

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FERNANDO MENDOZA, SOPHIA MENDOZA, and HUEY NGUYEN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

CRYSTAL BAY CASINO, LLC.,

Defendant.

Case No. 3:23-cv-00092-MMD-CLB

**CLASS SETTLEMENT AGREEMENT AND RELEASE**

This Class Settlement Agreement and Release (“Class Settlement Agreement”) is made and entered into by and among the following Settling Parties (as defined below): (i) Plaintiffs Fernando Mendoza, Sophia Mendoza, and Huey Nguyen (“Representative Plaintiffs” or “Plaintiffs”), individually and on behalf of the Settlement Class (as defined below), by and through their counsel, Thiago M. Coelho of WILSHIRE LAW FIRM, PLC and David K. Lietz of MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC, and (ii) Defendant Crystal Bay Casino, LLC (“Crystal Bay”), by and through its counsel, James W. Davidson of O’HAGAN MEYER, LLC. The Class 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.

This class action litigation arose from an November 2022 ransomware attack and resulting data breach perpetrated upon Crystal Bay that allowed a third-party access to some of Crystal

Bay's computer systems and data resulting in access to allegedly sensitive personal information associated with current and former Crystal Bay customers and/or employees, including Plaintiffs. Crystal Bay owns and operates a casino near Lake Tahoe that offers products and services including gaming, entertainment, hospitality, and dining. In the course of its business, Crystal Bay collects personally identifiable information ("PII") from its customers and employees.

Plaintiffs brought this action individually and on behalf of all persons that received notice from Crystal Bay of a data security incident that was disclosed on or around February 2023 (the "Data Breach"). Plaintiff Nguyen filed his complaint on March 8, 2023, in the United States District Court for the District of Nevada, Case No. 3:23-cv-00092. Plaintiffs Fernando Mendoza and Sophia Mendoza filed their complaint the same day (March 8, 2023), also in the United States District Court for the District of Nevada, Case No. 3:23-cv-00368. Crystal Bay moved to dismiss on May 22, 2023. The two cases were consolidated under the lower case number by motion granted May 30, 2023, with the motion to dismiss being denied without prejudice pending the filing of a consolidated complaint. A consolidated complaint was filed on June 29, 2023, which is the operative complaint in this Litigation.

In their Consolidated Complaint, Plaintiffs brought claims for negligence; quasi-contract/unjust enrichment; breach of implied contract; breach of fiduciary duty; violations of the Nevada Deceptive Trade Practices Act ("NDTPA"), Nev. Rev. Stat. Ann. §§ 598.0903, *et seq.*; and violations of the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*

After a period of informal discovery and mutual exchange of information, the Parties agreed to a formal mediation. On October 30, 2023, the Settling Parties engaged in an arms-length mediation before the Hon. Morton C. Denlow (Ret.), a retired federal magistrate judge currently employed by JAMS in Chicago, Illinois. Judge Denlow is a highly sought after and accomplished

mediator with a plethora of experience mediating data breach cases. After an all-day, arms-length mediation, the Settling Parties reached an agreement to resolve all claims arising from or related to the Incident. Subsequently, the Settling Parties worked on preparing this Settlement Agreement and the associated exhibits. The Settling Parties finalized this Class Settlement Agreement on or about January 14, 2024.

Pursuant to the terms agreed to and set out below, this Class Settlement Agreement resolves all actions, proceedings, and claims against Crystal Bay and the Released Parties that are asserted in, arise from, or relate to Representative Plaintiffs' complaint filed in the Litigation (including, without limitation, all claims that relate to or arise from the Incident), as well as all other actions by and on behalf of individuals or putative classes arising from the matters referenced in those complaints.

**I. CLAIMS OF REPRESENTATIVE PLAINTIFFS AND BENEFITS OF THE CLASS SETTLEMENT**

Representative Plaintiffs believe the claims asserted in the Litigation, as set forth in the Complaint filed in the Litigation, have merit. Representative Plaintiffs and Representative Plaintiffs' Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Crystal Bay and the Released Parties through motion practice, trial, and potential appeals. They have also considered the uncertain outcome, particularly in an area which remains in a state of development, and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Representative Plaintiffs' Counsel assert that they are highly experienced in class action litigation, particularly in the area of data breach incident litigation, and knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Litigation. In addition, Crystal Bay contends Plaintiffs will face difficulties in certifying a class, proving liability and

causation, and establishing compensable damages on a class-wide basis. While Representative Plaintiffs' Counsel believe Representative Plaintiffs would prevail on class certification and liability issues as to Crystal Bay, they nevertheless acknowledge the risks involved in litigation and believe settlement is in the best interests of the Settlement Class. Representative Plaintiffs' Counsel have determined that the settlement set forth in this Class Settlement Agreement is fair, reasonable, and adequate, and in the best interests of Representative Plaintiffs and the Settlement Class.

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

Crystal Bay denies each and all of the claims and contentions alleged against it in the Litigation and believes its defenses have merit. Crystal Bay denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Litigation. Nonetheless, Crystal Bay has concluded that further 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 Class Settlement Agreement. Crystal Bay has also considered the uncertainty and risks inherent in any litigation. Crystal Bay has, therefore, determined it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Class Settlement Agreement.

## **III. TERMS OF THE SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Representative Plaintiffs, individually and on behalf of the Settlement Class, and Crystal Bay that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, except as to those Settlement Class Members who timely opt out of the Class Settlement Agreement, upon and subject to the terms and conditions of this

Class Settlement Agreement. The Settling Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Settling Parties, the litigation, and the Settlement Agreement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

**1. DEFINITIONS**

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

**1.1** “Administration Costs” means all costs and expenses associated with providing notice of the Class Settlement Agreement to the Settlement Class, Claims Administration, and otherwise administering and carrying out the terms of this Class Settlement Agreement.

**1.2** “Agreement” or “Class Settlement Agreement” means this Class Settlement Agreement and Release.

**1.3** “Attorneys’ Fees and Expenses Award” means such funds as may be awarded by the Court to Settlement Class Counsel to compensate Representative Plaintiffs’ Counsel fully and completely for their fees, costs, and expenses in connection with the Litigation.

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

**1.5** “Claims Administration” means the processing of payments to Settlement Class Members by the Claims Administrator.

**1.6** “Claims Administrator” means Kroll Settlement Administration, LLC (“Kroll”), a company experienced in administering class action claims generally and specifically those of the type provided for in this Litigation, or, if Kroll is not approved by the Court, such other company experienced in administering class action claims generally and specifically those of the type provided for in this Litigation that is jointly agreed upon by the Settling Parties and approved by the Court.

**1.7** “Claim Form” shall mean the form used by Settlement Class Members to file claims for the benefits offered in this settlement, substantially in the form attached hereto as **Exhibit A**, as approved by the Court.

**1.8** “Class Notice” means the notice of settlement that is contemplated by this Class Settlement Agreement, and which shall include the long form notice (“Long Notice”) to be posted on the settlement website and a summary notice to be sent via first-class U.S. mail to the individuals who received formal notice of the Incident from Crystal Bay (“Short Notice”), substantially in the forms attached hereto as **Exhibits B** and **C**, respectively, as approved by the Court.

**1.9** “Effective Date” means the date by which all of the events and conditions specified in Paragraphs 1.11 and 1.12 below for the Final Approval Order and Judgment to become Final have occurred or have been met. The Effective Date shall not be altered in the event the Court declines to approve, in whole or in part, the Attorneys’ Fees and Expenses Award or the Incentive Awards. Further, the Effective Date shall not be altered in the event that an appeal is filed with the sole issue(s) on appeal being the Attorneys’ Fees and Expenses Award and/or the Incentive Award.

**1.10** “Final” means the occurrence of all of the following events: (a) the settlement pursuant to this Class Settlement Agreement is approved by the Court; (b) the Court has entered a Final Approval Order and Judgment (as that term is defined herein); (c) there are no objectors or intervenors; and (d) the time to appeal or seek permission to appeal from the Final Approval Order and Judgment (which the Parties understand to be 30 days under Rule 4 of the Federal Rules of Appellate Procedure) has expired or, if appealed, the appeal has been dismissed in its entirety, or the Final Approval Order and 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 foregoing, any order modifying or reversing any Attorneys’ Fees and Expenses Award or Incentive Award made in this case shall not affect whether the Final Approval Order and Judgment is “Final” as defined herein or any other aspect of the Final Approval Order and Judgment.

**1.11** “Final Approval Hearing” means the final hearing to be conducted by the Court in connection with the determination of the fairness, adequacy, and reasonableness of this Class Settlement Agreement and the proposed settlement of the Litigation.

**1.12** “Final Approval Order and Judgment” means the Court’s Order and Judgment Granting Final Approval of Class Action Settlement, which, among other things, approves this Class Settlement Agreement and the settlement of the Litigation as fair, adequate, and reasonable, and confirms the final certification of the Settlement Class, substantially in the form attached hereto as **Exhibit E**.

**1.13** “Incident” means the November 2022 incident alleged in the Complaint filed by Representative Plaintiffs and the Litigation during which an unauthorized actor gained access to Crystal Bay’s computer systems and accessed, compromised, and/or exfiltrated files that contained

current and former customer and employees' Personal Information (as defined herein), and that Crystal Bay disclosed to potentially-impacted individuals beginning on or about February 2023.

**1.14** "Litigation" means the consolidated action bearing Case No. 3:23-cv-00092-MMD-CLB in the United States District Court for the District of Nevada.

**1.15** "Net Settlement Fund" means the amount of funds that remains in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for Settlement Costs.

**1.16** "Non-Profit Residual Recipient" means Electronic Frontier Foundation, a 26 U.S.C. § 501(c)(3) non-profit organization that promotes digital privacy efforts and awareness.

**1.17** "Notice Deadline" means the date by which notice to the Settlement Class shall be commenced, and shall be thirty (30) days after the entry of the Preliminary Approval Order.

**1.18** "Objection Deadline" means sixty (60) days after the Notice Deadline or such other date set by the Court in the Preliminary Approval Order.

**1.19** "Opt-Out" means a Settlement Class Member (a) who timely submits a properly completed and executed Request for Exclusion, (b) who does not rescind that Request for Exclusion before the Opt-Out Deadline, and (c) as to whom there is not a successful challenge to the Request for Exclusion.

**1.20** "Opt-Out Deadline" means the date by which Settlement Class Members must mail or submit through the settlement website their Request for Exclusion in order for it to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Deadline shall be sixty (60) days after the Notice Deadline or such other date set by the Court in the Preliminary Approval Order.

**1.21** "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, affiliates, attorneys, predecessors, successors, representatives, or assignees.

**1.22** “Personal Information” means information that may have been exposed, compromised, or accessed during the Incident, as identified in the notice letters mailed by Crystal Bay to each of the Settlement Class Members in or around February 2023.

**1.23** “Preliminary Approval Order” means the Court’s order granting, among other things, conditional certification of the Settlement Class, preliminary approval of this Class Settlement Agreement and the settlement of the Litigation, and approval of the form and method of Class Notice, substantially in the form set forth in **Exhibit D**.

**1.24** “Released Claims” means all causes of action and claims for relief that have been asserted, or could have been asserted, by any Settlement Class Member, including Representative Plaintiffs, against any of the Released Parties based on, relating to, concerning, or arising out of the Incident, the alleged compromising and/or theft of Personal Information as a result of the Incident, and the allegations, facts, or circumstances described in the Complaint and the Litigation including, but not limited to 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 any claims for relief 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. 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 the Settlement Agreement, and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

**1.25** “Released Parties” means Crystal Bay and each of its past, present, and future parents, subsidiaries, divisions, affiliates, predecessors, successors, assigns, and related entities of any nature whatsoever, whether direct or indirect, and its past, present, and future directors, officers, employees, agents, insurers, shareholders, owners, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, and the predecessors, successors, assigns, and related entities of any nature whatsoever, whether direct or indirect, of each of them.

**1.26** “Releasing Parties” means Plaintiffs and all Settlement Class Members who do not timely and properly exclude themselves from the settlement memorialized in this Class Settlement Agreement, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns.

**1.27** “Request for Exclusion” means a substantially completed and properly-executed written request that is timely delivered to the Claims Administrator by a Settlement Class Member under Paragraph 5 of this Class Settlement Agreement and is postmarked or submitted through the settlement website on or before the Opt-Out Deadline. For a Request for Exclusion to be properly completed and executed, subject to approval by the Court, it should: (a) state the Settlement Class Member’s full name, address, and telephone number; (b) contain the Settlement Class Member’s personal and original signature or the original signature of a person authorized by law to act on the

Settlement Class Member's behalf with respect to a claim or right such as those asserted in the Litigation, such as a trustee, guardian, or person acting under a power of attorney; and (c) clearly manifest the Settlement Class Member's intent to be excluded from the settlement. All Requests for Exclusion must be submitted individually in connection with a Settlement Class Member, *i.e.*, one request is required for every Settlement Class Member seeking exclusion.

**1.28** "Service Award" means such funds as may be awarded by the Court to the Representative Plaintiffs for their service as Representative Plaintiffs.

**1.29** "Settlement Claim" means a claimant's claim for relief under the terms of this Class Settlement Agreement.

**1.30** "Settlement Class" means all individuals that received notice from Crystal Bay in or around February 2023, of a data security incident involving their Personal Information. Excluded from the Settlement Class are any judge presiding over this matter and any members of their first-degree relatives, judicial staff, Crystal Bay's officers, directors, and members, and persons who timely and validly request exclusion from the Settlement Class.

**1.31** "Settlement Class Counsel" means Thiago M. Coehlo of WILSHIRE LAW FIRM, PLC and David K. Lietz of MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC.

**1.32** "Settlement Class Member" means a member of the Settlement Class. The Settling Parties believe that there are approximately 93,950 Settlement Class Members.

**1.33** "Settlement Costs" means all costs of the settlement including the costs of carrying out the Notice Program, as set forth in Paragraph 4 herein, Claims Administration, any Attorneys' Fees and Expenses Award, any Service Award to Representative Plaintiffs, and all other expenses or costs related to the settlement, and payments of valid claims to the Settlement Class Members.

**1.34** "Settlement Fund" means a non-reversionary common fund of \$675,000.00, which

shall be the only amount paid by Crystal Bay and the sole and exclusive source of all Settlement Costs, Award payments to Settlement Class Members, Administrative Costs, Service Awards, and Attorneys' Fees and Expenses. No portion of the Settlement Fund will revert to Crystal Bay.

**1.35** "Settling Parties" means, collectively, Crystal Bay and Representative Plaintiffs, individually and on behalf of the Settlement Class.

**1.36** "Unknown Claims" means any of the Released Claims that Releasing Parties do not know or suspect to exist in their favor at the time of the release of the Released Parties and that, if known by them, might have affected their settlement with, and release of, the Released Parties, or might have affected their decision to participate in this Class Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Releasing Parties expressly shall be deemed to have, and by operation of the Final Approval Order shall have, released any and all Released Claims, including Unknown Claims, and waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States 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.**

Releasing Parties may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Releasing Parties expressly shall be deemed to have, and by operation of the Final Approval Order shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims

including Unknown Claims.

**1.37** All time periods described in this Class Settlement Agreement in terms of “days” shall be in calendar days unless otherwise expressly stated herein.

**2. SETTLEMENT CONSIDERATION**

**2.1** In consideration for the releases contained in this Class Settlement Agreement, and as a direct result of the Litigation, and without admitting liability for any of the alleged acts or omissions alleged in the Litigation, and in the interests of minimizing the costs inherent in any litigation, Crystal Bay will perform all the following:

**2.2** Crystal Bay will pay the Settlement Fund to the Claims Administrator as follows: (a) within fourteen (14) days following entry of the Preliminary Approval Order and receipt by Crystal Bay of IRS Form W-9 and payment instructions for the Claims Administrator, Crystal Bay will advance the amounts necessary to pay for the Notice Program, as set forth in Paragraph 4 herein, and settlement administration which amount shall be determined and requested by the Claims Administrator, and which advances will be credited against the Settlement Fund; and (b) Crystal Bay will pay the balance of the Settlement Fund into the Escrow Account by or before the Funding Date. (The “Funding Date” means the date, which is no later than thirty (30) days after the Effective Date.)

**2.3** The Settlement Administrator will agree to make the following compensation from the Settlement Fund available to Settlement Class Members who submit valid and timely claim forms. Claims will be subject to review for completeness and plausibility by a Settlement Administrator, and Claimants will have the opportunity to seek review by the Parties’ counsel, if they dispute the Settlement Administrator’s initial determination.

**2.3.1 Credit Monitoring:** All Settlement Class Members are eligible to claim and enroll in three (3) years of single-bureau Credit Monitoring Services, regardless of whether the Settlement Class Member submits a claim for reimbursement of documented ordinary losses, including lost time, reimbursement for extraordinary losses, or the Pro Rata Alternative Cash Payment. The Settlement Administrator shall send an activation code to each valid Credit Monitoring Services claimant within fourteen (14) days of the Effective Date that can be used to activate Credit Monitoring Services. Such enrollment codes shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such codes shall be sent via U.S. mail. Codes will be active for 180 days after the date of mailing, and may be used to activate the full 3-year term if used at any time during that 180 period. The provider shall provide Credit Monitoring Services to all valid claimants who timely activate those services for a period of three (3) years from the date of activation.

**2.3.2 Monetary Settlement Benefits.** In addition to Credit Monitoring (and not in lieu of) Settlement Class Members may make a Settlement Claim for reimbursement of documented ordinary losses, including lost time, and/or reimbursement for extraordinary losses, as further described below. As an alternative to filing a Settlement Claim for reimbursement of ordinary losses, extraordinary losses, lost time, and credit monitoring, Settlement Class Members may submit a claim to receive an Alternative Cash Payment, as explained in ¶ 2.3.2(d).

**2.3.2(a) Documented Ordinary Losses.** Settlement Class Members may submit a claim for documented out-of-pocket expenses fairly traceable to the

Incident, up to \$500.00 per individual. Ordinary Losses may include: (i) unreimbursed losses relating to fraud or identity theft; (ii) credit monitoring costs that were incurred on or after the Incident through the date of claim submission; and (iii) bank fees, long distance phone charges, postage, or gasoline for local travel. This list of reimbursable documented out-of-pocket expenses is not meant to be exhaustive, rather it is exemplary. Settlement Class Members may make claims for any documented out-of-pocket losses reasonably related to the Incident or to mitigating the effects of the Incident. The Claims Administrator shall have discretion to determine whether any claimed loss is reasonably related to the Incident. Settlement Class Members with Ordinary Losses must submit documentation supporting their claims. This can include receipts or other documentation not “self-prepared” by the claimant that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support to other submitted documentation.

**2.3.2(b) Attested Time Spent.** A Settlement Class Member who spent time remedying issues related to the Incident can receive reimbursement for up to five (5) hours of lost time at a rate of \$20 per hour with an attestation that they spent the claimed time responding to issues raised by the Incident. No documentation other than a description of their actions shall be required for members of the Settlement Class to receive compensation for attested time spent. Claims made for time spent can be combined with reimbursement for Ordinary Losses subject to the \$500.00 aggregate individual cap. Time spent may include (i) changing

passwords on potentially impacted accounts; (ii) monitoring for or investigating suspicious activity on potentially impacted medical, financial, or other accounts; (iii) contacting a medical provider or financial institution to discuss suspicious activity; (iv) signing up for identity theft or fraud monitoring; or (v) researching information about the Incident, its impact, or how to protect themselves from harm due to a Incident.

**2.3.2(c) Documented Extraordinary Losses.** Settlement Class Members are eligible for compensation for extraordinary losses resulting from the Incident, up to a maximum of \$10,000.00, upon submission of a valid Claim Form and supporting documentation, provided that: (i) the loss is an actual, documented, and unreimbursed monetary loss; (ii) the loss was more likely than not caused by the Incident; (iii) the loss occurred between June 1, 2022 and the Claims Deadline; (iv) the loss is not already covered by one or more of the normal reimbursement categories; (v) the claimant made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance. Extraordinary Losses may include, without limitation, the unreimbursed costs, expenses, losses or charges incurred a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of Private Information. To receive reimbursement for any Documented Extraordinary Loss, Settlement Class Members must submit supporting documentation of the loss and a description of how the loss is fairly traceable to the Incident, if not readily apparent from the documentation.



**2.3.2(d) Alternative Cash Payment.** As an alternative to filing a claim for reimbursement of Ordinary Losses, Attested Time Spent, Extraordinary Losses, and Credit Monitoring, Settlement Class Members may submit a claim to receive a *pro rata* payment from the net Settlement Fund after payment of costs of the settlement including the costs of carrying out the Notice Program and Claims Administration, any Attorneys' Fees and Expenses Award, any Service Award to Representative Plaintiffs, the cost of credit monitoring claimed, and payments for claims for Ordinary Losses, Attested Time Spent, and Extraordinary Losses. While the amount of the *pro rata* payment will depend upon the number of approved claims for the other settlement benefits and the number of claims for this cash payment, it is estimated that the Alternative Cash Payment will be between \$25 and \$50 per claimant, based upon the size of this Settlement Class, historic claims rates for Alternative Cash Payments, and the size of the Settlement Fund here.

**2.4 Assessing Claims for Documented Losses.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for Ordinary or Extraordinary Losses reflect valid Unreimbursed Economic Losses actually incurred that are fairly traceable to the Incident, but may consult with both Class Counsel and Defendant's Counsel in making individual determinations. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

**2.5 Assessing Claims for Lost Time.** The Settlement Administrator shall have the sole discretion and authority to determine whether the prerequisites have been met in order to award payments of Lost Time, but may consult with both Class Counsel and Defendant's Counsel in making individual determinations. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

**2.6 Assessing Claims for Alternative Cash Payments.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. A Settlement Class Member shall not be required to submit any documentation or additional information in support of their claim for an Alternative Cash Payment. However, the Claim Form must clearly indicate that the Settlement Class Member is electing to claim the Alternative Cash Payment in lieu of any other monetary benefits made available under this Settlement Agreement and, specifically, Paragraph 2.3.2(a), 2.3.2(b), and 2.3.2(c) above. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity. In the event of any ambiguities in the Claim Form, the Settlement Administrator must contact the Settlement Class Member prior to making a determination as to its validity and, specifically, to determine whether the Settlement Class Member wishes to file a claim for an Alternative Cash Payment or any other benefits made available under this Settlement Agreement.

**2.7 Order of Distribution of Funds.** The Settlement Administrator must use the funds available in the Net Settlement Fund (after payment of Settlement Costs as defined above) to make payments for approved claims in this order: Documented Ordinary or

Extraordinary Losses, followed by Credit Monitoring; followed by Lost Time, followed by payments for approved claims for the Pro Rata Alternative Cash Payments.

**2.8 Disputes.** To the extent the Settlement Administrator determines a claim for Unreimbursed Economic Losses or Lost Time is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies. Such notifications shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days. The Settlement Administrator may consult with Class Counsel and Defendant's Counsel in making such determinations.

**2.9 Contingencies.** In the event that the aggregate amount of all Settlement Payments exceeds the total amount of the Net Settlement Fund after payment of Court-approved attorneys' fees and Litigation Costs and Expenses, then all valid Ordinary and Extraordinary Loss Claims and each valid Lost Time Claim shall be paid in full, all Credit Monitoring shall be awarded, and then Alternative Cash Payment Claim shall be proportionately determined on a *pro rata* basis. In no event shall the Settlement Fund be increased for any reason. In the event that the aggregate amount of all Settlement Payments does not exceed the Net Settlement Fund, then each Settlement Class Member who is entitled to receive an Alternative Cash Payment Claim shall receive additional funds increased on a

*pro rata* basis (in other words, the same additional amount is added to each claimant's payment) so that the Net Settlement Fund is depleted.

**2.10 Residual Funds for Net Settlement Fund.** To the extent any monies remain in the Net Settlement Fund more than one hundred and twenty (120) days after the distribution of all Award payments to the Settlement Class Members, a subsequent payment will be evenly made to all Settlement Class Members who cashed or deposited their Award payments, provided that the average payment amount is equal to or greater than Five Dollars and No Cents (\$5.00). The distribution of this remaining Net Settlement Fund shall continue until the average payment amount in a distribution is less than Five Dollars and No Cents (\$5.00). Any amount remaining in the Net Settlement Fund after said additional distribution(s), if any, shall be distributed to the Non-Profit Residual Recipient.

### **3 PRELIMINARY SETTLEMENT APPROVAL AND FINAL APPROVAL**

**3.1** As soon as practicable after the execution of the Class Settlement Agreement, Settlement Class Counsel shall file a motion seeking entry of a Preliminary Approval Order. A proposed Preliminary Approval Order shall be submitted with the motion and shall be substantially in the form set forth in **Exhibit D**. The motion seeking entry of a Preliminary Approval Order shall request that the Court, *inter alia*:

- a) Stay all proceedings in the Litigation other than those related to approval of the Class Settlement Agreement;
- b) Stay and/or enjoin, pending Final Approval of the Class Settlement Agreement, any actions brought by Settlement Class Members concerning the Released Claims;
- c) Preliminarily certify the Settlement Class for settlement purposes only;

- d) Preliminarily approve the terms of the Class Settlement Agreement as fair, adequate, and reasonable;
- e) Appoint Representative Plaintiffs as the Settlement Class representatives for settlement purposes only;
- f) Appoint Settlement Class Counsel as counsel for the Settlement Class for settlement purposes only;
- g) Approve the Notice Program, as set forth in Paragraph 4 herein, and set the dates for the Opt-Out Deadline, and Objection Deadline;
- h) Approve the form and contents of a Long Notice substantially similar to the one attached hereto as **Exhibit B**, and a Short Notice substantially similar to the one attached hereto as **Exhibit C**, which together shall include a fair summary of the Settling Parties' respective litigation positions, the general terms of the settlement set forth in the Class Settlement Agreement, instructions for how to object to or submit a Request for Exclusion from the settlement, and the date, time, and place of the Final Approval Hearing;
- i) Appoint a Claims Administrator; and
- j) Schedule the Final Approval Hearing.

**3.2** Crystal Bay will consent to the entry of the Preliminary Approval Order so long as it is substantially in the form attached to this Class Settlement Agreement as **Exhibit D** and is otherwise consistent with this Class Settlement Agreement.

**3.3** Settlement Class Counsel and Crystal Bay shall request that the Court hold a Final Approval Hearing after notice is completed and at least one hundred (100) days after the Notice Date, and grant final approval of the Class Settlement Agreement as set forth herein.

**3.4** The proposed Final Approval Order and Judgment that shall be filed with the motion for final approval shall be substantially in the form attached hereto as **Exhibit E** and shall, among other things:

- a) Determine the Class Settlement Agreement is fair, adequate, and reasonable;
- b) Finally certify the Settlement Class;
- c) Determine that the Notice Program, as set forth in Paragraph 4 herein, satisfies due process requirements;
- d) Bar and enjoin any Settlement Class Members who did not timely opt out in accordance with the requirements of this Class Settlement Agreement from asserting any of the Released Claims; and
- e) Release and forever discharge Crystal Bay and the Released Parties from the Released Claims, as provided for in this Class Settlement Agreement.

**4** **NOTICE PROGRAM**

**4.1** Within ten (10) business days following the filing of the motion for preliminary approval of class action settlement, the Settlement Administrator, on behalf of the Defendant, shall cause a CAFA Notice to be served upon the appropriate State and Federal officials. All expenses incurred in connection with the preparation and service of the CAFA Notice shall be borne by Defendant from the Settlement Fund, and under no circumstances will be borne by Plaintiffs or Class Counsel.

**4.2** Within ten (10) calendar days of entry of the Preliminary Approval Order, Crystal Bay will provide the Claims Administrator with a list of Settlement Class Members Crystal Bay has been able to identify in such format as requested by the Claims Administrator which will include, to the extent available, the name and physical mailing address of each Settlement Class

Member. The Claims Administrator shall cause notice to be disseminated to the Settlement Class Members by direct U.S. mail, pursuant to the Preliminary Approval Order and the Notice Program, as described in Paragraph 4 herein, and in compliance with all applicable laws including, but not limited to, the Due Process clause of the United States Constitution, and to be effectuated pursuant to the provisions set forth below, the costs of which shall be a Settlement Cost. The Claims Administrator must maintain the list of Settlement Class Members provided by Crystal Bay pursuant to this Paragraph 4.2 in strict confidence and may not share the list with anyone other than Crystal Bay.

**4.3** Class Notice shall be provided to the Settlement Class as follows:

a) Within thirty (30) days after receiving the list of Settlement Class Members from Crystal Bay, the Claims Administrator shall send the Summary Notice as follows:

- (i) The Claims Administrator will send the Summary Notice (in postcard form) by first-class U.S. mail, postage prepaid;
- (ii) For any Short Notice (in postcard form) that has been mailed via first-class U.S. mail and returned by the U.S. Postal Service (“U.S.P.S.”) as undeliverable, the Claims Administrator shall re-mail the notice to the forwarding address, if any, provided by the U.S.P.S. on the face of the returned mail;
- (iii) Neither the Settling Parties nor the Claims Administrator shall have any other obligation to re-mail individual notices that have been mailed as provided in this Paragraph 4.2; and
- (iv) In the event the Claims Administrator transmits a Short Notice via first-class U.S. mail, then the Claims Administrator shall perform

any further investigations deemed appropriate by the Claims Administrator, including using the National Change of Address (“NCOA”) database maintained by the U.S.P.S., in an attempt to identify current mailing addresses for individuals whose names are provided by Crystal Bay, so long as the costs of such efforts are proportionate with the amount of the estimated payments to such individuals.

b) The Claims Administrator shall establish a dedicated settlement website that includes this Class Settlement Agreement, the complaint filed in the Litigation, and the Long Notice approved by the Court. The Claims Administrator shall maintain and update the settlement website until all payments have been made to Settlement Class Members pursuant to Paragraph 2, above. The Claims Administrator will also post on the settlement website copies of the motion for final approval of the Class Settlement Agreement, and the motion for an Attorneys’ Fees and Expenses Award and Incentive Awards and other relevant filings. A toll-free number with interactive voice response and FAQs shall also be made available to address Settlement Class Members’ inquiries. The settlement website shall not include any advertising and shall remain operational from the Notice Date until one-hundred eighty (180) days following the Effective Date, at which time the Claims Administrator shall terminate the settlement website and transfer ownership of the URL to Crystal Bay.

**4.4** The Short Notice and Long Notice shall be finalized by the Settling Parties no less than seven (7) days before they are sent to the Settlement Class Members. Plaintiffs shall prepare these documents, subject to Crystal Bay’s approval, leaving sufficient time for back-and-forth for review and edits.



**4.5** The Short Notice or Long Notice approved by the Court may be adjusted by the Claims Administrator in consultation and agreement with the Settling Parties as may be reasonable and necessary, so long as it is not inconsistent with such approval and does not materially alter the language approved by the Court.

**4.6** Prior to the Final Approval Hearing, counsel for the Settling Parties shall cause to be filed with the Court an appropriate declaration from the Claims Administrator demonstrating compliance with the Court-approved Notice Program.

## **5 OPT-OUT PROCEDURES**

**5.1** Each Settlement Class Member wishing to exclude themselves from the Settlement Class must individually sign and timely mail a written Request for Exclusion to the address designated by the Claims Administrator.

**5.2** To be effective, a Request for Exclusion must be postmarked no later than sixty (60) days after the Notice Deadline or such other date set by the Court in the Preliminary Approval Order.

**5.3** Within ten (10) days after the Opt-Out Deadline, the Claims Administrator shall provide the Settling Parties with a complete and final list of all Opt-Outs who have timely and validly excluded themselves from the Settlement Class and, upon request, copies of all completed Requests for Exclusions. Settlement Class Counsel may file these materials with the Court, with any Personal Information other than names and cities and states of residence redacted, no later than fourteen (14) days prior to the Final Approval Hearing.

**5.4** All Persons who opt out of the Settlement Class shall not receive any benefits of or be bound by the terms of this Class Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not opt out shall be bound by the terms of this Class Settlement

Agreement and by all proceedings, orders, and judgments in the Litigation.

## **6 OBJECTION PROCEDURES**

**6.1** Each Settlement Class Member who does not file a timely Request for Exclusion may file with the Court a notice of intent to object to the Class Settlement Agreement. The Long Notice shall instruct Settlement Class Members who wish to object to the Class Settlement Agreement to send their written objections to the Claims Administrator at the address indicated in the Summary Notice and Long Notice. The Long Notice shall make clear that the Court can only approve or deny the Class Settlement Agreement and cannot change the terms. The Long Notice shall advise Settlement Class Members of the deadline for submission of any objections.

**6.2** All notices of an intent to object to the Class Settlement Agreement must be written and should include all of the following:

- a) the objector's full name, address, telephone number, and email address (if any);
- b) a clear and detailed written statement that identifies the basis of the specific objection that the Settlement Class Member asserts;
- c) the identity of any counsel representing the objector;
- d) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying that counsel;
- e) a statement whether the Settlement Class Member has received any payment in exchange for his or her making the objections;
- f) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (if any).

**6.3** Notwithstanding the foregoing, any Settlement Class Member who timely submits a written notice of objection and attends the Final Approval Hearing may so state their objection at that time, subject to the Court's approval.

**6.4** To be timely, written notice of an objection in the appropriate form must be filed or postmarked no later than the Objection Deadline, subject to Court approval.

**6.5** Except upon a showing of good cause, any Settlement Class Member who fails to substantially comply with the requirements in this Paragraph 6 for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Class Settlement Agreement, and shall be bound by all the terms of the Class Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Class Settlement Agreement shall be through the provisions of this Paragraph 6.

## **7 CLAIMS ADMINISTRATION**

**7.1** The Claims Administrator shall administer and calculate the payments to Class Members.

**7.2** No Person shall have any claim against the Claims Administrator, Crystal Bay, the Released Parties, Crystal Bay's counsel, Settlement Class Counsel, Representative Plaintiffs' Counsel, and/or the Representative Plaintiffs based on distribution of Award payments to Settlement Class Members.

**7.3** The Claims Administrator shall agree to hold the Settlement Fund in an interest-bearing qualified settlement fund account, and administer the Settlement Fund, subject to the continuing jurisdiction of the Court and from the earliest possible date, as a qualified settlement fund as defined by Treasury Regulation § 1.46B-1 *et seq.*, and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible.

The Claims Administrator shall pay any taxes owed by the Settlement Fund out of the Settlement Fund. Except for funding the Settlement Fund, Crystal Bay shall not have any other financial obligation under the Class Settlement Agreement. In addition, under no circumstances will Crystal Bay have any liability for taxes or tax expenses under this Class Settlement Agreement.

**7.4** The Claims Administrator will send funds electronically (in an electronic payment format recommended by the Claims Administrator, such as PayPal or Venmo, and agreed-upon by the Settling Parties) or award check for payments to Settlement Class Members within thirty (30) days after the Effective Date. No distributions will be made without authorization from the Settling Parties. Award payment checks shall be sent by first-class U.S. mail. Award payment checks (electronic and paper) shall be valid for a period of one hundred and eighty (180) days from issuance, and shall state, in words or substance that the check must be cashed within one hundred and eighty (180) days, after which time it will become void. In the event an Award payment check becomes void, the Settlement Class Member to whom that Award payment check was made payable will forfeit the right to payment and will not be entitled to have the check reissued or to any further distribution from the Settlement Fund or to any further recourse against the Released Parties, and the Class Settlement Agreement will in all other respects be fully enforceable against the Settlement Class Member. No later than one hundred and ninety (190) days from the issuance of the Award payment checks, the Claims Administrator shall take all steps necessary to stop payment on any Award payment checks that remain uncashed.

**7.5** All Settlement Class Members who fail to timely cash their Award payment check shall be forever barred from receiving an Award payment pursuant to this Class Settlement Agreement, but will in all other respects be subject to, and bound by, the provisions of this Class

Settlement Agreement, including the releases contained herein, and the Final Approval Order and Judgment.

**8 RELEASES**

**8.1** Upon the Effective Date, the Releasing Parties will be deemed by operation of this Class Settlement Agreement and the Final Approval Order and Judgment to have forever fully, finally, completely, and unconditionally released, discharged, and acquitted Crystal Bay and the Released Parties from any and all of the Released Claims, and will be deemed to have also released Unknown Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, the Releasing Parties, 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 the participation in the Class Settlement Agreement as provided herein) in which any of the Released Claims or Unknown Claims are asserted.

**8.2** Upon entry of the Final Approval Order and Judgment, the Releasing Parties shall be barred from initiating, asserting, or prosecuting against Crystal Bay and any Released Parties any claims that are released by operation of the Class Settlement Agreement and the Final Approval Order and Judgment.

**9 THE ATTORNEYS' FEES AND EXPENSES AWARD AND INCENTIVE AWARDS**

**9.1** Settlement Class Counsel may file a motion seeking reasonable attorneys' fees in an amount not to exceed one-third (33.33 percent, or \$225,000) of the Settlement Fund. In addition, Class Counsel may seek their reasonable costs and expenses from the Settlement Fund. The entirety of the Attorneys' Fees and Expenses Award shall be payable solely from the Settlement Fund.

**9.2** Settlement Class Counsel will also request from the Court a Service Award for each of the Representative Plaintiffs in the amount of One Thousand Dollars (\$1,000.00), to be paid solely from the Settlement Fund. Crystal Bay will not object to Representative Plaintiffs' request for Service Award payment, unless Representative Plaintiffs' request exceeds the terms outlined in this Class Settlement Agreement.

**9.3** Within seven (7) days after the Effective Date, the Claims Administrator shall pay any Attorneys' Fees and Expenses Award and Service Awards from the Settlement Fund to an account designated by Settlement Class Counsel. After the Attorneys' Fees and Expenses Award and the Incentive Awards have been deposited into this account, Settlement Class Counsel shall be responsible for distributing any Incentive Awards to Representative Plaintiffs, and shall have sole discretion in allocating such attorneys' fees and costs, and distributing to each participating Representative Plaintiffs' Counsel firm an allocated share of such attorneys' fees and costs to that firm. Crystal Bay shall have no responsibility for distribution of attorneys' fees or costs among participating firms.

**9.4** No order of the Court or modification or reversal or appeal of any order of the Court concerning the amounts of the Attorneys' Fees and Expenses Award or the Incentive Awards hereunder shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Class Settlement Agreement.

**9.5** Crystal Bay shall not be liable for any additional attorneys' fees and expenses of Representative Plaintiffs' Counsel or Settlement Class Counsel in the Litigation.

**10** **CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

**10.1** Crystal Bay's willingness to settle this Litigation on a class-action basis and to agree to the accompanying certification of the Settlement Class is dependent on achieving finality

in this Litigation and the desire to avoid the expense of this and other litigation, unless otherwise expressly provided for in this Class Settlement Agreement. Consequently, Crystal Bay has the right to terminate this Class Settlement Agreement, declare it null and void, and have no further obligations under this Class Settlement Agreement to the Representative Plaintiffs, the Settlement Class, or Representative Plaintiffs' Counsel/Settlement Class Counsel, unless each of the following conditions occur:

- a) The Court has entered a Preliminary Approval Order;
- b) The Court enters a Final Approval Order and Judgment; and
- c) The Effective Date has occurred.

**10.2** If all of the conditions in Paragraph 10.1 are not fully satisfied and the Effective Date does not occur, this Class Settlement Agreement shall, without notice, be automatically terminated unless Settlement Class Counsel and Crystal Bay's counsel mutually agree in writing to proceed with the Class Settlement Agreement.

**10.3** In the event that the Class Settlement Agreement is not approved by the Court or the Class Settlement Agreement is terminated in accordance with its terms: (a) 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 litigant, which extension shall be subject to the decision of the Court; (b) Crystal Bay will still bear any costs of notice and administration through the date of termination, and (c) the terms and provisions of the Class 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 Class Settlement Agreement, including certification of the Settlement Class for settlement

purposes only, shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Class Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of any Attorneys' Fees and Expenses Award to Settlement Class Counsel shall constitute grounds for cancellation or termination of the Class Settlement Agreement.

**10.4** For the avoidance of doubt, Crystal Bay conditionally agrees and consents to certification of the Settlement Class for settlement purposes only, and within the context of the Class Settlement Agreement only. If the Class Settlement Agreement is not fully approved or is otherwise terminated for any reason, Crystal Bay reserves its right to assert any and all objections and defenses to certification of a class, and neither the Class Settlement Agreement nor anything relating to the Class Settlement Agreement, including any Court orders, shall be offered by any Person as evidence or in support of a motion to certify a class for a purpose other than the settlement set forth in this Class Settlement Agreement.

## **11 THE COURT RETAINS JURISDICTION OVER THE ACTION**

**11.1** The Settling Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Settling Parties, the Litigation, and the Settlement Agreement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

## **12 MISCELLANEOUS PROVISIONS**

**12.1** The Settling Parties and their counsel acknowledge that it is their intent to consummate this Class Settlement Agreement and agree to undertake their best efforts to effectuate and implement all terms and conditions of this Class Settlement Agreement, including taking all



steps and efforts contemplated by this Class Settlement Agreement, and any other steps and efforts which may become necessary by order of the Court or otherwise.

**12.2** The Settling Parties intend this Class Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation and with regard to the Released Parties. The Class Settlement Agreement 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 set forth in this Class Settlement Agreement 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.

**12.3** Neither the Class Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of the Class Settlement Agreement: (a) is or may be deemed to be or may be used as an admission, or evidence, of the validity or lack thereof of any of the Released Claims or of any wrongdoing or liability of any of the Released Parties including, but not limited to, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; or (b) is or may be deemed to be or may be used as an admission, or evidence, of any fault or omission of any of the Released Parties including, but not limited to, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Any of the Released Parties may file the Class Settlement Agreement 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.

**12.4** The Class 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. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

**12.5** The Class Settlement Agreement contains the entire agreement between the Settling Parties and supersedes all prior agreements or understandings between them. The terms of the Class Settlement Agreement shall be construed as if drafted jointly by all Settling Parties to this Class Settlement Agreement. The terms of the Class Settlement Agreement shall be binding upon each of the Settling Parties, their agents, attorneys, employees, successors and assigns, and upon all other Persons or entities claiming any interest in the subject matter hereof, including any Settlement Class Member.

**12.6** The Class Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Nevada, and the rights and obligations of the parties to the Class Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Nevada without giving effect to that State's choice of law principles.

**12.7** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Class Settlement Agreement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Class Settlement Agreement that cannot be resolved by negotiation and agreement by counsel for the Settling Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Class Settlement Agreement and shall retain jurisdiction for the purpose of enforcing all

terms of the Class Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Claims Administrator. As part of its agreement to render services in connection with this Settlement, the Claims Administrator shall consent to the jurisdiction of the Court for this purpose.

**12.8** The individuals signing this Class Settlement Agreement on behalf of Crystal Bay represent that they are fully authorized by Crystal Bay to enter into, and to execute, this Class Settlement Agreement on its behalf. Representative Plaintiffs' Counsel represent that they are fully authorized to conduct settlement negotiations with counsel for Crystal Bay on behalf of Representative Plaintiffs, and to enter into, and to execute, this Class Settlement Agreement on behalf of the Settlement Class, subject to Court approval.

**12.9** None of the Settling Parties shall be considered to be the primary drafter of this Class Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

**12.10** The Settling Parties agree that, subject to Paragraph 12.3 of this Agreement, this Class Settlement Agreement, and the Final Approval Order and Judgment following from the Class Settlement Agreement, will not prejudice in any way the Settling Parties' right to raise any of the arguments that the Settling Parties made in this case in any future litigation.

**12.11** In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Class Settlement Agreement shall continue in full force and effect without said provision to the extent Crystal Bay does not exercise its right to terminate under Paragraph 10 of this Class Settlement Agreement.

**12.12** If applicable, within thirty (30) days after Award payments are funded, Settlement Class Counsel shall destroy all confidential, non-public information obtained in connection with

the Litigation and Class Settlement Agreement, and certify the same.

**12.13** All notices or formal communications under this Class Settlement Agreement shall be in writing and shall be given (a) by hand delivery, (b) by registered or certified mail, return receipt requested, postage pre-paid, or (c) by overnight courier to counsel for the Settling Party to whom notice is directed at the following addresses, and also send a copy by electronic mail:

Representative Plaintiffs and the Settlement Class:	Crystal Bay:
<p>Thiago Coelho, Esq.                      WILSHIRE LAW FIRM, PLC                      3055 Wilshire Blvd., 12<sup>th</sup> Floor                      Los Angeles, CA 90010                      Tel: (213) 381-9988 Ext. 229  <a href="mailto:thiago@wilshirelawfirm.com">thiago@wilshirelawfirm.com</a></p> <p>David K. Lietz                      MILBERG COLEMAN BRYSON                      PHILLIPS GROSSMAN, PLLC                      5335 Wisconsin Avenue NW                      Suite 440                      Washington, D.C. 20015-2052                      Telephone: (866) 252-0878  <a href="mailto:dlietz@milberg.com">dlietz@milberg.com</a></p>	<p>James W. Davidson                      O'HAGAN MEYER, LLC                      1 E. Wacker Drive                      Suite 3400                      Chicago, Illinois 60601                      Telephone: (312) 422-6100  <a href="mailto:jdavidson@ohaganmeyer.com">jdavidson@ohaganmeyer.com</a></p>

Counsel may designate a change of the person to receive written notice or a change of address, from time to time, by giving written notice to all Settling Parties in the manner described in this Paragraph 12.13.

**12.14** The Representative Plaintiffs, Representative Plaintiffs' Counsel/Settlement Class Counsel, Crystal Bay and Crystal Bay's counsel may execute this Class Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all Settling Parties had signed the same instrument. Facsimile and scanned signatures shall be considered as valid

signatures as of the date signed. This Class Settlement Agreement shall not be deemed executed until signed by the Representative Plaintiffs, all Representative Plaintiffs' Counsel/Settlement Class Counsel, and by counsel for and representative(s) of Crystal Bay.

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Class Settlement Agreement to be executed on their behalf by their duly authorized counsel of record, all as of the day set forth below:

Dated: 1/18/2024, 2024

DocuSigned by:  
*Fernando Mendoza*  
23EC6BE0E483415

\_\_\_\_\_  
Fernando Mendoza, *Representative Plaintiff*

Dated: 1/18/2024, 2024

DocuSigned by:  
*Sophia Mendoza*  
5E7250D1C15E447

\_\_\_\_\_  
Sophia Mendoza, *Representative Plaintiff*

Dated: January 16, 2024



\_\_\_\_\_  
Huy Nguyen, *Representative Plaintiff*

Dated: January 17, 2024



\_\_\_\_\_  
Thiago M. Coelho

*Representative Plaintiffs' Counsel and Proposed Settlement Class Counsel*

Dated: January 15, 2024



\_\_\_\_\_  
David K. Lietz


*Representative Plaintiffs' Counsel and Proposed Settlement Class Counsel*

Dated: JANUARY 16, <sup>2024</sup>~~2023~~

  
\_\_\_\_\_  
Crystal Bay Casino, LLC, Defendant

By: ERIC ROE  
Its: GENERAL MANAGER

Dated: January 16, 2024

  
\_\_\_\_\_  
James W Davidson

*Counsel for Defendant  
Crystal Bay Casino, LLC*