class action settlement within the last 3 years;
- a list, by case name, court, and docket number, of all other cases in which your counsel (on behalf of any person or entity) has filed an objection to any proposed class action settlement within the last 3 years; and
- a list, by case name, court, and docket number, of all other cases in which you have been a named plaintiff in any class action or served as a lead plaintiff or representative plaintiff.

To be timely, your objection must be **postmarked** to the Clerk of the Court for the United States District Court for the Western District of North Carolina (Charlotte Division) no later than **Month Day, 2021**.

In addition, you must **mail** a copy of your objection to both Class Counsel and Defense Counsel, postmarked no later than **Month Day, 2021**:

Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Office of the Clerk U.S. District Court for the Western District of North Carolina (Charlotte Division) United States Courthouse Charles R. Jonas Federal Bldg. 401 West Trade Street, Room 210 Charlotte, NC 28202	Jean S. Martin Morgan & Morgan Complex Litigation Group 201 N. Franklin St., 7th Floor Tampa, FL 33602	Paul G. Karlsgodt Baker & Hostetler LLP 1801 California Street Suite 4400 Denver, CO 80202

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

Objecting is telling the Court that you do not like the Settlement and why you do not think it should be approved. You can object only if you do not exclude yourself from the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement.

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Settlement Approval Hearing at __: __ .m. on **Month Day, 2021**, at the United States District Court for the Western District of North Carolina (Charlotte Division) located at the Charles R. Jonas Federal Bldg., 401 West Trade Street, Charlotte, NC 28202. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [WEBSITE] or call [PHONE #]. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely 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 request for an award of attorneys' fees and reasonable costs and expenses, as well as the request for service awards for the Representative Plaintiffs. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

22. Do I have to attend the hearing?

No. Class Counsel will present the Settlement Agreement 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 come to 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 19, the Court will consider it.

23. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Settlement Approval Hearing. To do so, you must file an objection according to the instructions in Question 19, including all the

Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

information required by items (v), (vi), and (vii). Your Objection must be **filed** with the Clerk of the Court for the United States District Court for the Western District of North Carolina (Charlotte Division) no later than **Month Day, 2021**. In addition, you must **mail** a copy of your objection to both Class Counsel and Defense Counsel listed in Question 19, postmarked no later than **Month Day, 2021**.

IF YOU DO NOTHING

24. What happens if I do nothing?

If you do nothing, you will get no benefits from this Settlement. Unless you exclude yourself, after the Settlement is granted final approval and the judgment becomes final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against cbdMD about the legal issues in this case, ever again.

GETTING MORE INFORMATION

25. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement at [WEBSITE]. You may also write with questions to cbdMD Claims Administrator, PO Box XXXXX, City, State Zip. You can also get a Claim Form at the website, or by calling the toll-free number, [PHONE].

Questions? Call 1-XXX-XXX-XXXX or visit [WEBSITE]

EXHIBIT E
NOTICE PLAN
CONTAINED IN
DECLARATION OF
PROPOSED NOTICE
ADMINISTRATOR

Since 2002, RG/2 has administered and distributed in excess of \$1.2 billion in class-action settlement proceeds. A true and accurate copy of the firm's publication describing RG/2's background and capabilities is attached hereto as Exhibit A.

3. I have been involved in the development and implementation of media plans for class action notification for more than ten years.

4. I submit this declaration at the request of Proposed Class Counsel for the Settlement Class in order to describe the proposed notice plan and notice services in the settlement of claims against Defendants cbdMD, Inc. and CBD Industries, LLC (collectively "cbdMD" or "Defendants") in the above-captioned litigation.

5. I have personal knowledge of the matters set forth in this declaration and, if called as a witness, could and would testify competently thereto.

6. The objective of the suggested Notice program is to provide the best notice practicable—Rule 23-compliant notice—to those members of the Class.

7. Within 10 days of Class Counsel filing for Preliminary Approval, RG/2 Claims will provide notice to relevant state and federal attorneys general in compliance with the Class Action Fairness Act.

8. RG/2 Claims proposes a notice program with the following elements:

a. Direct notice via postcard to the class members identified from Defendants' records who made a purchase online with cbdMD between March 30, 2020 at 00:03:12 UTC (Coordinated Universal Time) (March 29, 2020 at 8:03 pm ET) and the end of May 8, 2020, and between May 14, 2020 at 21:02:57 UTC (6:02:57 pm ET) through the end of May 18, 2020. Defendants have names and addresses for every person who made a purchase during this time.

b. The Notice and other important court documents relevant to the Class Notice and the litigation in general will be made available on a case specific website designated for this action. Additionally, RG/2 Claims will maintain a toll-free number to answer and address any class member inquiries.

9. The proposed notice plan provides the best practicable method to reach the potential class members and is consistent with other class action notice plans that have been approved by various federal courts for similarly situated matters.

10. Whenever practicable, direct USPS mail is the preferred form of notice for class members in a class action. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175-76 (1974).

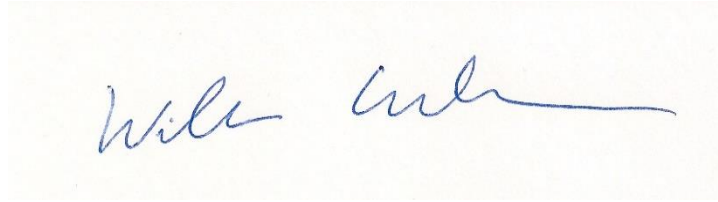
11. All undeliverable mail will be sorted and scanned. For returned notices without a forwarding address, RG/2 Claims will use Accurint (a division of Lexis-Nexis) to perform a basic “skip trace” search in order to retrieve the most accurate and updated information. The database will be updated with any new address found and the Notice will be either be re-mailed to the updated addresses or sent by email.

12. RG/2 Claims believes the notice program described above is suitable for this case and is comparable to plans other federal courts have approved for similar cases. RG/2 Claims also believes that the Notice is drafted in the “plain language” format preferred by federal courts and provides the information required by Rule 23. RG/2 Claims believes that the Notice is understandable for members of the Class and complies with due process.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES THAT TO THE BEST OF MY KNOWLEDGE THE FOREGOING IS TRUE AND CORRECT.

[Signature on the following page]

Executed on April 30, 2021 at New York, NY.



William W. Wickersham, Declarant

EXHIBIT F
PROPOSED PRELIMINARY
APPROVAL ORDER

Preliminary Approval of Settlement Agreement

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the meanings ascribed to those terms in the Settlement Agreement.
2. This Court has jurisdiction over the Litigation, Plaintiffs, all Settlement Class Members, Defendants cbdMD, Inc. and CBD Industries, LLC (collectively “cbdMD” or “Defendants”), and any party to any agreement that is part of or related to the Settlement.
3. The Court finds that the proposed Settlement with cbdMD set forth in the Settlement Agreement is fair, reasonable, and adequate, otherwise meets the criteria for approval, and warrants issuance of notice to the Settlement Class. Accordingly, the proposed Settlement is preliminarily approved.

Provisional Certification of the Settlement Class

4. Solely for purposes of the Settlement, the Court conditionally certifies the following class pursuant to FED. R. CIV. P. 23(a) and (b)(3) (“Settlement Class”):

All persons residing in the United States who made a purchase online with cbdMD between March 30, 2020 at 00:03:12 UTC (Coordinated Universal Time) and the end of May 8, 2020, and between May 14, 2020 at 21:02:57 UTC through the end of May 18, 2020.

Excluded from the Settlement Class are (i) cbdMD and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; (v) banks and other entities that issued payment cards which were utilized at cbdMD during the Security Incident; and (vi) 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 Security Incident or who pleads *nolo contendere* to any such charge.

5. Subject to final approval of the Settlement, the Court finds and concludes for settlement purposes only that the prerequisites to a class action, set forth in FED. R. CIV. P. 23(a) and (b), are satisfied in that:

- (a) the Settlement Class is so numerous that joinder of all members is impracticable;
- (b) there are questions of law or fact common to the Settlement Class;
- (c) Plaintiffs and Class Counsel (each defined below) fairly and adequately represent the Settlement Class;
- (d) the claims of Plaintiffs are typical of those of Settlement Class Members;
- (e) common issues predominate over any individual issues affecting the members of the Settlement Class;
- (f) Plaintiffs fairly and adequately protect and represent the interests of all members of the Settlement Class, and Plaintiffs' interests are aligned with the interests of all other members of the Settlement Class; and
- (g) settlement of the Actions on a class action basis is superior to other means of resolving this matter.

6. The Court appoints Jean Martin of MORGAN & MORGAN COMPLEX LITIGATION GROUP, and M. Anderson Berry of CLAYEO C. ARNOLD, P.C as Class Counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

7. The Court hereby appoints Michael Warshawsky and Michael Steinhauser to serve as Class Representatives for settlement purposes only on behalf of the Settlement Class.

Notice to Settlement Class Members

8. The Court approves the Notices of Pendency and Proposed Settlement of Class Action (the “Settlement Notices”), and finds that the dissemination of the Notices substantially in the manner and form set forth in the Notice Plan attached to the Motion complies fully with the requirements of the Federal Rule of Civil Procedure 23 and due process of law, and is the best notice practicable under the circumstances. Non-material modifications to the Settlement Notices may be made without further order of the Court.

9. The notice procedures described in the Notice Plan attached to the Motion are hereby found to be the best means of providing notice under the circumstances, are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement, and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law.

10. The Claims Administrator is directed to carry out the Notice Plan, which shall be completed in the manner set forth in the Settlement Agreement. No later than thirty (30) days from the date of this Order preliminarily approving the Settlement, the Claims Administrator shall initiate the Notice Plan, which shall be completed in the manner set forth in the Settlement Agreement.

11. All costs incurred in disseminating and otherwise in connection with the Settlement Notices shall be paid by Defendants pursuant to the Settlement Agreement.

12. The claim form attached to the Settlement Agreement satisfies the requirements of due process and of Rule 23(e) of the Federal Rules of Civil Procedure and thus is approved for dissemination to the Settlement Class. The claim form shall be made available to the Settlement Class as set forth on the Notice Plan and shall be made available to any potential Class member that requests one.

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

13. Settlement Class Members may opt-out (the “Opt-Out Deadline”) or object up to 120 days from the date on which the Notice Program commences.

14. Any member of the Settlement Class that wishes to be excluded (“opt out”) from the Settlement Class must send a written Request for Exclusion to Class Counsel and Counsel for cbdMD to the designated Post Office box established by the Claims Administrator on or before the close of the Opt-Out Deadline. Members of the Settlement Class may not exclude themselves by filing Requests for Exclusion as a group or class, but must in each instance individually and personally execute a Request for Exclusion. All Settlement Class Members that exclude themselves from the Settlement Class will not be eligible to receive any benefits under the Settlement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against Defendants.

15. Any member of the Settlement Class that does not properly and timely request exclusion from the Settlement Class shall, upon entry of the Order and Final Judgment, be bound by all the terms and provisions of the Settlement Agreement and Release, whether or not such Class member objected to the Settlement and whether or not such Class member received consideration under the Settlement Agreement.

16. A hearing on the Settlement (the “Final Approval Hearing”) shall be held before this Court on _____, 2021 at _____, Courtroom ___ of the United States District Court for the Western District of North Carolina (Charlotte Division) located at the Charles R. Jonas Federal Bldg., 401 West Trade Street, Charlotte, NC 28202.

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

18. The date and time of the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class, other than that which may be posted by the Court. Should the Court adjourn the date for the Final Approval Hearing, that shall not alter the deadlines for mailing and publication of Notice, the Opt-Out deadline, or the deadlines for submissions of settlement objections, claims, and notices of intention to appear at the Final Approval Hearing unless those dates are explicitly changed by subsequent Order.

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

20. Any person or entity who or which does not elect to be excluded from the Settlement Class may object to the proposed Settlement. Any Class member may object to, *inter alia*, (a) the proposed Settlement, (b) entry of Final Approval Order and the judgment approving the Settlement, (c) Class Counsel's application for fees and expenses, or (d) service award requests, by serving a written objection upon Class Counsel, cbdMD's counsel, and the Court.

21. Any Class member making the objection (an "Objector") must sign the objection personally or through Objector's counsel. An objection shall include all information required by the Settlement Agreement, including the Objector's name, address and telephone number of the objector, proof of class membership, and a detailed statement of each objection asserted, including the grounds for objection together with any documents such person wishes to be considered in support of the objection. The objection must also contain a detailed list of any other objections by the Objector and/or by the attorney representing the Objector to any class action settlement(s) submitted to any state or federal court in the United States in the previous three (3) years.

22. If an Objector intends to appear at the hearing, personally or through counsel, the Objector must include with the objection a notice of the Objector's intent to appear at the hearing. If counsel is appearing on behalf of more than one Settlement Class member, counsel must identify each such Settlement Class member and each Settlement Class member must have complied with the requirements of this Order. No objector may appear at the hearing unless the objector indicates an intent to appear.

23. Objections, along with any notices of intent to appear and any supporting documents, must be filed with the Clerk of the Court no later than one hundred twenty (120)

days from the date on which the Notice Program commences. These documents must be filed with the Clerk of the Court electronically or at the following address:

U.S. District Court for the Western District of North Carolina (Charlotte Division)
Office of the Clerk of Court
Charles R. Jonas Federal Bldg.
401 West Trade Street, Room 210
Charlotte, NC 28202

23. Only Settlement Class Members that have filed and served valid and timely notices of objection shall be entitled to be heard at the Final Approval Hearing. Any Settlement Class member that does not timely file and serve an objection in writing in accordance with the procedure set forth in the Class Notice and mandated in this Order shall be deemed to have waived any objection to (a) the Settlement; (b) the Release; (c) entry of Final Approval Order or any judgment; (d) Class Counsel's application for fees, costs, and expenses; or (e) service award requests for the named Plaintiffs, whether by appeal, collateral attack, or otherwise.

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

25. Upon entry of the Order and Final Judgment all members of the Settlement Class that have not personally and timely requested to be excluded from the Settlement Class will be enjoined from proceeding against Defendant with respect to all of the Released Claims.

26. cbdMD shall prepare and send, at cbdMD's expense, all notices that are required by the Class Action Fairness Act of 2005 ("CAFA") as specified in 28 U.S.C. § 1715. Class Counsel and Counsel for cbdMD shall cooperate promptly and fully in the preparation of such notices, including providing cbdMD with any and all information in their possession necessary for the preparation of these notices. cbdMD shall provide courtesy copies of the notices to Class Counsel for the purpose of implementing the settlement. cbdMD shall provide notice to Class

Counsel and the Court of compliance with the CAFA requirements within ten (10) days of providing notice to Attorneys General under CAFA.

27. The schedule by which the events referenced above should occur is as follows:

Event	Date
cbdMD Provides CAFA Notice required by 28 U.S.C. § 1715(b)	Within 10 days after the filing of Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement
cbdMD Provides Notice to Class Counsel and the Court of Compliance with CAFA Requirements	Within 10 days of providing notice to Attorneys General under CAFA
Class Notice Program Commences	Within 30 days after entry of this Preliminary Approval Order
Compliance with CAFA Waiting Period under 28 U.S.C. § 1715(d)	90 days after the Appropriate Governmental Officials are Served with CAFA Notice
Motion for Attorney's Fees, Reimbursement of Costs and Expenses, and Service Awards to be Filed by Class Counsel	At Least 14 days before the Objection Deadline
Postmark Deadline for requests for Exclusion (Opt-Out) or Objections	120 days after Commencement of Notice Program
Postmark/Filing Deadline for Filing Claims	120 days after Commencement of Notice Program
Motion for Final Approval to be Filed by Class Counsel	At Least 21 days before the Final Approval Hearing
Final Approval Hearing	Approximately 150 days after Commencement of Notice Program, or _____

Administration of the Settlement

28. The Court hereby appoints the claims administrator proposed by the parties, RG2 (the "Claims Administrator"). Responsibilities of the Claims Administrator shall include: (a) establishing a post office box for purposes of communicating with Settlement Class Members;

(b) disseminating Notice to the Class; (c) developing a web site to enable Settlement Class Members to access documents; (d) accepting and maintaining documents sent from Settlement Class Members relating to claims administration; (e) determining validity of Claims in accordance with the Settlement Agreement; and (f) distributing settlement checks to Settlement Class Members. Pursuant to the Settlement Agreement, Defendants shall pay all related costs and expenses associated with the Notice, claims, and settlement administration. These payments to the Claims Administrator shall be made separate and apart from the relief being made available to Settlement Class Members under the Settlement.

29. The Court hereby appoints the Claims Referee proposed by the parties, Bennett G. Picker of the law firm Stradley Ronon Stevens & Young, LLP (the “Claims Referee”). The Claims Referee shall be responsible for deciding certain claims that may be rejected by the Claims Administrator, upon request of the Settlement Class Member submitting such Claims, as described in the Settlement Agreement.

Claims Process and Distribution and Allocation Plan

30. The parties have created a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid claim form. The Court preliminarily approves the plan for remuneration described in Section 2.3 of the Settlement Agreement, and directs that the Claims Administrator effectuate the distribution of settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

31. Settlement Class Members who qualify for and wish to submit a claim form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If final Judgment is entered, all Settlement Class Members who qualify for any benefit

under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the releases included in that Agreement, and the final Judgment.

Additional Provisions

32. In the event the Settlement Agreement and the proposed settlement are terminated in accordance with the applicable provisions of the Settlement Agreement, the Settlement Agreement, the proposed Settlement, and all related proceedings shall, except as expressly provided to the contrary in the Settlement Agreement, become null and void, shall have no further force and effect, and Settlement Class Members shall retain all of their current rights to assert any and all claims against Defendants and any other released party, and the Defendants and any other released parties shall retain any and all of their current defenses and arguments thereto (including but not limited to arguments that the requirements of FED. R. CIV. P. 23(a) and (b)(3) are not satisfied for purposes of continued litigation). These Actions shall thereupon revert forthwith to their respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and all other related orders and papers had not been executed.

33. Neither this Order nor the Settlement Agreement nor any other settlement-related document nor anything contained herein or therein or contemplated hereby or thereby nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other settlement-related document, shall constitute, be construed as or be deemed to be evidence of or an admission or concession by cbdMD as to the validity of any claim that has been or could have been asserted against it or as to any liability by it as to any

matter set forth in this Order, or as to the propriety of class certification for any purposes other than for purposes of the current proposed settlement.

34. Except as necessary to effectuate this Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the final Judgment, or until further order of this Court.

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

Dated: _____

HON. ROBERT J. CONRAD JR.
UNITED STATES DISTRICT JUDGE

EXHIBIT G
PROPOSED FINAL
APPROVAL ORDER
AND JUDGMENT

WHEREAS, on _____, the Court entered a Preliminary Approval Order which among other things: (a) conditionally certified this matter as a class action, including defining the class and class claims, appointing Plaintiffs as Class Representatives, and appointing Proposed Counsel as Class Counsel; (b) preliminarily approved the Settlement Agreement; (c) approved the form and manner of Notice to the Settlement Class; (d) set deadlines for opt-outs and objections; (e) approved and appointed the claims administrator; and (f) set the date for the Final Fairness Hearing;

WHEREAS, on _____ [DATE], pursuant to the Notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement Agreement, of the right of Settlement Class Members to opt-out, and the right of Settlement Class Members to object to the Settlement Agreement and to be heard at a Final Fairness Hearing;

WHEREAS, on _____ [DATE], the Court held a Final Approval Hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this action with prejudice. Prior to the Final Approval Hearing, a declaration of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice was filed with the Court as required by the Preliminary Approval Order. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right to appear at the final approval hearing in support of or in opposition to the proposed Settlement Agreement, the award of attorneys' fees and costs to Class Counsel, and the payment of Service Awards to the Representative Plaintiffs;

WHEREAS, the Court not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

WHEREAS, the Court being required under Federal Rule of Civil Procedure 23(e) to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether the settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Class Counsel and counsel for cbdMD, having reviewed all of the submissions presented with respect to the proposed Settlement Agreement, having determined that the Settlement Agreement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys' fees and costs and expenses, and the application for Service Awards to the Representative Plaintiffs, and having reviewed the materials in support thereof, and good cause appearing:

IT IS ORDERED that:

1. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all Parties thereto, including the Settlement Class.
2. The Settlement involves allegations in Plaintiffs' Class Action Complaint and Jury Demand against Defendants for failure to implement or maintain adequate data security measures for customer information, including Card Information, directly and proximately caused injuries to Plaintiffs and the Class.
3. The settlement does not constitute an admission of liability by Defendants, and the Court expressly does not make any finding of liability or wrongdoing by Defendants.

4. Unless otherwise noted, words spelled in this Order with initial capital letters have the same meaning as set forth in the Settlement Agreement.

5. The Court, having reviewed the terms of the Settlement Agreement submitted by the parties pursuant to Federal Rule of Civil Procedure 23(e)(2), grants final approval of the Settlement Agreement and for purposes of the Settlement Agreement and this Final Approval Order and Judgment only, the Court hereby finally certifies the following Settlement Class:

All persons residing in the United States who made a purchase online with cbdMD between March 30, 2020 at 00:03:12 UTC (Coordinated Universal Time) and the end of May 8, 2020, and between May 14, 2020 at 21:02:57 UTC through the end of May 18, 2020.

Excluded from the Settlement Class are (i) cbdMD and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; (iv) the attorneys representing the Parties in the Litigation; (v) banks and other entities that issued payment cards which were utilized at cbdMD during the Security Incident; and (vi) 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 Security Incident or who pleads *nolo contendere* to any such charge.

6. The Settlement was entered into in good faith following arm's length negotiations and is non-collusive. The Settlement is in the best interests of the Settlement Class and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays and uncertainties, including as to the outcome, including on appeal, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class Members. The Court finds

that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the settlement reflected in the Settlement Agreement.

7. The Settlement Agreement provides, in part, and subject to a more detailed description of the settlement terms in that Agreement, for:

- A. Defendants to institute a Settlement Claims Process as outlined in the Settlement Agreement whereby Class Members can submit claims that will be evaluated by a Claims Administrator mutually agreed upon by Class Counsel and Defendant.
- B. Defendants to pay all costs of Claims Administration and Settlement Administration, including the cost of Claims Administrator, instituting Notice, processing and administering claims, and preparing and mailing checks.
- C. Defendants to pay, subject to the approval and award of the Court, the reasonable attorneys' fees of Class Counsel and service awards to the Class Representatives.

The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Federal Rule of Civil Procedure 23(a) and (b)(3) set forth in the Preliminary Approval Order and notes again that because this certification of the Settlement Class is in connection with the Settlement Agreement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the class proposed in the Settlement Agreement.

8. The terms of the Settlement Agreement are fair, adequate, and reasonable and are hereby approved, adopted, and incorporated by the Court. Notice of the terms of the Settlement, the rights of Class Members under the Settlement, Final Approval Hearing, the application for counsel fees and costs and expenses, and the proposed service award payments to the Class Representative have been provided to Settlement Class Members as directed by this Court's Orders, and proof of Notice has been filed with the Court.

9. The Court finds that such Notice as therein ordered, was the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).

10. The Court finds that cbdMD has fully complied with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

11. As of the Opt-Out deadline, ____ potential Settlement Class Members have requested to be excluded from the Settlement. Their names are set forth in Exhibit A to this Order. Those persons are not bound by this Order, as set forth in the Settlement Order.

12. The Court has considered all the documents filed in support of the settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the final hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

13. The parties, their respective attorneys, and the Claims Administrator are hereby directed to consummate the settlement in accordance with this Order and the terms of the Settlement Agreement.

14. Pursuant to the Settlement Agreement, Defendants, the Claims Administrator, and Class Counsel shall implement the settlement in the manner and time frame as set forth therein.

15. Within the time period set forth in the Settlement Agreement, the relief provided for in the Settlement Agreement shall be made available to the various Settlement Class Members submitting valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

16. Pursuant to and as further described in the Settlement Agreement, Plaintiffs and the Settlement Class Members release claims as follows:

Any and all claims and causes of action that were or could have been brought in the Litigation based on, relating to, concerning or arising out of the Security Incident and alleged theft or misuse of payment card data or other personal information or the allegations, facts, or circumstances described in the Litigation including, without limitation, any violations of the California, North Carolina, Florida, and similar state consumer protection statutes; any violation of the California Customer Records Act, California Unfair Competition Law, California Consumers Legal Remedies Act; Florida Deceptive and Unfair Trade Practices Act; negligence; negligence per se; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; 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, 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, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Security Incident and alleged theft or misuse of payment card data or other personal information or the allegations, facts, or circumstances described in the Litigation.

Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

17. Pursuant to the Settlement Agreement, and in recognition of their efforts on behalf of the Settlement Class, the Court approves payments to Plaintiffs in the total amount of \$2,500 each as a service award for their efforts on behalf of the Settlement Class. Class Counsel shall make such payment in accordance with the terms of the Settlement Agreement.

18. The Court has appointed Jean Martin of MORGAN & MORGAN COMPLEX LITIGATION GROUP, and M. Anderson Berry of CLAYEO C. ARNOLD, P.C as Class Counsel.

19. The Court, after careful review of the time entries and rates requested by Class Counsel, and after applying the appropriate standards required by relevant case law, hereby grants Class Counsel's application for attorneys' fees, costs, and expenses in the amount of \$135,000.00, and grants the request for service awards to each of the Representative Plaintiffs in the amount of \$2,500. Payment shall be made pursuant to the terms of the Settlement Agreement.

20. This Order resolves all claims against all parties in this action and is a final order.

21. The matter is hereby dismissed with prejudice and without costs except that the Court reserves jurisdiction over the consummation and enforcement of the settlement, without affecting the finality of this Final Approval Order and Judgment.

Dated: _____

HON. ROBERT J. CONRAD, JR.
UNITED STATES DISTRICT JUDGE

Exhibit 2

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

MICHAEL WARSHAWSKY and MICHAEL
STEINHAUSER, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

CBDMD, INC. and CBD INDUSTRIES LLC,

Defendants.

Case No. Case No. 20-cv-00562

**DECLARATION OF JEAN SUTTON MARTIN IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL**

I, Jean Sutton Martin, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I have been licensed to practice law in the State of North Carolina since 1998.
2. I am an attorney in the Class Action Department of Morgan & Morgan, within its larger Complex Litigation Group. Morgan & Morgan is among the largest, if not the largest, exclusively Plaintiff's law firms in the United States, employing over 700 lawyers and 2,000 support staff serving consumers in over 50 offices in, among others, Alabama, Arkansas, California, Florida, Georgia, Indiana, Illinois, Kentucky, Mississippi, Massachusetts, Pennsylvania, Tennessee, and New York.
3. I graduated from Wake Forest University School of Law in 1998, where I served as Editor-in-Chief of the Wake Forest Law Review.
4. The majority of my practice for the last 22 years has concentrated on complex litigation, including consumer class actions.

5. I have been honored with the prestigious “AV” rating by Martindale-Hubbell. In 2015, I was inducted as a Fellow of the Litigation Counsel of America, a prestigious trial lawyer honorary society comprised of less than one-half of one percent of American lawyers. I have also been selected as a Fellow of the American Bar Foundation, an honorary legal organization whose membership is limited to one third of one percent of lawyers in each state.

6. In 2016, I was honored by my peers and selected as the top Litigation attorney in the State of North Carolina for Business North Carolina Magazine’s Legal Elite earning entrance into the Legal Elite Hall of Fame.

7. I have considerable experience in data breach cases, including recent appointments as interim co-lead counsel in *In re: Warner Music Group Data Breach*, No. 20-cv-07473-PGG (S.D.N.Y.), *In re Morgan Stanley Data Security Litigation*, 20-cv-05914 (S.D.N.Y.), and *In Re: Ambry Genetics Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.). I also presently serve as interim co-lead counsel in *In re Brinker Data Incident Litigation*, No. 18-cv-686 (M.D. Fla.) in which class certification for a payment card data breach was recently granted.

8. I have represented consumers in numerous privacy rights and data-breach cases, including serving as co-lead counsel in *Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415 (D. Colo.) (consumer payment card data breach); class counsel in *Torres, et al., v. Wendy’s International LLC*, No. 6:16-cv-210-Orl-18DAB (M.D. Fla.) (consumer payment card data breach); class counsel in *Brady, et al. v. Due North Holdings, LLC, et al.*, No. 1:17-cv-01313 (S.D. Ind.) (data breach class action involving employees’ W-2 forms); and co-lead counsel in *Linnins, et al., v. Timco Aviation Services, Inc.*, No. 16-cv-486 (M.D.N.C.) (data breach class action involving employees’ W-2 forms).

The Litigation

9. On October 9, 2020, my co-counsel and I filed the initial class action complaint in this matter on behalf of Plaintiffs Michael Warshawsky and Michael Steinhauser, who had purchased products from cbdMD's website during the time of the Security Incident. We filed the operative, first amended complaint on December 18, 2020, to assert a claim for monetary damages pursuant to the CCPA. Subsequent to the filing of the initial Complaint, we began discussions with counsel for Defendants regarding the possibility of early settlement.

The Settlement Negotiations

10. The Parties agreed to and did retain Benjamin Picker, Esq., of the law firm Stradley Ronon Stevens & Young, LLP, a highly experienced mediator, to assist the Parties in settlement negotiations. A full-time mediator and arbitrator, Mr. Picker has facilitated many data breach mediations.

11. Prior to the mediation, the Parties briefed their respective positions on the facts, claims, defenses, and assessments of the risk of litigation. The issues were discussed with the mediator before the day of the mediation, and also during the course of the mediation. Plaintiffs' Counsel also submitted a draft settlement term sheet, which was then used as the basis for negotiations.

12. Through the information provided by Defendants, we learned the mechanism of the breach, the timing of the breach, and the customer data that was compromised. Based upon this information, we are informed by Defendants that the Class is comprised of approximately 44,541 individuals, whose name and mailing address are known to Defendants.

13. On February 3, 2021, the Parties, through their respective counsel, engaged in a full-day virtual mediation session before mediator Benjamin Picker, Esq. A representative for

cbdMD's insurer also participated. With the assistance of Mr. Picker, the Parties were able to reach a negotiated resolution on a class-wide basis that provides monetary relief to Class Members and obligates Defendant to take remedial measures to safeguard against the reoccurrence of a data security incident.

14. While courteous and professional, the negotiations were hard-fought throughout and the settlement process was conducted at arm's length between experienced counsel with an understanding of the strengths and weaknesses of their respective positions in the Lawsuit. Throughout the negotiations, Mr. Picker was able to assist the Parties in reaching an agreement on the substantive terms of the Settlement to include monetary compensation to class members and the adoption by Defendants of business practice changes related to data security. There was nothing collusive about the settlement negotiations or the ultimate Settlement reached. Lastly, attorneys' fees, costs, expenses, and service awards were negotiated only after all substantive terms of the Settlement were agreed upon by the Parties.

15. During the ensuing months, the Parties continued the exchange of information and negotiations as to the final details of the Settlement Agreement. Consequently, the Parties worked together to prepare a comprehensive set of settlement documents, which are embodied in the Settlement Agreement and the exhibits attached thereto. The Parties spent significant time negotiating the terms of this final written Settlement Agreement.

The Settlement

16. The Settlement provides significant benefits to Class Members. All Settlement Class Members who submit a valid Settlement Claim through the Claim Form and supporting documentation are eligible to receive reimbursement for documented, eligible out-of-pocket expenses incurred by Settlement Class Members as a result of the Data Breach. Defendants will

also implement several measures to improve its data security, particularly on its e-Commerce platform, and ensure that the problem which led to the Security Incident is not repeated.

17. The multi-tiered framework of benefits provided in this Settlement developed as a result of my experience in other PCD disclosure cases, numerous discussions with affected class members as to the types of injuries and damages suffered as a result of these disclosures, and actual settlement claims made in similar cases. As I stated earlier, my discussions with affected class members in other cases in which I have been involved in along with my experiences in overseeing the administration of settlements in these cases, helped my co-counsel and me to determine what type of documentation exists to support such claims.

18. Moreover, the Parties have agreed that the cost of the notice and costs of claims administration will be paid by Defendants, separate and apart from the relief offered to the Settlement Class. The Parties have jointly selected RG/2 Claims Administration, LLC to serve as the Notice and Settlement Administrator.

19. Defendants have agreed to pay the fees and expenses of legal counsel for Plaintiffs in an aggregate amount not to exceed \$135,000, subject to Court approval. The amount of any attorneys' fees and expenses approved by the Court will be paid by the by Defendants separate and apart from the relief offered to the Settlement Class.

20. Defendants have agreed to pay a service award not to exceed \$2,500 for each of the two named Plaintiffs, subject to approval by the Court. The amount of any service awards approved by the Court will be paid by the by Defendants separate and apart from the relief offered to the Settlement Class.

The Strength of Plaintiffs' Case

21. I believe that Plaintiffs have a strong case for liability and damages. My co-counsel

and I were prepared to submit evidence supporting Plaintiffs' assertion that Defendants failed to take a number of industry-standard measures to secure its customers' PII. I also believe that we would be able to show that Plaintiffs suffered damages as a result of the Data Breach. Defendants have has continually disputed the sufficiency of Plaintiffs' allegations. Although I feel strongly that Plaintiffs would be able to obtain a favorable ruling on all issues, this was not a certainty.

The Risk, Expense, Complexity, and Likely Duration of Further Litigation

22. Although Plaintiffs are confident in the merits of their claims, the risks involved in prosecuting a class action through trial cannot be disregarded. I have practiced in this area far too long to disregard the high level of risk, expense, and complexity of class litigation, which is one reason that judicial policy so strongly favors resolving class actions through settlement. This is not only a complex case, but it is in an especially risky field of litigation. Data breach cases continue to be among the most risky and uncertain of all class action litigation. Many data breach cases are dismissed at the Rule 12 stage and, to date, consumers have won only one contested class certification motion in a payment card data breach case.

23. Through the Settlement, Plaintiffs and Class Members gain significant benefits without having to face further risk. Moreover, the cost of trial and any appeals would be significant and would delay the resolution of this litigation without the guarantee of any relief.

The Amount Offered In Settlement

24. The valuable benefits made available pursuant to the Settlement squarely address the issues raised in the Litigation and provide timely, significant, and pertinent relief to the Settlement Class Members, which compares favorably to what Class Members could recover were they to secure a favorable judgment at trial. In the experience of Class Counsel, the monetary relief provided by this Settlement is an outstanding result, and is fair and reasonable in light of

reported average out-of-pocket expenses due to a data breach.

The Extent of Discovery Completed and The Stage of The Proceedings

25. While formal discovery did not take place, the Parties exchanged briefs on their respective positions on the facts, claims, defenses, and assessments of the risk of litigation. The Parties also submitted a draft settlement term sheet prepared by Plaintiffs, which was then used as the basis for negotiations. More importantly, Defendants provided Plaintiffs with directed, informal discovery and were forthcoming about the specifics of the Security Incident.

The Experience and Views of Counsel

26. At the outset of this litigation, Plaintiffs selected and retained as counsel for the Settlement Class myself and M. Anderson Berry of Clayeo C. Arnold, P.C. Mr. Berry and I are now proposed by Plaintiffs to be appointed as Class Counsel.

27. Mr. Berry and I are qualified, experienced, and able to conduct the litigation. Our firms have worked together for a number of years and Mr. Berry and I have personally worked together in other data breach cases. Through these experiences, I have had the opportunity to observe and benefit from his superior litigation skill and abilities.

28. With respect to the adequacy of counsel, both Mr. Berry and I, and our firms, have invested considerable time and resources into the prosecution of this action. Specific to this area of privacy litigation, we have a wealth of experience in litigating complex, class action lawsuits, including data breach cases, as set forth in in the attached resumes. We have extensive experience leading and managing consumer class actions and complex litigation like this, extensive knowledge of all applicable case law, and sufficient resources which we committed to the class in this case. Attached as Exhibits to this Declaration are resumes for Clayeo C. Arnold, P.C. and Morgan and Morgan Complex Litigation Group, which detail each firm's experience and

accomplishments in data breach and privacy litigation specifically and consumer class action litigation generally and specifics related to Mr. Berry and myself.

29. Further, Mr. Berry and I have diligently investigated and prosecuted the claims in this matter, dedicated substantial resources to the investigation and litigation of those claims, and successfully negotiated the Settlement of this matter to the benefit of Plaintiffs and the Settlement Class.

30. Through the settlement process and before finally entering the Settlement, Mr. Berry and I carefully weighed with Plaintiffs: (1) the benefits to Plaintiffs and the Class under the terms of the Settlement Agreement; (2) the range of the results in other settlements reached in similar litigation; (3) the attendant risks and uncertainty of litigation, especially in complex cases such as this Action where certification is by no means a given and would be challenged if litigated and appealed if the court certified the Class; (4) the difficulties and delays inherent in such litigation in the event that Defendants were to seek appellate review of the Court's Final Judgment, in the event Plaintiffs and the Class are successful at trial; (5) Defendants' vigorous defense of the litigation and continued denial of the claims contained in the Complaint (including certification); (6) the desirability of consummating this Settlement, to ensure that the Class received a fair and reasonable settlement; and (8) providing Plaintiffs and Class Members prompt relief.

31. Based on our independent investigation of the relevant facts and applicable law, experience with other data breach cases, and the information provided by Defendants, Plaintiffs' counsel has determined that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class.

Whether the Settlement Is a Product of Collusion Among The Parties

32. Plaintiffs undertook significant factual and legal investigation of the issues prior to

filing the case. As explained previously, mediator Bennett Picker, Esq. presided over the Parties' formal, arm's-length, and adversarial mediation. The Settlement clearly emerged from a formal, arm's-length negotiation process between the Parties, is designed to, and provides a fair and easy process to redress the claims of those members of the class. Further, the Settlement is the product of significant time and effort spent by the Parties in negotiating its terms and a final written memorialization.

33. Additionally, the proposed Settlement Class Representatives are members of the Settlement Class and possess no interests antagonistic to the Settlement Class. They provided their PII to Defendants and allege that their PII was compromised as a result of the Security Incident, just as the PII of the Settlement Class was also allegedly compromised. Indeed, their claims reflect identically the claims of the Settlement Class, and they and the Settlement Class desire the same outcome of this litigation. Because of this, the proposed Settlement Class Representatives have vigorously prosecuted this case for the benefit of all Settlement Class Members. Plaintiffs have been at the helm of the Litigation, reviewing pleadings, conferring with Counsel, and providing input in crafting and approving the Settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 30, 2021, in Tampa, Florida.

By: /s/ Jean Sutton Martin
Jean Sutton Martin

EXHIBIT A
FIRM BIO OF
MORGAN & MORGAN



Morgan & Morgan is a leading civil trial law firm representing consumers and commercial clients nationwide. With over 700 lawyers, and more than 2,000 non-lawyer employees, Morgan & Morgan is the largest plaintiffs' firm in the state of Florida and one of the largest if not the largest in the nation. Morgan & Morgan has a dedicated Complex Litigation Group staffed with lawyers, paralegals, and retired FBI agents serving as investigators committed to representing consumers in complex litigation, MDL proceedings and class action cases throughout the country.

John Yanchunis leads the class action section of the law firm. His practice—which began after completing a two-year clerkship with United States District Judge Carl O. Bue, Jr., S. D. Tex.—has concentrated on complex litigation and spans over 35 years, including consumer class actions for more than two-thirds of that time. As a result of his extensive experience in privacy and data-breach litigation, he regularly lectures at seminars regarding privacy litigation.

Mr. Yanchunis serves in leadership positions in many multidistrict and consolidated proceedings, including: *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-MD-2915-AJT (E.D. Va.) (co-lead counsel); *Adkins v. Facebook, Inc.*, No. C 18-05982 WHA (JSC) (N.D. Cal.) (co-lead counsel); *In re: Yahoo! Inc. Customer Data Security Breach Litigation*, No. 5:16-MD-02752-LHK (N.D. Cal.) (Lead Counsel); *In re: Monat Hair Care Products Marketing, Sales Practices, and Products Liability Litigation*, No.: 1:18-md-02841-DPG (S.D. Fla.) (member of the Plaintiffs' Steering Committee); *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.) (member of the Plaintiffs' Steering Committee); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.) (member of the Executive Committee) (dismissal on standing grounds recently reversed on appeal to the D.C. Circuit); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (co-Lead Counsel) (final judgment entered approving a settlement on behalf of a class of 40 million consumers with total value of \$29,025,000); and *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class of approximately 100 million consumers upheld by the 8th Circuit).

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

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

Jean Sutton Martin has concentrated her practice on complex litigation, including consumer protection and defective products class action, for more than 20 years. Ms. Martin was

recently appointed as interim co-lead counsel in *In re Morgan Stanley Data Security Litigation*, 1:20-cv-05914 (S.D.N.Y.) and *In Re: Ambry Genetics Data Breach Litigation*, No. 20-cv-00791 (C.D. Cal.) (“Ambry”), and presently serves as interim co-lead counsel in *In re Brinker Data Incident Litigation*, No. 18-cv-686 (M.D. Fla.). She is also a member of the Plaintiffs’ Steering Committee and bellwether trial team in *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*, No. 17-md-2775 (D. Md.) and a member of the Plaintiffs’ Steering Committee in *In re: Allergan Biocell Textured Breast Implant Products Liability Litigation*, No. 19-md-2921 (D. N.J.). She has served in leadership positions in many consumer class actions and consolidated proceedings in federal courts around the country, including *Gordon, et al. v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415 (D. Colo.) (data breach) (co-lead counsel).

Ms. Martin received her Juris Doctor degree from Wake Forest University School of Law, where she served as Editor-in-Chief of the *Wake Forest Law Review*. She obtained eDiscovery certification from the eDiscovery Training Academy at Georgetown Law Center in 2017. Ms. Martin graduated from Wake Forest University with a Bachelor of Science in Mathematical Economics in 1989. She earned a Master of International Business from the University of South Carolina in 1991. She worked with the sales finance team of Digital Equipment Company in Munich, Germany developing sales forecasts and pricing models for the company’s expansion into the Eastern European market after the fall of the Berlin wall. Prior to law school, Ms. Martin also worked as a marketing manager for an international candy manufacturer where her responsibilities included product development, brand licensing, market research, and sales analysis.

Ms. Martin has been honored with the prestigious “AV” rating by Martindale-Hubbell. In 2015, she was inducted as a Fellow of the Litigation Counsel of America, a prestigious trial lawyer honorary society comprised of less than one-half of one percent of American lawyers. Fellows are selected based upon excellence and accomplishment in litigation, both at the trial and appellate levels, and superior ethical reputation. For upholding the highest principles of the legal profession and for outstanding dedication to the welfare of others, Ms. Martin has also been selected as a Fellow of the American Bar Foundation, an honorary legal organization whose membership is limited to one third of one percent of lawyers in each state. In 2016, Ms. Martin was selected by her peers as the foremost Litigation attorney in the State of North Carolina for *Business North Carolina Magazine’s Legal Elite*, gaining membership in the *Legal Elite* Hall of Fame. Since 2012, she has been selected to the Super Lawyers list for North Carolina in the areas of mass torts and class actions, with repeated selection to the Top 50 Women North Carolina list since 2014. Additionally, Ms. Martin has been named by National Trial Lawyers to the Top 100 Trial Lawyers, Top 50 Class Action Lawyers, and Top 50 Mass Torts Lawyers for North Carolina.

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

Michael F. Ram is a consumer class action lawyer with 38 years of experience. He graduated cum laude from Harvard Law School in 1982. He has co-tried several class action trials and frequently lectures on class trials. In 1992 he was a co-recipient of the Trial Lawyer of the Year Award given by Trial Lawyers for Public Justice for *National Association of Radiation Survivors v. Walters* No. 83-c-1861 (N.D. Cal.) (tried to class-wide judgment on remand from Supreme Court).

From 2017 to 2020, Mr. Ram was a partner at Robins Kaplan LLP. In August, 2020, Mr. Ram joined Morgan & Morgan to open a San Francisco office. He is currently co-lead counsel in numerous consumer class actions, including *Gold v. Lumber Liquidators*, N.D. Cal. No. 14-cv-05373-RS, a certified multistate class action involving bamboo floors, and *Fowler v. Wells Fargo*, N.D. Cal. No. 3:17-cv-02092-HSG, a class action involving interest charges that settled for \$30 million.

Prior to joining Morgan & Morgan, Mr. Ram was a partner with several national plaintiffs firms, including Robins Kaplan LLP and Lief, Cabraser, Heimann and Bernstein where he represented plaintiffs in several major class actions, including: *Cox v. Shell*, Civ. No 18,844 (Obion County Chancery Court, Tenn.) national class of six million owners of property with defective polybutylene plumbing systems; *In re Louisiana-Pacific Inner-Seal Litigation*, No. 95-cv-879 (D. Oregon) (co-lead counsel) national class of homeowners with defective siding; *ABS Pipe Litigation*, Cal. Judicial Council Coordination Proceeding No. 3126 (Contra Costa County) national class of homeowners. Mr. Ram was co-lead counsel in many consumer class actions including a national class of half a million owners of dangerous glass pane gas fireplaces in *Keilholtz et al. v. Superior Fireplace Company*, No. 08-cv-00836 (N.D. Cal. 2008). He was co-lead counsel for plaintiffs in *Chamberlan v. Ford Motor Company*, No. 03-cv-2628 (N.D. Cal.), a class action involving defective intake manifolds that generated four published opinions, including one by the Ninth Circuit, 402 F.3d at 950, and settled one court day before the class trial. He was also co-counsel for plaintiffs in a number of other consumer class actions, involving matters such as defective automotive components, defective construction materials, and electronic privacy under the California Confidentiality of Medical Information Act.

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

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

Patrick was selected as a Florida Super Lawyer Rising Star in 2019 in the field of Class Actions. He is also active in speaking on privacy and class action topics, having spoken in June 2018, at the NetDiligence Cyber Risk Summit on the topic of Unauthorized Use of Personal Data;

in November 2018 at the American Association for Justice's Advanced 30(b)(6) Seminar, on the topic of 30(b)(6) Depositions in in Data Breach Cases; and in January 2019 at HarrisMartin's Marriott Data Breach Litigation Conference on that topics of damage models and settlements in data breach cases; and Rule 23(c)(4) classes at the Mass Torts Made Perfect conference.

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

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

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

Ryan has been selected as a Florida Super Lawyer Rising Star in 2018 and 2019. He is admitted to the Florida Bar in 2009 and is also admitted to practice in the Northern, Middle, and Southern Districts of Florida.

Francesca Kester was born and raised in Scranton, Pennsylvania. She attended Marywood University, where she graduated with a major in English Literature, and The Pennsylvania State University's Dickinson School of Law, where she received her Juris Doctor degree in 2017. While at Dickinson, Ms. Kester competed in the American Bar Association's National Appellate Advocacy Competition, where she was awarded the highest honor for her legal brief writing, and the Texas Young Lawyer's National Trial Competition, where she finished as a regional finalist. Ms. Kester also served as Executive Chair of the Dickinson Law Moot Court Board, Founder of the Dickinson Law partnership with Big Brothers Big Sisters, and Student Director of the Bethesda Mission Men's Shelter legal clinic.

Ms. Kester interned as a judicial clerk to United States Magistrate Judge Martin C. Carlson while in law school. After graduation, she served for two years as a law clerk to the Honorable James M. Munley in the United States District Court for the Middle District of Pennsylvania.

Ms. Kester is admitted to practice law in both Pennsylvania and Florida.

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

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

For most of her career, Ms. Appel has been in private practice litigating class claims related to defective products, mortgage fraud/Truth in Lending violations, unfair business practices relating to manufactured home sales, interest overcharges by the United States on military veterans' credit accounts, and statutory violations by the United States relating to offset of debts beyond the limitations period. From 2012 to 2019, Ms. Appel left private practice to become the Supervising Attorney of the Consumer Project at the Justice & Diversity Center of the Bar Association of San Francisco which provides free legal services to low-income persons facing consumer issues. In April 2019, Ms. Appel returned to private practice as Counsel at Robins Kaplan, LLP, then joined Morgan & Morgan in August 2020 where she focuses on class action litigation. In addition to her legal practice, Ms. Appel is an Adjunct Professor at Golden Gate University School of Law in San Francisco where she teaches legal research and writing, and from 2011 to 2018 supervised students at the Consumer Rights Clinic, in which students performed legal work at the Justice & Diversity Center's Consumer Debt Defense and Education Clinics.

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

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

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

Kenya Reddy represents consumers in class action litigation. She graduated from Duke University in 1997 with a degree in political science. In 2000, she received her law degree from the University of Virginia School of Law. Prior to joining Morgan & Morgan, Ms. Reddy was a shareholder at Carlton Fields, P.A., where her primary areas of practice were antitrust, complex civil litigation, class action defense, and business litigation. She also has experience in including labor and employment, products litigation, ERISA and employee benefits law, insurance, healthcare, and securities litigation.

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

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

Ra O. Amen. Mr. Amen was raised in both the California Bay Area and Massachusetts. In 2005, Ra graduated from Stanford University with a B.A. in Economics. After graduating, Ra worked as a Peace Corps volunteer in Morocco teaching English as a second language and business skills to local artisans. Before entering law school, Ra worked for several years in education and in business development for a mobile technology startup. In 2017, he obtained his Juris Doctor degree with Honors from Emory University School of Law. While at Emory Law, he was a Managing Editor of the Bankruptcy Developments Journal. Before joining Morgan & Morgan in 2020, Mr. Amen worked at one of the nation's largest defense law firms in the nation where he specialized in representing clients in complex commercial, administrative, and ecclesiastical disputes. Mr. Amen speaks both English and Spanish, and is an avid guitar player.

Mr. Amen is admitted to practice in Georgia.

EXHIBIT B
FIRM BIO OF
ARNOLD LAW FIRM



Arnold Law Firm Biography

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916-777-7777

Long Beach Office

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

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

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

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



Arnold Law Firm Biography

(continued)

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

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

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

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

In Re: Matt Matic, et al. v. Google, Inc. and Alphabet, Inc., 5:18-cv-06164-EJD (N.D. Cal.); (data breach);

In Re: Kirk Keilholtz, et al. v. Lennox Hearth Products, Inc., 4:08-cv-00836-CW (N.D. Cal.); (product);

In Re: Rodney Harmon v. Hilton Group, et al., 3:11-cv-03677-JCS (N.D. Cal.); (fraudulent billing)



Arnold Law Firm Biography

(continued)

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



M. Anderson Berry Biography



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

Mr. Berry holds an extensive background in privacy and consumer/government fraud litigation, actively participating in a currently sealed False Claims Act case involving widespread cybersecurity fraud upon the United States, and the following class action litigations:

Filed in 2021

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

Cohen, Chelsea et al. v. MedNax Services, Inc., 1:21-cv-20375 (S.D. Fla.);

Edke, Anand v. Belden, Inc., 2021CH00047 (Circuit Court of Cook County, Ill.);

Hashemi, Ken et al. v. Bosley, Inc. 2:21-cv-00946 (CD. Cal.);

Filed in 2020

A.A., a minor, by and through his natural parent, Steve Altes, et al. v. AFTRA Retirement Fund, 1:20-cv-11119-UA (S.D.N.Y.);

Combs, Levi et al. v. Warner Music Group Corp., 1:20-cv-07473 (S.D.N.Y.) (Executive Committee);

Darnell, Ethan v. Wyndham Capital Mortgage, Inc., 3:20-cv-00690-FDW-DSC (W.D.N.C.);

Gaston, Cheryl v. FabFitFun, Inc., 2:20-cv-09534 (C.D. Cal.) (Co-Lead Counsel);

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M. Anderson Berry Biography

(continued)

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

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

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

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

In Re: Zoom Video Comm., Inc. Privacy Litigation, 5:20-cv-02939 (N.D. Cal.);

Llamas, Emmanuel v. Truefire, LLC, et al., 8:20-cv-857-T-02CPT (M.D. Fla.);

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

Pygin, Alex v. Bombas, LLC and Shopify, et al., 3:20-cv-04412 (N.D. Cal.) (Co-Lead Counsel);

Riggs, William v. Kroto, Inc. et al., 3:20-cv-04705 (N.D. Ill.) (Co-Lead Counsel);

Rossi, Julia, et al. v. Claire's Stores, Inc. et al., 1:20-cv-05090 (N.D. Ill.) (Co-Lead Class Counsel);

Warshawsky, Michael et al., v. cbdMD, Inc., et al., 3:20-cv-00562 (E.D. Va.) (Co-Lead Counsel)

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

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



M. Anderson Berry Biography

(continued)

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

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

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

He was admitted to the California Bar in 2009 and is admitted to practice in the Northern, Eastern and Central Districts of California.

M. Anderson Berry was raised in Moraga, California.



Leslie Sindelar Guillon Biography



Leslie Sindelar Guillon practices in the data breach complex litigation practice for the Arnold Law Firm.

Ms. Guillon has experience in privacy and consumer/government fraud litigation, actively participating in a currently sealed False Claims Act case involving widespread cybersecurity fraud upon the United States. She also participates in the following class action litigations: *In Re: Hanna Andersson and Salesforce.com Data Breach Litigation*, 3:20-cv-00812-EMC (N.D. Cal.); *Emmanuel v. Truefire, LLC, et al.*, 8:20-cv-857-T-02CPT (M.D. Fla.);

In Re: Ambry Genetics Data Breach Litigation, 8:20-cv-00791 (C.D. Cal.); and *Barajas Torres v. Caglia Environmental, LLC, et al.*, MCV078838 (California Superior Court, Madera).

Ms. Guillon joined the Arnold Law Firm in 2016. Her legal career began with a large Los Angeles defense firm before returning to the Sacramento area to represent plaintiffs, specializing in whistleblower law. Thereafter, for three years she focused on elder abuse and personal injury cases. She has practiced law continuously in California since 2002 and became a member of the Illinois Bar in 2003.

Ms. Guillon was born and raised outside of Chicago in the River Forest/Oak Park area, known for its historical connections with architect Frank Lloyd Wright and author Ernest Hemingway. She moved to the west coast for undergraduate studies at the University of Southern California in Los Angeles, where she graduated with a Business Administration degree and a minor in Music Industry in 1998.

Ms. Guillon briefly worked for the American Society of Composers, Authors and Publishers (ASCAP), before deciding to follow in the footsteps of her father, a patent attorney, and head to law school.



**Leslie Sindelar Guillon
Biography**

(continued)

Ms. Guillon was awarded an academic scholarship at the McGeorge School of Law, University of the Pacific, graduating in 2002 and receiving the Witkin Award in Legal Process. While at McGeorge, she was Assistant Comment Editor for the *Transnational Lawyer Law Journal* and published “Not so Fair After All --- International Aspects of the Fairness in Music Licensing Act of 1998.”