

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**IN RE MARSHALL & MELHORN, LLC
DATA BREACH LITIGATION**

Case No.: 3:23-cv-01181

Judge James R. Knepp, II

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and among the following Settling Parties (as defined below): Plaintiffs Mark Hendrix and Kathryn Thiel (“Plaintiffs”), individually and on behalf of themselves and all others similarly situated, and Defendant Marshall & Melhorn, LLC (“Marshall & Melhorn” or “Defendant” and, together with Plaintiffs, the “Parties” or “Settling Parties”). The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to resolve, discharge, and settle the Released Claims and this Litigation (as defined below), upon and subject to the terms and conditions set forth below.

I. INTRODUCTION

This is a nationwide consumer class action brought by Plaintiffs on behalf of themselves and a class, as alleged in Plaintiffs’ Consolidated Class Action Complaint, of “All persons Defendant identified as being among those individuals impacted by the Data Breach, including all who were sent a notice of the Data Breach (the “Class” or “Class Members”).”

This class action arises out of the targeted cyberattack and data breach (the “Data Breach”) on Defendant’s network that resulted in unauthorized access to the sensitive data of its employees, clients, and third parties.. Specifically, Plaintiffs allege that from on or about August 20, 2021 to September 14, 2021, an unauthorized third party had gained access to Defendant’s computer

systems and exfiltrated information stored on Defendant's computer systems. On June 7, 2023, Defendant sent notice of the Data Breach to impacted individuals due notice for whom Defendant could locate addresses (the "Notice of Data Breach"). Substitute notice was provided to other individuals due notice whose addresses could not be located.

Plaintiffs allege Defendant failed to properly safeguard the information of approximately 47,000 individuals, which Plaintiffs allege was subsequently published on the internet. Defendant denies these allegations, and denies there is any evidence that any private information was published on the internet. The information allegedly stolen by the unauthorized actor contained personally identifiable information including, but not limited to, individuals' full names, Social Security number, financial account information, driver's licenses and state identification information, passport information, dates of birth, medical information, and insurance information, ("PII" or "Private Information"). Because of the Data Breach, Plaintiffs and Class Members allege that they have suffered ascertainable losses and harm in the form of invasion of privacy, the loss of the benefit of the bargain, out-of-pocket expenses, the value of their time reasonably incurred to remedy or mitigate the effects of the Data Breach, emotional distress, and the imminent risk of future harm caused by the compromise of their sensitive Private Information. Defendant denies Plaintiffs and Class Members have suffered the injuries alleged in the Consolidated Class Action Complaint.

Defendant sent notice to Plaintiffs and Settlement Class Members in or about June 2023 informing them that their Private Information may have been compromised in the Data Breach (the "Notice of Data Breach"), and each filed their respective class actions in the weeks that followed. First, on June 13, 2023, Plaintiff Mark Hendrix filed *Hendrix v. Marshall & Melhorn, LLC*, No. 2023-cv-01181 (N.D. Ohio) in the United States District Court for the Northern District

of Ohio. Second, on June 21, 2023, Plaintiff Kathryn Thiel filed *Thiel v. Marshall & Melhorn, LLC*, No. 2023-cv-01222 (N.D. Ohio). On July 21, 2023, the Court consolidated both actions into the first-filed case and re-captioned the matter *In re Marshall & Melhorn, LLC*, No. 3:23-cv-01181 (N.D. Ohio). *See* Doc. 10. Plaintiffs filed a consolidated amended complaint on August 21, 2023, alleging claims for (1) negligence; (2) negligence per se; (3) breach of implied contract, (4) breach of fiduciary duty, and (5) unjust enrichment. *See* Doc. 11.

Defendant filed a Motion to Dismiss on October 19, 2023. Doc. 13. The parties concluded briefing on December 18, 2023. Doc. 17. Following briefing on the Motion to Dismiss, the parties exchanged informal discovery and attended mediation with renowned mediator Hon. Wayne R. Andersen (Ret.) on April 30, 2024. While the mediation was unsuccessful, the parties continued to negotiate. Ultimately, the parties reached an agreement in principle on May 23, 2024. The agreed resolution or settlement is memorialized in this Settlement Agreement.

Pursuant to the terms identified below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Defendant and the Released Persons (as defined below) relating to the Data Breach and this Litigation, by and on behalf of Plaintiffs and Class Members (as defined below).

II. PLAINTIFFS' CLAIMS AND BENEFITS OF SETTLING

Plaintiffs believe the claims asserted in the Litigation, as set forth in their Consolidated Class Action Complaint (“CAC”), have merit. Plaintiffs and Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Defendant through motion practice, trial, and potential appeals. Plaintiffs and Class Counsel have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, especially in complex class actions. Class Counsel are highly experienced in class action litigation and, in particular, data breach and

privacy litigation, and have previously served as lead counsel in other Ohio data breach class actions through final approval. Plaintiffs and Class Counsel believe that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class Members.

III. DENIAL OF WRONGDOING AND LIABILITY

Defendant denies each and all of the claims and contentions alleged against it in the CAC. Defendant denies all claims, liability, damages, losses, penalties, interest, fees, restitution, and all other forms of relief that were or could have been sought in this Litigation, as well as all charges of wrongdoing or liability as alleged, or which could be alleged, as a result of the Data Breach. Nonetheless, Defendant has concluded that further litigation would be protracted and expensive, and that it is desirable that this matter be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. Defendant has considered the uncertainty and risks inherent in any litigation and in this matter. Defendant has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

Defendant has agreed to resolve this Litigation through this Settlement Agreement, but if this Settlement Agreement is deemed void or Final Approval does not occur, Defendant does not waive, but expressly reserves, all rights to challenge all such claims and allegations in the Litigation on all procedural, evidentiary, and factual grounds, including, without limitation, the ability to challenge on any grounds whether any class can be certified and to assert any and all defenses or privileges. Plaintiffs and Class Counsel agree that Defendant retains and reserves all of these rights and agree not to take a position to the contrary.

IV. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Class Members, Proposed Class Counsel, as set forth in the signature block below, and Defendant that, subject to the approval of the Court, the Released Claims (as defined below) shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties and the Class Members, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. Definitions

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

1.1 “**Administration Fees**” shall mean the fees, costs and other expenses incurred for Settlement Administration, as defined below, and includes Costs of Settlement Administration.

1.2 “**Agreement**” or “**Settlement Agreement**” means this agreement.

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

1.4 “**Claim Form**” means the form that will be used by Class Members to submit a Settlement Claim to the Settlement Administrator and that is substantially in the form as shown in **Exhibit A** to this Settlement Agreement.

1.5 “**Claimed Benefit(s)**” means the valid Settlement Claims for (a) Pro-Rata Cash Payment; and/or (b) Out-of-Pocket Expense Claims.

1.6 “**Claims Deadline**” means the postmark and/or online submission deadline for Settlement Claims pursuant to ¶ 2.1, which shall be ninety (90) days after the Notice Date (as defined below). The Claims Deadline shall clearly be set forth in the Order granting Preliminary Approval of the Settlement, as well as in the Notice and on the Claim Form.

1.7 “**Class**” means all natural persons residing in the United States who were due Notice of the Data Breach notifying them that their Private Information was compromised in the Data Breach. The Class specifically excludes: (i) all Persons who timely and validly request exclusion from the Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Breach or who pleads *nolo contendere* to any such charge.

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

1.9 “**Costs of Settlement Administration**” means all actual costs associated with or arising from Settlement Administration.

1.10 “**Court**” means the United States District Court for the Northern District of Ohio, Western Division, Judge James R. Knepp.

1.11 “**Data Incident**” (also referred to herein as “**Data Breach**”) means the targeted cyberattack on Defendant’s network in which an unauthorized third party gained access to the sensitive data of its employees, clients, and third parties from on or about August 20, 2021, until September 14, 2021 (as defined below).

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

1.13 “**Effective Date**” shall mean the date when the Settlement Agreement becomes Final, which is thirty-one (31) days after the Court’s grant of the Final Approval Order assuming no appeals have been filed. If an appeal is filed, the Effective Date will be thirty-one (31) days from when the appeal is decided and a Judgment is entered in this case.

1.2 “**Escrow Account**” means the account with Western Alliance Bank.

1.14 “**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’ fees award or Service Awards made in this case shall not affect whether the Judgment is “Final” as defined herein or any other aspect of the Judgment.

1.15 “**Final Approval Hearing**” means hearing at which the Court will determine whether to finally approve the proposed Settlement including determining whether the settlement benefits, attorneys’ fees and expenses, Class Representative Service Awards, and Settlement Administration fees and expenses are fair reasonable and adequate.

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

1.17 “**Interim Lead Counsel**” and “**Class Counsel**” means Terence R. Coates of Markovits, Stock & DeMarco, LLC, Philip J. Krzeski of Chestnut Cambronne PA, and David K. Lietz of Milberg Bryson Coleman Phillips Grossman, PLLC.

1.18 “**Judgment**” means a judgment rendered by the Court.

1.19 “**Litigation**” means this consolidated case pending in the United States District Court for the Northern District of Ohio against Defendant, *In re Marshall & Melhorn, LLC*, No. 3:23-cv-01181.

1.20 “**Long Notice**” means the long-form notice of settlement to be posted on the Settlement Website (as defined below), substantially in the form as shown in **Exhibit B** to this Settlement Agreement.

1.21 “**Notice**” or “**Notice Program**” means the notice that will be issued to the Class regarding this class action settlement including the Short Notice, Long Notice, and Settlement Website.

1.22 “**Notice Date**” means thirty (30) days after the entry of the Preliminary Approval Order, which is the date that Notice will be provided to Class Members.

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

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

1.25 “**Person**” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal

representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.26 “**Plaintiffs**” and “**Class Representatives**” mean Mark Hendrix and Kathryn Thiel.

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

1.28 “**Private Information**” as also defined in the Introduction above means Class Members’ names, Social Security numbers, financial account information, dates of birth, drivers licenses, state identification information, passport information, medical information, and insurance information.

1.29 “**Released Claims**” shall collectively mean any and all past, present, and future claims or causes of action, including Unknown Claims, that are asserted, were asserted, or could be asserted, by any Class Member against any of the Released Persons that are based upon or arising out of the alleged Data Breach. Released Claims specifically include, but are not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. § 45, *et seq.*; state consumer-protection statutes; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; and failure to provide adequate notice pursuant to any breach notification statute or common law duty. Released Claims include but are not limited to any and all claims for

damages, injunctive relief, disgorgement, declaratory relief or judgment, 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, or other legal or equitable relief, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, or direct or derivative. Released Claims shall not include the right of any 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 any Person who has timely excluded themselves from the Class.

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

1.31 “**Released Persons**” means Defendant and its Related Entities and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and clients and each of their respective predecessors, successors, directors, officers, members, employees, associate and of counsel Attorneys, principals, agents, attorneys, insurers, and reinsurers.

1.32 “**Remainder Funds**” means the funds, if any, that remain in the Settlement Fund after settlement payments for all Valid Claims (as defined below). The funds remaining in the Settlement Fund after settlement payments have been distributed and the time for cashing and/or

depositing payments has expired will be Remainder Funds. The Remainder Funds will be sent to a charitable organization jointly selected by the Parties.

1.33 “**Service Awards**” shall have the meaning ascribed to it as set forth in ¶ 7.3 of this Settlement Agreement. The Service Awards requested in this matter will be no more than \$2,500.00 to each Class Representative, subject to court approval and will be in addition to any other Settlement benefits Plaintiffs may receive. The Service Awards shall be paid from the Settlement Fund.

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

1.35 “**Settlement Administrator**” means Simpluris, Inc., a business experienced in administering class action claims of the type provided for and made in data breach litigation.

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

1.37 “**Settlement Fund**” means the non-reversionary common settlement fund established by the Settlement Administrator or Class Counsel pursuant to 26 C.F.R. § 1.468B-1 at Western Alliance Bank, in which Defendant will deposit \$800,000 in settlement funds and from which all monetary compensation to the Settlement Class and certain other expenses shall be paid.

1.38 “**Settlement Website**” is the website that will be devoted to this Settlement, will include important information about the Settlement and will be the following URL: www.marshallmelhorndatasettlement.com or a similar variation.

1.39 “**Settling Parties**” means, collectively, Defendant and Plaintiffs, individually and on behalf of the Class and all Released Persons.

1.40 “**Short Notice**” means the short-form notice of this proposed class action Settlement, substantially in the form as shown in **Exhibit D** to this Settlement Agreement. The Short Notice will direct recipients to the Settlement Website where recipients may view the Long Notice and make a claim for monetary relief. The Short Notice will also inform Class Members, *inter alia*, of the Claims Deadline, the Opt-Out Date and Objection Date, and the date of the Final Approval Hearing.

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

1.42 “**Unknown Claims**” means any of the Released Claims that any Class Member, including any Plaintiff, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall have, and each of the other Class Members intend to and shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, (or any similar, comparable, or equivalent provision of any federal, state or foreign law, or principle of common law). California Civil Code § 1542 provides:

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

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

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

2. Settlement Benefits

2.1 Claimed Benefits: All Class Members shall have the opportunity to submit a Claim Form for certain Claimed Benefits on or before the Claims Deadline. Claimed Benefits shall be paid out of the Settlement Fund. The Claimed Benefits, as described below, shall include: (a) Pro-Rata Cash Payment; and (b) Out-of-Pocket Expense Claims. Class Members may submit a Claim for any Claimed Benefit for which they qualify and may combine Claims (e.g., a Class Member may be entitled to Claimed Benefits of Pro Rata Cash Payment and/or Out-of-Pocket Expenses).

- a) Pro-Rata Cash Payment. After the distribution of Administrative Fees, Service Awards, Out-of-Pocket Expense Claims (each of which is defined below in this Section), attorneys’ fees, and Class Counsel’s litigation expenses, the Settlement Administrator will make a *pro rata* cash payment of \$70 of the remaining Settlement Fund to each Class Member who submits a Valid Claim. A Class Member is not required to provide any documentation or attestation to claim the cash payment.

- b) Out-of-Pocket Expense Claims. Class Members can submit a Claim Form for reimbursement of documented out-of-pocket losses reasonably traceable to the Data Breach up to \$5,000.00 per individual (“Out-of-Pocket Expense Claims”). Out-of-Pocket Expense Claims will include, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after September 14, 2021, through the date of claim submission that the claimant attests under penalty of perjury were caused or otherwise incurred as a result of the Data Breach; and miscellaneous expenses such as notary, data charges (if charged based on the amount of data used) fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges.

Class Members with Out-of-Pocket Expense Claims must submit documentation and an attestation supporting their claims. Documentation may include receipts or other documentation, not “self-prepared” by the claimant, that verifies the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support to other submitted documentation.

2.2 Any residual funds after payment of all class benefits, Settlement Administration fees, attorneys’ fees, costs, and Service Awards shall be used for a *pro rata* increase of the Pro

Rata Cash Payment claims set forth in Section 2.1(a) above, with no maximum payment. Any funds that remain after the distribution and reissuance of all payments from the Settlement Fund, including for settlement payments that are not cashed by the deadline to do so, will be Remainder Funds that shall be distributed to a charitable organization agreed to by the Parties, subject to Court approval.

2.3 Business Practices Changes & Confirmatory Discovery. In connection with the Parties' mediation, Marshall & Melhorn provided Plaintiffs with documentation regarding the Data Breach and the security business practice changes that Marshall & Melhorn has made to improve its information security posture following the Data Breach.

2.4 Dispute Resolution for Claims. The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the Out-of-Pocket Expense Claims described in Section 2.1; and (3) the information submitted could lead a reasonable person to conclude that it is more likely than not the claimant has suffered the claimed losses as a result of the Data Breach. The Settlement Administrator may, at any time, request from the claimant, in writing, additional information as the Settlement Administrator may reasonably require in order to evaluate the claim, e.g., documentation requested on the Claim Form, information regarding the claimed losses, and claims previously made for identity theft and the resolution thereof. For any such claims that the Settlement Administrator determines to be implausible, the Settlement Administrator will submit those claims to the Settling Parties (one Plaintiffs' lawyer and one Defense lawyer shall be designated to fill this role for all Plaintiffs and for Defendant, respectively). If the Settling Parties do not agree with the claimant's Settlement Claim, after

meeting and conferring, then the Settlement Claim shall be referred for resolution to the Settlement Administrator for final determination.

- a) Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is facially valid, the Settlement Administrator shall request additional information and give the claimant a minimum of fourteen (14) days to cure the defect before rejecting the claim. If the defect is not cured in the time permitted by the Settlement Administrator (subject to the 14-day minimum), then the claim will be deemed invalid and there shall be no obligation to pay the defective claim. The postmark date shall constitute evidence of the date of mailing for these purposes.
- b) Following receipt of additional information requested by the Settlement Administrator, the Settlement Administrator shall have ten (10) 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 Settlement 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 and evaluate the claim, then the Settlement Administrator may reject the claim without any further action. A defect in one claim shall not cause rejection of any other valid claim submitted by the claimant.
- c) Class Members shall have ten (10) days from receipt of the offer to accept or reject any offer of partial payment received from the Settlement Administrator.

2.5 Settlement Expenses. All costs for notice to the Class Members as required under ¶ 3.2, Administration Fees under ¶¶ 9.1-9.4 CAFA costs ¶¶ 1.3, and the costs of Dispute Resolution described in ¶¶ 2.4, 9.1 shall be paid out of the Settlement Fund.

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

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

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

- a) certification of the Class for settlement purposes only pursuant to ¶ 2.6;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Interim Lead Counsel as Class Counsel;
- d) appointment of Plaintiffs as Class Representatives;

- e) approval of the Short Notice to be emailed and/or mailed to Class Members in a form substantially similar to the one attached as **Exhibit D** this Settlement Agreement;
- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to the one attached as **Exhibit B** to this Settlement Agreement, which, together with the Short Notice, shall include a fair summary of the Parties' respective litigation positions, statements that the settlement and notice of settlement are legitimate and that the Class Members are entitled to benefits under the settlement, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, instructions for how to obtain the benefits from the Settlement, the process and instructions for making claims, and the date, time and place of the Final Approval Hearing;
- g) approval of a Claim Form to be used by Class Members to make a claim in a form substantially similar to the one attached as **Exhibit A** to this Settlement Agreement; and
- h) appointment of Simpluris, Inc. as the Settlement Administrator.

The Short Notice, Long Notice, and Claim Form have been reviewed and approved by the Settlement Administrator but may be revised as agreed upon by the Settling Parties before submission to the Court for approval. Immaterial revisions to these documents may also be made prior to dissemination of notice.

3.2 Costs for providing notice to the Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Administration Fees shall be paid from the Settlement Fund. Attorneys' fees, expenses of Proposed Class Counsel, and Service Awards to Class Representatives, as approved by the Court, shall also be paid from the Settlement Fund. Notice shall be provided to Class Members by the Settlement Administrator as follows:

- a) No later than fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the name and last known physical address of each Class Member due Notice that Defendant located, along with the names of the Class Members due Notice but for whom no addresses were located (collectively, "Class Member Information").
- b) The Class Member Information and its contents shall be used by the Settlement Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the Settlement as provided in this Settlement Agreement, or to provide all data and information in its possession to the Settling Parties upon request, the Settlement Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.
- c) Prior to the dissemination of the Notice, the Settlement Administrator shall establish the Settlement Website (www.marshallmelhorndatasettlement.com) that will inform Class Members of the terms of this Settlement Agreement, their rights, dates,

deadlines, and related information. The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; (v) Class Counsel's Motion for Attorney Fees, Expenses, and Contribution Awards (once filed); and (vi) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide Class Members with the ability to complete and submit the Claim Form electronically.

d) Within thirty (30) days after the entry of the Preliminary Approval Order ("Notice Date"), and subject to the requirements of this Settlement Agreement and the Preliminary Approval Order, the Settlement Administrator will provide notice to the Class through any one of the following means:

- via email to any email address located by Defendant; and,
- via mail to the postal address located by Defendant. Before any mailing under this paragraph occurs, the Settlement Administrator shall run the postal addresses of Class Members through the United States Postal Service ("USPS") National Change of Address database to update any change of address on file with the USPS; and
- for individuals for which no email or postal address can be located by Defendant and/or the Settlement Administrator, substitute notice shall be communicated by the Settlement Administrator via

print and/or electronic media through a process mutually agreed upon by Proposed Class Counsel and counsel for Defendant;

- in the event that a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Settlement Administrator shall re-send the Short Notice to the forwarding address within ten (10) days of receiving the returned Short Notice; in the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out Date and Objection Date, a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, i.e., the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Class Member in question and, if such an address is ascertained, the Settlement Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.
- e) Publishing, on or before the Notice Date, the Claim Form, Long Notice and this Settlement Agreement on the Settlement Website, as specified in

the Preliminary Approval Order, and maintaining and updating the website throughout the claim period; and,

- f) Establishing a toll-free help line with an IVR system and a live operator to provide Class Members with additional information about the settlement. The Settlement Administrator also will provide copies of the Long Notice and paper Claim Form, as well as this Settlement Agreement, upon request.

3.3 Contemporaneously with seeking Final Approval of the Settlement, Proposed Class Counsel and Defendant's Counsel shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with these provisions regarding notice.

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

3.5 Proposed Class Counsel and Defendant's counsel shall request that after notice is completed the Court hold the Final Approval Hearing and grant final approval of the settlement set forth herein.

3.6 The Settlement Administrator shall provide notice to the relevant state and federal governmental officials as required by the Class Action Fairness Act. On or before the date of the Final Approval Hearing, the Settlement Administrator shall cause to be filed a Notice of Compliance with this Section.

4. Opt-Out Procedures

4.1 Each Person wishing to opt-out of the Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator. The written notice must clearly manifest a Person's intent to opt-out of the Class.

To be effective, written notice must be postmarked no later than the Opt-Out Date, as defined in ¶ 1.19.

4.2 All Persons who submit valid and timely notices of their intent to opt-out of the Class 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 Class who do not validly opt-out of the Class shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

4.3 If the Settlement Administrator receives more than 500 Opt-Outs from the Settlement, Defendant shall have the right to terminate the Settlement Agreement in its entirety. However, Defendant shall remain responsible for the payment of any administrative or notice costs already incurred.

5. Objection Procedures

5.1 Each 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 and address; (ii) the case name and docket number, *In re Marshall & Melhorn, LLC Data Breach Litig.*, Case No. 3:23-cv-01181 (N.D. Ohio); (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., copy of the objector’s settlement notice, copy of original notice of the Data Breach, or a statement explaining why the objector believes he or she is a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and (vii) the objector’s signature or the signature of the objector’s duly

authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. To be timely, written notice of an objection in the appropriate form must be mailed, with a postmark date no later than the Objection Date, to Clerk of the Court, James M. Ashley and Thomas W.L. Ashley Courthouse, 1716 Spielbusch Ave., Toledo, Ohio 43604.

5.2 Any 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, including any claims, shall be through the provisions of ¶¶ 2.4, 5.1, 9.1. 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. Release

6.1 Upon the Effective Date, each Class Member, including 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 as against all Released Entities. Further, upon the Effective Date, and to the fullest extent permitted by law, each Class Member, including 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 of the Released Claims is asserted. Any other claims or defenses Plaintiffs and each and all of the Class Members may have against

Defendant that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Data Breach, the Litigation, or the Released Claims are specifically preserved and shall not be affected by the preceding sentences.

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

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or Service Awards to Plaintiffs until after the substantive terms of the Settlement had been agreed upon, other than that reasonable attorneys' fees, costs, expenses, and Service Awards to Plaintiffs as may be agreed to by Defendant and Class Counsel and as ordered by the Court shall be paid from the Settlement Fund. Defendant and Class Counsel then negotiated and agreed to the procedure as set forth herein.

7.2 Class Counsel will move the Court for an award of attorneys' fees not to exceed one-third (1/3) of the Settlement Fund, or approximately \$266,666.67 and litigation expenses not to exceed \$25,000.00 to be paid from the Settlement Fund. Class Counsel, in their discretion, shall allocate and distribute any amounts of attorneys' fees, costs, and expenses awarded by the Court among Class Counsel.

7.3 Subject to Court approval, Class Representatives intend to request Service Awards in the amount up to \$2,500.00 to each Class Representative, also to be paid from the Settlement Fund, as a result of their time and effort furthering the interests of the Class in this case.

7.4 If awarded by the Court, the attorneys' fees and expenses as set forth in ¶ 7.2 will be distributed to Class Counsel, within fourteen (14) days after the Effective Date, from the Escrow Account. Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Plaintiffs' Counsel and Service Awards to Plaintiffs consistent with ¶ 7.2.

7.5 The amount(s) of any award of attorneys' fees, costs, and expenses, and the Service Awards to 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 Awards ordered by the Court to Class Counsel or Plaintiffs shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

8. Settlement Fund

8.1 Deposits. Defendant agrees to make a payment of Eight Hundred Thousand Dollars and No Cents (\$800,000.00) and deposit that payment into the Escrow Account as follows: (i) Defendant shall pay Seven Hundred Thousand Dollars and No Cents (\$700,000.00) into the Escrow Account within fourteen (14) days after the later of (i) the Effective Date, and (ii) the receipt of a W-9 from the Settlement Administrator, along with wire instructions and independent verbal confirmation of the payment details; and (ii) Defendant shall pay One Hundred Thousand Dollars (\$100,000.00) into the Escrow Account within fourteen (14) days after the later of (i) the Court's entry of the Preliminary Approval Order to pay for the Administration Fees, and (ii) the receipt of a W-9 from the Settlement Administrator, along with wire instructions and independent verbal confirmation of the payment details, whichever date is later. For the avoidance of doubt, and for purposes of this Settlement Agreement, Defendant's liability shall not exceed Eight Hundred Thousand Dollars and No Cents (\$800,000.00) inclusive of the costs associated with the CAFA Notice also deducted from the Settlement Fund.

8.2 Custody of the Settlement Fund. The Settlement Fund shall be deposited into the Escrow Account, which shall be an appropriate trust established by the Settlement Administrator

but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to the Settlement Agreement or returned to those who paid the Settlement Fund in the event this Settlement Agreement is voided, terminated, or cancelled.

8.3 Treasury Regulations and Fund Investment. The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund (“QSF”) within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any taxes owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation (“FDIC”) at a financial institution determined by the Settlement Administrator and approved by the Parties. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

8.4 Taxes. All taxes relating to the Settlement Fund shall be paid out of the Settlement Fund, shall be considered an Administrative Expense, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have

made no representation or warranty with respect to any tax treatment by any Class Representative or any Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, they, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

9. Administration of Claims

9.1 The Settlement Administrator shall administer and calculate the claims submitted by Class Members under ¶ 2.1. Class Counsel and Defendant's Counsel shall be given reports as to both claims and distribution, and both shall have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Settlement Administrator's determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the Dispute Resolution process set forth in ¶ 2.4. All claims agreed to be paid in full by Defendant shall be deemed valid.

9.2 Payment of Valid Claims, whether via mailed check or electronic distribution, shall be made within thirty (30) days of the Effective Date.

9.3 All 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.

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

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

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

- a) Defendant has not exercised its option to terminate the Settlement Agreement pursuant to ¶ 4.3,
- b) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and
- c) the Judgment has become Final, as defined in ¶ 1.14.

10.2 If all conditions specified in ¶ 1.14 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated unless Class Counsel and Defendant's counsel mutually agree in writing to proceed with the Settlement Agreement.

10.3 Within fourteen (14) days after the Opt-Out Date, the Settlement Administrator shall furnish to Class Counsel and to Defendant's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

10.4 In the event that the Settlement Agreement or the releases set forth in ¶ 6.1 above are not approved by the Court or the Settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party, 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, Defendant shall be obligated to pay amounts already billed or incurred for costs of notice to the Class, Settlement Administration, and Dispute Resolution pursuant to ¶¶ 2.4, 3.2, 9.1-9.4 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.

11. Miscellaneous Provisions

11.1 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.

11.2 In the event that the aggregated amount of payments of all valid Claimed Benefits (i.e., the Pro Rata Cash Payment and/or Out-of-Pocket Expense Claims) exceeds the total amount of the Settlement Fund, then the value of the payments to be paid to each Class Member making a Valid Claim shall be reduced on a *pro rata* basis, such that the aggregate value of all payments for all claims does not exceed the Settlement Fund (after payment of all Settlement Administration Costs and Expenses, Attorneys' Fees, Expenses, and Service Awards). All *pro rata* reduction determinations shall be made by the Settlement Administrator.

11.3 The Settling Parties intend this Settlement to be a final and complete resolution of all claims and disputes between them with respect to the Data Breach and this Litigation. The Settlement compromises claims, including but not limited to all Released Claims, that are

contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the Settlement was negotiated in good faith by the Settling Parties and reflects a compromise that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth herein.

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

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

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

11.7 This Settlement Agreement, including all exhibits hereto, contains the entire understanding between Defendant and Plaintiffs, individually and on behalf of the Class and all Released Entities, regarding the payment of the Litigation settlement and supersedes all previous negotiations, agreements, commitments, understandings, and writings between the Parties in connection with the payment of the Litigation settlement. Except as otherwise provided herein, each party shall bear its own costs. This Settlement Agreement supersedes all previous agreements made between the Parties.

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

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

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

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

11.12 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in

the Settlement Agreement. The Court shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

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

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

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

11.16 If a Class Member opts to receive settlement benefits via mailed check, cashing the settlement check is a condition precedent to any Class Member’s right to receive settlement benefits. All settlement checks shall be void ninety (90) days after issuance and shall bear the language: “This check must be cashed within ninety (90) days, after which time it is void.” If a check becomes void, the 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 Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Class Member’s right to receive monetary relief shall be extinguished, and there shall be no obligation to make

payments to the Class Member for expense reimbursement or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days after the Effective Date, requests for re-issuance need not be honored after such checks become void.

11.17 The Settlement Website shall be deactivated one hundred eighty (180) days after the Effective Date.

11.18 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.

Counsel for Marshall & Melhorn, LLC

Duly Authorized Signatory

DATED this 15th day of August, 2024.

Respectfully submitted,

/s/ Philip J. Krzeski

Philip J. Krzeski
Chestnut Cambronne PA
100 Washington Avenue South, Suite 1700
Minneapolis, MN 55401
Telephone: (612) 339-7300
Facsimile: (612) 336-2940
pkrzeski@chestnutcambronne.com

/s/ Terence R. Coates

Terence R. Coates
Dylan J. Gould
Markovits, Stock & Demarco, LLC
119 E. Court Street, Suite 530
Cincinnati, OH 45202
Telephone: (513) 651-3700
Facsimile: (513) 665-0219
tcoates@msdlegal.com
dgould@msdlegal.com

/s/ David K. Lietz

David K. Lietz
Milberg Coleman Bryson
Phillips Grossman, PLLC
227 W. Monroe St., Ste. 2100
Chicago, IL 60606
Phone: (866) 252-0878
dlietz@milberg.com

Class Counsel

/s/ Mark Hendrix

Mark Hendrix

Kaitlyn Thiel

Plaintiffs

/s/ Jonathan L. Schwartz

Jonathan L. Schwartz
Freeman Mathis & Gary, LLP
33 N. Dearborn St., Ste. 1430
Chicago, IL 60602
Telephone: (773) 389-6440
jonathan.schwartz@fmglaw.com

*Attorneys for Defendant Marshall &
Melhorn, LLC*

/s/ Philip J. Krzeski

Philip J. Krzeski
Chestnut Cambronne PA
100 Washington Avenue South, Suite 1700
Minneapolis, MN 55401
Telephone: (612) 339-7300
Facsimile: (612) 336-2940
pkzeski@chestnutcambronne.com

/s/ Terence R. Coates

Terence R. Coates
Dylan J. Gould
Markovits, Stock & Demarco, LLC
119 E. Court Street, Suite 530
Cincinnati, OH 45202
Telephone: (513) 651-3700
Facsimile: (513) 665-0219
tcoates@msdlegal.com
dgould@msdlegal.com

/s/ David K. Lietz

David K. Lietz
Milberg Coleman Bryson
Phillips Grossman, PLLC
227 W. Monroe St., Ste. 2100
Chicago, IL 60606
Phone: (866) 252-0878
dlietz@milberg.com

Class Counsel

Mark Hendrix


Kaitlyn Thiel (Aug 13, 2024 16:19 EDT)

Kaitlyn Thiel

Plaintiffs

Jonathan L. Schwartz
Freeman Mathis & Gary, LLP
33 N. Dearborn St., Ste. 1430
Chicago, IL 60602
Telephone: (773) 389-6440
jonathan.schwartz@fmglaw.com

*Attorneys for Defendant Marshall &
Melhorn, LLC*

SETTLEMENT TIMELINE

<u>From Order Granting Preliminary Approval</u>	
Defendant provides list of Class Members to the Settlement Administrator	+14 days
Notice Deadline	+30 days
Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards	+76 days
Objection Deadline	+90 days
Opt-Out Deadline	+90 days
Settlement Administrator Provide List of Objections/Exclusions to the Parties' counsel	+104 days
Claims Deadline	+120 days
<u>Final Approval Hearing</u>	
Motion for Final Approval	_____, 2024
<u>From Order Granting Final Approval</u>	
Effective Date	+31 days, assuming no appeal has been taken. See definition of Final in the Agreement.
Payment of Attorneys' Fees and Expenses Class Representative Service Awards	+45 days
Payment of Claims to Class Members	+65 days
Settlement Website Deactivation	+240 days

Exhibit A

CLAIM FORM FOR THE MARSHAL & MELLHORN, LLC DATA BREACH BENEFITS

**USE THIS FORM TO MAKE A CLAIM FOR A PRO RATA CASH PAYMENT
AND/OR OUT-OF-POCKET LOSS PAYMENT**

For more information, call 1-888-888-8888 or visit the website (**WEBSITE HERE**)

Para una notificación en Español, pueda llamar 1-888-888-8888 o visitar nuestro sitio de web WEBSITE HERE.

The DEADLINE to submit this Claim Form online (or have it postmarked for mailing) is

[XXXX XX, 2024]

I. GENERAL INSTRUCTIONS

If you were notified that your private information was potentially compromised in a cybersecurity attack experienced by Defendant Marshall & Melhorn, LLC (“Marshall Melhorn” or “Defendant”), you are a Class Member. The event that caused your data to be lost is referred to here as the “Data Breach.”

The Settlement establishes a \$800,000.00 fund to compensate Class Members for their lost time and out-of-pocket losses or expenses as well as for the costs of notice and administration, and attorneys’ fees and expenses as awarded by the Court. As a Class Member, you are eligible for cash payments as reimbursement for your time and money spent in response to the Data Breach (such as money spent on credit monitoring), as well as for any money you lost as a result of incidents of fraud or identity theft caused by the Data Breach. You must fill out this claim form to receive these benefits. **You may submit a claim for one or more of these benefits. All payments for valid claims under the Settlement, including those for Pro Rata Cash Payment and Out-of-Pocket Expenses, may be reduced pro rata based on the total number of valid claims.**

The benefits are as follows:

a. Pro Rata Cash Payment

After distributing funds for the claim’s payments set forth above to claimants, as well as attorneys’ fees, Class Counsel’s litigation expenses, and Administrative Fees, if there is any money left over, the Settlement Administrator will make a pro rata settlement payment of the remaining Settlement Fund to each Settlement Class Member who submits a valid claim for a cash payment using this Claim Form.

b. Out-of-Pocket Expenses

You are eligible to receive reimbursement for money you paid to address or protect yourself from the Data Breach such as money spent on a credit monitoring service. You are also eligible to receive reimbursement for money you lost as a result of fraud or identity theft, if that money has not been reimbursed from another source. This includes:

- Unreimbursed losses relating to fraud or identity theft;
- Professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services;
- Costs associated with freezing or unfreezing credit with any credit reporting agency;
- Credit monitoring costs that were incurred on or after the Data Breach through the date of claim submission;
- Parking expenses or other transportation expenses for trips to a financial institution to address fraudulent charges or receive a replacement payment card;
- Instances of verified fraud such as fraudulent bank or credit card charges, fraudulent tax filings, fraudulent opening/closing of bank or credit accounts, unemployment filings, or other fraudulent actions taken using your information from the Data Breach; and

- Miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.
- Other expenses that are reasonably attributable to the Data Breach that were not reimbursed.

These Out-of-Pocket Expenses must be documented; you must submit copies of documents supporting your claims, such as receipts or other documentation. “Self-prepared” documents, such as handwritten receipts, will not count as documentation, but you can submit them as clarification to other, official documents.

Completing the Claim Form

This Claim Form may be submitted online at (**WEBSITE HERE**) or completed and mailed to the address below. Please type or legibly print all requested information in blue or black ink. If submitting by U.S. mail, mail your completed Claim Form, including any supporting documentation, to:

Marshall & Mellhorn Data Breach
Settlement Administrator
P.O. Box XXXX XXXXX, XX XXXXX

In order to make a claim for Out-of-Pocket Expenses, **you must** (i) fill out the information below, or fill out a separate sheet to be submitted with this Claim Form; (ii) sign the Certification at the end of this Claim Form (section III); and (iii) include reasonable documentation supporting each claimed loss along with this Claim Form. Out-of-Pocket Expenses need to be deemed fairly traceable to the Data Breach by the Settlement Administrator based on the documentation you provide and the facts of the Data Breach.

Failure to meet the requirements of this section may result in your claim being rejected by the Settlement Administrator.

<input type="checkbox"/> Other (provide detailed description).	[][] / [][] / [][][][] (mm/dd/yy)	\$ [][][][][] . [][][]	Please provide detailed description below or in a separate document submitted with this Claim Form. Your documents: _____ _____ _____
<input type="checkbox"/> Fraudulent bank or credit card charges.	[][] / [][] / [][][][] (mm/dd/yy)	\$ [][][][][] . [][][]	Examples: Account statement with unauthorized charges highlighted; correspondence with credit card company disputing the charges. Your documents: _____ _____ _____
<input type="checkbox"/> Fraudulent tax filings.	[][] / [][] / [][][][] (mm/dd/yy)	\$ [][][][][] . [][][]	Examples: Letter from IRS or state about tax fraud in your name; Accountant bill for re-filing tax return. Your documents: _____ _____ _____
<input type="checkbox"/> Opening of bank accounts and/or credit cards in your name.	[][] / [][] / [][][][] (mm/dd/yy)	\$ [][][][][] . [][][]	Examples: Notification from bank of new credit card or account; correspondence with bank about closing the account. Your documents: _____ _____ _____
<input type="checkbox"/> Government benefits taken in your name.	[][] / [][] / [][][][] (mm/dd/yy)	\$ [][][][][] . [][][]	Examples: Notification of unemployment benefits being taken; correspondence with agency regarding issue. Your documents: _____ _____ _____

If you **do not submit** reasonable documentation supporting a claim for Out-of-Pocket Expenses, or your claim for an Out-of-Pocket Expenses payment is rejected by the Settlement Administrator for any reason and you do not cure the defect, only your claim for a Pro Rata Cash Payment, if such claim is made, will be considered.

III. CERTIFICATION

By submitting this Claim Form, I certify that I am eligible to make a claim in this settlement and that the information provided in this Claim Form and any attachments are true and correct. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I understand that this claim may be subject to audit, verification, and Court review and that the Settlement Administrator may require supplementation of this Claim or additional information from me. I also understand that all claims for payments under this Settlement are subject to the availability of settlement funds and may be reduced in part or in whole, depending on the type of claim and the determinations of the Settlement Administrator.

Signature: _____

Date: _____

Print Name: _____

Exhibit B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re Marshall & Melhorn, LLC Data Breach Litigation, Case No. 3:23-cv-01181
A court has authorized this notice. This is not a solicitation from a lawyer.

If You Were Subject to the Marshall & Melhorn, LLC Data Breach and Previously Were Provided Notice of the Data Breach, You Could be Eligible for a Payment from a Class Action Settlement

- You may be eligible to receive a payment from a proposed \$800,000 non-reversionary class action settlement (the “Settlement Fund”).
- The class action lawsuit concerns a cyberattack experienced by Marshall & Melhorn between August 2021, until September 14, 2021, (the “Data Breach”) involving Marshall & Melhorn in which it was determined that an unauthorized third party may have gained access to certain Marshall & Melhorn files containing, among other things, names, Social Security numbers, and financial information (collectively referred to in this Settlement as “Private Information”). Marshall & Melhorn denies any wrongdoing and denies that it has any liability but has agreed to settle the lawsuit on a classwide basis.
- To be eligible to make a claim, you must have been provided notice of the Marshall & Melhorn Data Breach that occurred between August 2021, until September 14, 2021.
- Eligible claimants under the Settlement Agreement will be eligible to receive one, two, and/or three of the following Settlement benefits:
 - ❖ **Pro-Rata Cash Payment:** A \$70 cash payment from the Settlement Fund that will be increased or decreased *pro rata* depending on the amount remaining in the Settlement Fund after allocation of the Settlement Fund for reimbursement of documented Out-of-Pocket Expenses, attorneys’ fees and expenses, Service Awards, and Notice and Administrative Expenses; and/or,
 - ❖ **Out-of-Pocket Expenses:** Reimbursement for the actual amount of unreimbursed Out-of-Pocket Expenses or expenses up to \$5,000, with supporting documentation of the monetary losses or expenses.
- For more information or to submit a claim visit **WEBSITE HERE** or call 1-####-###-#### Monday through Saturday, between 8:30 a.m. and 5:00 p.m. C.T.
- **Please read this notice carefully. Your legal rights will be affected, and you have a choice to make at this time.**

	Summary of Legal Rights	Deadline(s)
Submit a Claim Form	The only way to receive payment.	Submitted or Postmarked on or Before _____, 2024
Exclude Yourself By Opting Out of the Class	Receive no payment. If you are a Class Member, you must exclude	Submitted or Postmarked on or Before _____, 2024

	yourself from this class action settlement in order to retain your right to bring any other lawsuit against Defendant for the same claims.	
Object to the Settlement and/or Attend the Fairness Hearing	You can write the Court about why you agree or disagree with the Settlement. The Court cannot order a different Settlement. You can also ask to speak to the Court at the Final Approval Hearing on _____, 2024 about the fairness of the Settlement, with or without your own attorney.	Received on or Before _____, 2024
Do Nothing	Receive no payment. Give up rights if you are a Class Member.	No Deadline.

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

What This Notice Contains

Basic Information 3

Who is in the Settlement 3

The Settlement Benefits—What You Get if You Qualify 4

How do You Submit a Claim 5

What Does Defendant Get 5

Excluding Yourself from the Settlement 5

Objecting to the Settlement 6

The Lawyers Representing You 7

Service Awards 7

The Court’s Fairness Hearing 8

If You Do Nothing 8

Getting More Information 8

BASIC INFORMATION

1. Why is there a notice?

The Court authorized this notice because you have a right to know about the Settlement, and all of your options, before the Court decides whether to give “final approval” to the Settlement. This notice explains the nature of the lawsuit that is the subject of the Settlement, the general terms of the

Settlement, and your legal rights and options.

Judge James R. Knepp II of the United States District Court for the Northern District of Ohio case captioned as *In Re: Marshall & Melhorn, LLC Data Breach Litigation*, Case No. 3:23-cv-01181. The individuals who brought the lawsuit, Plaintiffs Mark Hendrix and Kathryn Thiel are called the Plaintiffs. The entity being sued, Marshall & Melhorn, LLC, is called the Defendant.

2. What is this lawsuit about?

The lawsuit claims that Defendant was responsible for the Data Breach and that Plaintiffs were injured as a result of the Data Breach.

Defendant denies these claims and says it did not do anything wrong. No court or other judicial entity has made any judgment or other determination that Defendant has any liability for these claims or did anything wrong.

3. Why is this lawsuit a class action?

In a class action, one or more people called class representatives or representative plaintiffs sue on behalf of all people who have similar claims. Together, all of these people are called a class, and the individuals are called class members. One court resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiffs or Defendant. Instead, both sides agreed to the Settlement. The Settlement avoids the cost and risk of a trial and related appeals, while providing benefits to members of the Class (“Class Members”). The Class Representatives appointed to represent the Class and the attorneys for the Class (“Class Counsel,” see Question 18) think the Settlement is best for all Class Members.

WHO IS IN THE SETTLEMENT?

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

You are affected by the Settlement and potentially a member of the Class if you reside in the United States and your Private Information may have been compromised in connection with the Data Breach, including if you were mailed a notification by or on behalf of Marshall & Melhorn regarding the Data Breach.

Only Class Members are eligible to receive benefits under the Settlement. Specifically excluded from the Class are (i) all Persons who timely and validly request exclusion from the Class, (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Breach or who pleads *nolo contendere* 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-###-###-#### with questions. You may also write with questions to:

Marshall & Melhorn Settlement Administrator

address

address

WEBSITE HERE

THE SETTLEMENT BENEFITS – WHAT YOU GET IF YOU QUALIFY

7. What does the Settlement provide?

The Settlement provides that Defendant will fund the following payments up to a total of \$800,000: (a) up to \$5,000 for reimbursement of your documented Out-of-Pocket Expenses reasonably traceable to the Data Breach; and (b) a *pro rata* \$70 cash payment, subject to adjustment as set forth below.

The \$70 *pro rata* payment will be dispersed after the distribution of attorneys' fees, Class Counsel's litigation expenses, Service Awards, Notice and Administrative Expenses, and other Settlement benefits to claimants. The other Settlement benefits are also subject to *pro rata* reduction as needed in the event that the total claims exceed the \$800,000 cap on payments to be made by Defendant, and payments may also be increased on a *pro rata* basis until the Settlement Fund is distributed. Payment of (1) attorneys' fees, costs, and expenses (see Question 19) and (2) the costs of notifying the Class and administering the Settlement will also be paid out of the Settlement Fund.

8. What payments are available for reimbursement under the Settlement?

Class Members who submit a claim are eligible to receive:

- a) A potential residual cash payment of the remainder funds, which is estimated to be \$70 but may adjusted upward or downward *pro rata* based on how many other claims are made.
- b) Reimbursement of actual, documented, unreimbursed Out-of-Pocket Expenses resulting from the Data Breach (up to \$5,000 in total), such as the following incurred on or after September 14, 2021:
 - Unreimbursed losses relating to fraud or identity theft;
 - Professional fees including attorneys' fees, accountants' fees, and fees for credit repair services;
 - Costs associated with freezing or unfreezing credit with any credit reporting agency;
 - Credit monitoring costs that were incurred on or after the Data Breach through the date of claim submission;
 - Parking expenses or other transportation expenses for trips to a financial institution to address fraudulent charges or receive a replacement payment card;
 - Instances of verified fraud such as fraudulent bank or credit card charges, fraudulent tax filings, fraudulent opening/closing of bank or credit accounts, unemployment filings, or other fraudulent actions taken using your information from the Data Breach;
 - Miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and
 - Other expenses that are reasonably attributable to the Data Breach that were not reimbursed.

HOW DO YOU SUBMIT A CLAIM?

9. How do I get a benefit?

To receive a benefit under the Settlement, you must complete and submit a claim for that benefit (a “Claim”). Every Claim must be made on a form (“Claim Form”) available at **WEBSITE** or by calling **1-###-###-####**. Claim Forms will also be sent to Class Members as part of the postcard notice and tear-off Claim Form that will be mailed to Class Members. Read the instructions carefully, fill out the Claim Form, provide the required documentation, and submit it according to the instructions on the Claim Form.

10. How will claims be decided?

The Settlement Administrator will decide whether and to what extent any Claim made on each Claim Form is valid. The Settlement Administrator may require additional information. If you do not provide the additional information in a timely manner, then the Claim will be considered invalid and will not be paid.

11. When will I get my payment?

The Court will hold a Final Approval Hearing on _____, 2024 at _____ .m. EST to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals from that decision and resolving those can take time, perhaps more than a year. It also takes time for all the Claim Forms to be processed. Please be patient.

WHAT DOES DEFENDANT GET?

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

The Defendant gets a release from all claims covered by this Settlement. Thus, if the Settlement becomes final and you do not exclude yourself from the Settlement, you will be a Class Member and you will give up your right to sue Defendant and other persons (“Released Entities”) as to all claims (“Released Claims”) arising out of or relating to the Data Breach. This release is described in the Settlement Agreement, which is available at **WEBSITE HERE**. If you have any questions you can talk to the law firms listed in Question 18 for free or you can talk to your own lawyer.

EXCLUDING YOURSELF FROM THE SETTLEMENT

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

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

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

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

No. Unless you exclude yourself, you give up any right to sue Defendant (and any other Released Parties) for the claims that this Settlement resolves. You must exclude yourself from the Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you want to exclude yourself, then do not submit a Claim Form to ask for any benefit under

the Settlement.

15. How do I exclude myself from the Settlement?

To exclude yourself, send a letter that says you want to be excluded or opt-out from the Settlement in *In re Marshall & Melhorn, LLC Data Breach Litigation*, Case No. 3:23-cv-01181, United States District Court, Northern District of Ohio. The letter must: (a) state your full name, address, and telephone number; (b) contain your personal and original signature or the original signature of a person authorized by law to act on your behalf; and (c) state unequivocally your intent to be excluded from the Settlement. You must mail your exclusion request postmarked by _____, 2024, to:

Marshall & Melhorn Data Breach
Settlement Administrator
Attn: Exclusion Request
address
address

OBJECTING TO THE SETTLEMENT

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

You can tell the Court that you do not agree with the Settlement or some part of it by objecting to the Settlement. The Court will consider your views in its decision on whether to approve the Settlement. The Court can only approve or deny the Settlement and cannot change its terms. To object, you must mail your objection to the Clerk of the Court, at the mailing addresses listed below, postmarked by **no later** than the Objection Deadline, _____, 2024:

Court
Office of the Clerk James M. Ashley and Thomas W.L. Ashley U.S. Courthouse 1716 Spielbusch Avenue Toledo, Ohio (419) 213-5500

Your objection must be written and must include all of the following: (i) the objector’s full name and address; (ii) the case name and docket number, *In re Marshall & Melhorn, LLC Data Breach Litigation*, Case No. 3:23-cv-01181 (N.D. Ohio); (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., copy of the objector’s settlement notice, copy of original notice of the Data Breach, or a statement explaining why the objector believes he or she is a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and (vii) the objector’s signature or the signature of the objector’s duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection.

17. 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 are a Class Member. Excluding yourself is telling the Court that you do not want to be part of the Class and do not want to receive any payment from the Settlement. If you exclude yourself, then you have no basis to object because you are no longer a member of the Class, and the case no longer affects you. If you submit both a valid objection and a valid request to be excluded, you will be deemed to have only submitted the request to be excluded.

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this case?

Yes. The Court appointed Terence R. Coates of Markovits, Stock & DeMarco, LLC, 119 E. Court Street, Suite 530, Cincinnati, OH 45202; Philip J. Krzeski, Chestnut Cambronne, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401; and David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC, 227 W. Monroe St., St. 2100, Chicago IL 60606 as Class Counsel to represent the Class. If you want to be represented by your own lawyer, then you may hire one at your own expense.

19. How will the lawyers be paid?

Class Counsel will ask the Court for an award for attorneys' fees up to \$266,666.67 plus litigation expenses not to exceed \$25,000. Defendant has agreed not to object to any award of attorneys' fees, costs, and expenses up to those amounts, to the extent they are approved by the Court. This payment for any attorneys' fees and expenses to Class Counsel will be made out of the Settlement Fund. Any such award would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement and will be the only payment to them for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis.

Any award for attorneys' fees and expenses for Class Counsel must be approved by the Court. The Court may award less than the amount requested. Class Counsel's papers in support of final approval of the Settlement will be filed no later than _____, 2024, and their application for attorneys' fees, costs, and expenses will be filed no later than _____, 2024, and will be posted on the Settlement Website.

20. What are the Service Awards?

SERVICE AWARDS TO THE CLASS REPRESENTATIVES

The Class Representatives will request Service Awards in the amount up to \$2,500 each for their time and effort pursuing this matter on behalf of the Class and in achieving the \$800,000 non-reversionary common fund settlement. Defendant has not agreed to any Service Awards, and like the attorneys' fees and expenses, are subject to Court approval. This payment for any attorneys' fees and expenses to Class Counsel and service awards will be made out of the Settlement Fund.

THE COURT'S FINAL APPROVAL HEARING

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

The Court will hold a Final Approval Hearing at _____ m. ET on _____, 2024, at the James M. Ashley and Thomas W.L. Ashley U.S. Courthouse, 1716 Spielbusch Avenue, Toledo,

Ohio, or by remote or virtual means as ordered by the Court. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely and valid objections, then 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. After the hearing the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The hearing may be moved to a different date or time without additional notice, so Class Counsel recommend checking **WEBSITE HERE** or calling **1-###-###-####**.

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 visit the Court to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in Question 16, the Court will consider it.

23. May I speak at the hearing?

You may ask the Court for permission to speak at the final fairness hearing. To do so, you must file an objection according to the instructions in Question 16, including all the information required. Your objection must be **mailed** to the Clerk of the Court postmarked no later than **_____**, **2024**.

IF YOU DO NOTHING

24. What happens if I do nothing?

If you do nothing you will not get any money from this Settlement. If the Settlement is granted final approval and the judgment becomes final, then you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant and the other Released Parties based on any of the Released Claims related to the Data Breach, ever again.

GETTING MORE INFORMATION

25. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement itself. A copy of the Settlement Agreement is available at **WEBSITE HERE**. You may also call the Settlement Administrator with questions or to receive a Claim Form at **1-###-###-####**.

This Notice is approved by United States District Court for the Northern District of Ohio.

DO NOT CONTACT THE COURT DIRECTLY IF YOU HAVE QUESTIONS ABOUT THE SETTLEMENT. Please contact the Settlement Administrator or Class Counsel if you have any questions about the Settlement.

Exhibit C

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**IN RE MARSHALL & MELHORN, LLC
DATA BREACH LITIGATION**

Case No.: 3:23-CV-01181

Judge James R. Knepp, II

**[PROPOSED] ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Before this Court is Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion"). The Court has reviewed the Motion and Settlement Agreement between Plaintiffs and Defendant Marshall & Melhorn, LLC ("Marshall & Melhorn" or "Defendant"). After reviewing Plaintiffs' unopposed request for preliminary approval, this Court grants the Motion and preliminarily concludes that the proposed Settlement is fair, reasonable, and adequate.

IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement,¹ including the proposed notice plan and forms of notice to the Class, the appointment of Plaintiffs Mark Hendrix and Kathryn Thiel as the Class Representatives, the appointment of Class Counsel for Plaintiffs and the Class, the approval of Simpluris, Inc. ("Simpluris") as the Settlement Administrator, the various forms of class relief provided under the terms of the settlement, and the proposed method of distribution of settlement benefits are fair, reasonable, and adequate, subject to further consideration at the Final Approval

¹ All capitalized terms used in this Order shall have the same meanings as set for in the Settlement Agreement.

Hearing described below.

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

all natural persons residing in the United States who were due Notice of the Data Breach notifying them that their Private Information was compromised in the Data Breach. The Class specifically excludes: (i) all Persons who timely and validly request exclusion from the Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Breach or who pleads *nolo contendere* to any such charge.²

3. For purposes of settlement, based on the information provided: the Settlement Class is ascertainable; it consists of roughly 47,000 Class Members satisfying numerosity; there are common questions of law and fact including whether Defendant failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the Data Breach, satisfying commonality; the proposed Class Representatives' claims are typical in that they are members of the Class and allege that they have been damaged by the same conduct as the other members of the Class; the proposed Class Representatives and Class Counsel fully, fairly, and adequately protect the interests of the Class; questions of law and fact common to members of the Class predominate over questions affecting only individual members for settlement purposes; and a class action for settlement purposes is superior to other available methods for the fair and efficient adjudication of this Action.

4. The Court appoints Plaintiffs Mark Hendrix and Kathryn Thiel as the Class Representatives.

5. The Court appoints Terence R. Coates of Markovits, Stock & DeMarco, LLC;

² "Data Breach" shall mean the cyberattack Defendant experienced between August 20, 2021, until September 14, 2021, giving rise to the Litigation.

Philip J. Krzeski of Chestnut Cambronne PA; and David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC as Class Counsel for the Class.

6. The Court appoints Simpluris, Inc. as the Settlement Administrator.

7. A Final Approval Hearing shall be held before the Court on ____ [date] _____, 2024 at ____ [time] _____ for the following purposes:

- a. To determine whether the proposed Settlement is fair, reasonable, and adequate to the Class and should be approved by the Court;
- b. To determine whether to grant Final Approval, as defined in the Settlement Agreement;
- c. To determine whether the notice plan as conducted was appropriate;
- d. To determine whether the claims process under the Settlement is fair, reasonable, and adequate and should be approved by the Court;
- e. To determine whether the requested Class Counsel's combined attorneys' fees, of up to 1/3 of the Settlement Fund (\$266,666.67), and litigation expenses up to \$25,000.00, should be approved by the Court;
- f. To determine whether the request Service Awards of up to \$2,500 to each Class Representative are fair, reasonable, and adequate.
- g. To determine whether the settlement benefits are fair, reasonable, and adequate; and
- h. To rule upon such other matters as the Court may deem appropriate.

8. The Court approves, as to the form and content, the Notices (including the Short Form Notice). Furthermore, the Court approves the implementation of the Settlement Website and the proposed methods of mailing or distributing the notices substantially in the form as presented in the exhibits to the Motion for Preliminary Approval of Class Action Settlement, and finds that

such notice plan meets the requirements of Federal Rules of Civil Procedure 23 and due process, and is the best notice practicable under the circumstances, and shall constitute due and efficient notice to all persons or entities entitled to notice.

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

SETTLEMENT TIMELINE

<u>From Order Granting Preliminary Approval</u>	
Defendant provides list of Class Members to the Settlement Administrator	+14 days
Notice Deadline	+30 days
Counsel’s Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards	+76 days
Objection Deadline	+90 days
Opt-Out Deadline	+90 days
Settlement Administrator Provide List of Objections/Opt-Outs to the Parties’ counsel	+104 days
Claims Deadline	+120 days
<u>Final Fairness Hearing</u>	
Motion for Final Approval	_____, 2024
<u>From Order Granting Final Approval</u>	
Effective Date	+31 days, assuming no appeal has been taken. See definition of Final in the Agreement.
Payment of Attorneys’ Fees and Expenses Class Representative Service Awards	+45 days
Payment of Claims to Class Members	+65 days
Settlement Website Deactivation	+240 days

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

Order in accordance with the timeline being keyed on the grant of this Order.

11. Additionally, all requests to opt-out or object to the proposed Settlement must be received by the Settlement Administrator no later than 60 days after the Notice Date. Any request to opt-out of the Settlement should, to the extent possible, contain words or phrases such as “opt-out,” “opt out,” “exclusion,” or words or phrases to that effect indicating an intent not to participate in the settlement or be bound by this Agreement. Class Members who seek to Opt-Out shall receive no benefit or compensation under this Agreement.

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

(i) the objector’s full name and address; (ii) the case name and docket number, *In Re: Marshall & Melhorn, LLC Data Breach Litigation*, Case No. 3:23-cv-01181 (N.D. Ohio); (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., copy of the objector’s settlement notice, copy of original notice of the Data Breach, or a statement explaining why the objector believes he or she is a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and (vii) the objector’s signature or the signature of the objector’s duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. Any Objection failing to include the requirements expressed above will be deemed to be invalid. Furthermore, any Class Member objecting

to the Settlement agrees to submit to any discovery related to the Objection.

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

14. Pending final determination of whether the Settlement Agreement should be approved, Plaintiffs and the Class are barred and enjoined from commencing or prosecuting any claims asserting any of the Released Claims against Marshall & Melhorn.

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

IT IS SO ORDERED this ____ day of _____, 2024.

Judge James R. Knepp, II

Exhibit D

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

*In Re: Marshall & Melhorn
Data Breach Litigation c/o*

Settlement Administrator

P.O. Box XXXX

City, State Zip

NOTICE OF CLASS ACTION
SETTLEMENT

If you received a notice of a data breach from Marshall & Melhorn, LLC, you are entitled to submit a claim for monetary compensation under a class action settlement.

WEBSITE HERE

<<Barcode>>

Class Member ID: <<Refnum>>

<<FirstName>> <<LastName>>

<<BusinessName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<zip4>>

WHO IS A CLASS MEMBER?

In the lawsuit *In Re: Marshall & Melhorn, LLC Data Breach Litigation*, Case No. 3:23-cv-01181, United States District Court, Northern District of Ohio, you are a Class Member if your personal information was potentially compromised as a result of the cyber-attack that Defendant Marshall & Melhorn, LLC ("Marshall & Melhorn") experienced between August 2021, until September 14, 2021 (the "Data Breach").

WHAT ARE THE SETTLEMENT BENEFITS AND TERMS?

The Settlement establishes a \$800,000.00 fund to compensate Class Members for their out-of-pocket losses or expenses and to provide them with a pro rata cash payment as well as for the costs of notice and administration, and attorneys' fees and expenses as awarded by the Court. As a Class Member, you are eligible for cash payments as reimbursement for your time and money spent in response to the Data Breach (such as money spent on credit monitoring), as well as for any money you lost as a result of incidents of fraud or identity theft caused by the Data Breach. You must fill out this claim form to receive these benefits. **You may submit a claim for one or more of these benefits, including that you may receive each of a lost time payment, out-of-pocket loss payment, and/or pro rata cash payment. All payments for valid claims under the Settlement, including those Out-of-Pocket Expenses, may be reduced pro rata based on the total number of valid claims.** More information about the types of Claims and how to file them is available at **WEBSITE HERE** ("Settlement Website"). The Pro Rata Cash payments under the Settlement are projected to be \$70.

WHAT ARE YOUR RIGHTS AND OPTIONS?

Submit a Claim Form. To qualify for a cash payment, you must timely mail a Claim Form that is attached to this notice or timely complete and submit a Claim Form online at **WEBSITE HERE**. Your Claim Form must be postmarked or submitted online no later than _____, 2024. ("_____") is the Settlement Administrator.

Opt-Out. You may exclude yourself from the Settlement and retain your ability to sue Marshall & Melhorn on your own by mailing a written request for exclusion to the Settlement Administrator that is postmarked no later than _____, 2024. If you do not exclude yourself, then you will be bound by the Settlement and give up your right to sue regarding the Released Claims.

Object. If you do not exclude yourself, you have the right to object to the Settlement. Written objections must be signed, postmarked no later than _____, 2024, and provide the reasons for the objection. Please visit **WEBSITE HERE** for more details.

Do Nothing. If you do nothing, you will not receive a Settlement payment and will lose the right to sue regarding the released claims. You will be bound by the Court's decision because this is a conditionally certified class action.

Attend the Final Approval Hearing. The Court will hold a **Final Approval Hearing at _____ m. ET on _____, 2024** to determine if the Settlement is fair, reasonable, and adequate. All persons who timely object to the Settlement may appear at the Final Approval Hearing.

Who are the attorneys for the Plaintiffs and the proposed Class? The Court appointed: Terence R. Coates of Markovits, Stock & DeMarco, LLC, 119 E. Court Street, Suite 530, Cincinnati, OH 45202; Philip J. Krzeski, Chestnut Cambronne, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401; and David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC, 227 W. Monroe St., St. 2100, Chicago IL 60606 as Class Counsel to represent the Class.

Do I have any obligation to pay attorneys' fees or expenses? No. The attorneys' fees and expenses will be paid exclusively from the Settlement Fund as awarded and approved by the Court. The attorneys' fees will be in an amount up to \$266,666.67 and the expenses will not exceed \$25,000. The Attorneys' Fee and Expense Application will be posted on the Settlement Website after it is filed with the Court. Plaintiffs will also seek Class Representative Service Awards in the amount of up to \$2,500 for each Class Representative, subject to Court approval.

Who is the Judge overseeing this settlement? Judge James R. Knepp, II of the United States District Court for the Northern District of Ohio

Where may I locate a copy of the settlement agreement, learn more about the case, or learn more about submitting a Claim? Please visit **WEBSITE HERE**.

*** Please note that if you wish to submit a claim for compensation for out-of-pocket expenses on the attached Claim Form, you will likely need to submit your claim online so you may attach all information necessary to support your request for payment. A longer version of the Claim Form may be accessed on the Settlement Website.

This Notice is a summary of the proposed Settlement.

*In Re: Marshall & Melhorn,
LLC Data Breach Litigation*
c/o Settlement Administrator
P.O. Box XXXX
City, State Zip