

Proposed Order Approving Class Action Settlement

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 JENNIFER MIRANDA and PATRICIA
4 TERRY, on behalf of themselves and all others
5 similarly situated,

6 Plaintiffs,

7 v.

8 GOLDEN ENTERTAINMENT (NV), INC.,

9 Defendant.

Case No.: 2:20-cv-00534-APG-DJA

**[PROPOSED] ORDER APPROVING
CLASS ACTION SETTLEMENT**

10 WHEREAS, the Parties have entered into the Stipulation of Class Action Settlement, with
11 its attached exhibits (collectively, the “Agreement”), signed and filed with this Court on October
12 12, 2020, to settle *Miranda, et al. Golden Entertainment (NV), Inc.*, Case No. 2:20-cv-00534-
13 APG-DJA pending in the United States District Court for the District of Nevada (the “Action”).

14 WHEREAS, by Order dated December 17, 2020 (the “Preliminary Approval Order”), this
15 Court granted preliminary approval of the proposed class action settlement between the parties in
16 the Action, ordering the dissemination of Class Notice to potential Class Members, providing
17 potential Class Members with an opportunity either to exclude themselves from the Class or to
18 object to the proposed settlement, and issuing related Orders.

19 WHEREAS, the Court also preliminarily certified a Class, for settlement purposes only,
20 approved the procedure for giving notice and forms of notice, and set a Fairness Hearing to take
21 place on May 12, 2021. On that date, the Court held a duly noticed Fairness Hearing to consider:
22 (1) whether the terms and conditions of the Agreement are fair, reasonable, and adequate; (2)
23 whether a judgment should be entered dismissing Plaintiffs’ complaint on the merits and with
24 prejudice in favor of Defendant and the Released Parties and against all persons who are Class
25 Members pursuant and subject to the terms of the Agreement; (3) whether and in what amount to
26 award Incentive Awards to Plaintiffs; and (4) whether and in what amount to award Attorneys’
27 Fees and Expenses to Plaintiffs’ Counsel.

28 WHEREAS, the Court, having considered the papers submitted by the Parties and by all

1 other persons who timely submitted papers in accordance with the Preliminary Approval Order,
2 and having heard oral presentations by the Parties and all persons who complied with the
3 Preliminary Approval Order, and based on all of the foregoing, together with this Court's
4 familiarity with the Action, it is hereby **ORDERED, ADJUDGED, AND DECREED** as
5 follows:

6 1. Use of Capitalized Terms. Except where otherwise noted, all capitalized terms
7 used in this Final Order Approving Class Action Settlement shall have the meanings attributed to
8 them in the Agreement.

9 2. Incorporation of Other Documents. This Final Order Approving Class Action
10 Settlement incorporates and makes a part hereof: (a) the Agreement, including all amendments
11 and exhibits thereto, and definitions included therein, which was signed and filed with this Court
12 on October 12, 2020; (b) the briefs, affidavits, declarations, and other materials filed in support of
13 the Settlement and Plaintiffs' Counsel's request for an award of Attorneys' Fees and Expenses;
14 (c) the record at the Fairness Hearing; (d) the documents listed on the docket sheet or otherwise
15 submitted to the Court; and (e) all prior proceedings in the Action.

16 3. Jurisdiction. The Court has personal jurisdiction over the Parties, and because due,
17 adequate, and practicable notice has been disseminated and all potential Class Members have
18 been given the opportunity to exclude themselves from or object to this Settlement, the Court has
19 personal jurisdiction over all Class Members (as defined below and in the Agreement). The
20 Court has subject matter jurisdiction over the claims asserted in the Action pursuant to 28 U.S.C.
21 §§ 1332 and 1367, including, without limitation, jurisdiction to approve the proposed Settlement
22 and the Agreement and all exhibits attached thereto, grant final certification of the Class for
23 settlement purposes, settle and release all claims arising out of the transactions alleged in this
24 Action, dismiss the Action on the merits and with prejudice, and issue related orders. The Court
25 finds that venue is proper in this district pursuant to 28 U.S.C. § 1391.

26 4. Final Class Certification for Settlement Purposes Only. The Class preliminarily
27 certified by this Court is hereby finally certified, for settlement purposes only, under Rules 23(a)
28 and(b)(3) of the Federal Rules of Civil Procedure ("FRCP"), the Court finding that the Class fully

1 satisfies all the applicable requirements of FRCP 23 and due process. The Class shall consist of
2 all customers, vendors, and current and former employees of Golden to whom Golden mailed
3 notice that between May 30, 2019, and October 6, 2019, Golden was the target of a cyberattack in
4 which third parties sent phishing emails to Golden’s employees in the hopes of gaining access to
5 Golden’s computer systems and might have resulted in unauthorized parties accessing personal
6 information. The Settlement Class specifically excludes: (i) Golden and its respective officers and
7 directors; (ii) all Settlement Class Members who timely opt-out of the settlement; (iii) the judge
8 assigned to evaluate the fairness of this settlement; and (iv) any other person found by a court of
9 competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting
10 the criminal activity occurrence of the Phishing Attack or who pleads nolo contendere to any such
11 charge.

12 5. Requests for Exclusion. The Court finds that one Class Member, Kevin Berghel,
13 has submitted a valid request for exclusion from the Class, and, accordingly, all Class Members
14 other than Mr. Berghel shall be bound by this Order.

15 6. Adequacy of Representation. The Court designates Plaintiffs as representatives of
16 the Class and finds that these Plaintiffs have adequately represented the Class for purposes of
17 entering into and implementing the Agreement. The Court appoints the law firm of Bursor &
18 Fisher, P.A. as counsel for the Class (“Plaintiffs’ Counsel”). For purposes of these settlement
19 approval proceedings only, the Court finds that Bursor & Fisher, P.A. are experienced and
20 adequate Plaintiffs’ Counsel. Plaintiffs and Plaintiffs’ Counsel have satisfied the requirements of
21 FRCP 23(a)(4) and 23(g).

22 7. Class Notice. The Court finds that the dissemination of the Class Notice in
23 accordance with the terms of the Agreement and this Court’s Preliminary Approval Order, as
24 described in the Settlement Administrator’s Declaration filed before the Fairness Hearing, a copy
25 of which is incorporated herein and made a part hereof:

26 a. constituted the best practicable notice to Class Members under the
27 circumstances of the Action;

1 b. constituted notice that was reasonably calculated, under the circumstances,
2 to apprise Class Members of (i) the pendency of this class action; (ii) the terms of the proposed
3 Settlement; (iii) their rights under the proposed Settlement; (iv) their right to exclude themselves
4 from the Class and the proposed Settlement; (v) their right to object to any aspect of the proposed
5 Settlement (including, but not limited to, final certification of the Class, the fairness,
6 reasonableness or adequacy of the proposed Settlement, the adequacy of the Class’ representation
7 by Plaintiffs or Plaintiffs’ Counsel, and/or the award of attorneys’ fees and expenses and
8 representative awards); (vi) their right to appear at the Fairness Hearing—either on their own or
9 through counsel hired at their own expense—if they did not exclude themselves from the Class;
10 and (vii) the binding effect of the Orders and Final Judgment in this Action, whether favorable or
11 unfavorable, on all persons who did not request exclusion from the Class;

12 c. constituted notice that was reasonable, due, adequate, and sufficient to
13 inform all persons and entities entitled to be provided with notice; and

14 d. constituted notice that fully satisfied all applicable requirements of the
15 FRCP, including FRCP 23(c)(2) and (e), the United States Constitution (including the Due
16 Process Clause), the Rules of this Court, and any other applicable law, and that complied with the
17 Federal Judicial Center’s illustrative class action notices.

18 8. CAFA Notice. The Court finds that Defendant provided notice of the proposed
19 Settlement to the appropriate state and federal government officials pursuant to 28 U.S.C. § 1715.
20 Furthermore, the Court has given the appropriate state and federal government officials the
21 requisite ninety (90) day time period (pursuant to the Class Action Fairness Act of 2005
22 (“CAFA”), 28 U.S.C. § 1715(d)) to comment or object to the proposed settlement before entering
23 its Orders and Final Judgment, and no such objections or comments were received.

24 9. Final Settlement Approval. The terms and provisions of the Agreement, including
25 any and all amendments and exhibits, have been entered into in good faith and are hereby fully
26 and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of
27 the Parties and the Class Members, and in full compliance with all applicable requirements of the
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1 FRCP, CAFA, the United States Constitution (including the Due Process Clause), and any other
2 applicable law.

3 The Court finds that the Agreement is fair, adequate, and reasonable based on the
4 following factors, among other things:

5 a. There was no fraud or collusion underlying this Settlement, and it was
6 reached as a result of extensive arm’s-length negotiations, occurring over the course of five
7 months. *See, e.g., Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982);
8 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011); *Lee v. Enterprise*
9 *Leasing Co.-West*, 2015 WL 2345540, at *5 (D. Nev. May 15, 2015).

10 b. The complexity, expense, and likely duration of the litigation favor
11 settlement—which provides meaningful benefits on a much shorter time frame than otherwise
12 possible—on behalf of the Settlement Class. *See, e.g., Lane v. Facebook, Inc.*, 696 F.3d 811, 820
13 (9th Cir. 2012) (affirming the district court’s approval of a settlement where Plaintiffs’ Counsel
14 “reasonably concluded that the immediate benefits represented by the Settlement outweighed the
15 possibility—perhaps remote—of obtaining a better result at trial”); *Class Plaintiffs v. Seattle*, 955
16 F.2d 1268, 1276 (9th Cir. 1992) (the Ninth Circuit has a “strong judicial policy that favors
17 settlements, particularly where complex class action litigation is concerned”). Data breach cases
18 such as this one are particularly complex and risky, further favoring settlement. *Fox v. Iowa*
19 *Health System*, 2021 WL 826741, at *5 (W.D. Wisc. Mar. 4, 2021) (“Data breach litigation is
20 evolving; there is no guarantee of the ultimate result.”); *Gordon v. Chipotle Mexican Grill, Inc.*,
21 2019 WL 6972701, at *1 (D. Colo. Dec. 16, 2019) (“Data breach cases such as the instant case
22 are particularly risky, expensive, and complex.”); *In re Sonic Corp. Customer Data Sec. Breach*
23 *Litig.*, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) (“Data breach litigation is complex
24 and risky.”). Those risks are exacerbated at class certification due to the “dearth of precedent” on
25 non-settlement data breach classes. *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 318
26 (N.D. Cal. 2018). Indeed, as far as Class Counsel knows, only one non-settlement data-breach
27 class has been certified under FRCP (b)(3) to date. *Id.* (citing *Smith v. Triad of Ala., LLC*, 2017
28 WL 1044692, at *16 (M.D. Ala. Mar. 17, 2017)). “Moreover, multiple federal courts around the

1 country had denied bids to certify classes in data-breach cases.” *In re Anthem, Inc. Data Breach*
2 *Litig.*, 2018 WL 3960068, at *12 (N.D. Cal. Aug. 17, 2018).

3 c. The support of Plaintiffs’ Counsel, who are highly skilled in class action
4 litigation such as this, and the Plaintiffs, who have participated in this litigation and evaluated the
5 proposed settlement, also favors final approval. *See Class Plaintiffs*, 955 F.2d at 1291;
6 *Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856, at *7 (C.D. Cal. July 21, 2008);
7 *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979).

8 d. The Settlement provides meaningful relief to the Class, including cash
9 relief, and certainly falls within the range of possible recoveries by the Class.

10 There are no timely or valid objections to the Settlement. The Settlement is approved.
11 The Parties and Class Members are hereby directed to implement and consummate the Agreement
12 in accordance with its terms and provisions. Plaintiffs’ Counsel shall take all steps necessary and
13 appropriate to provide Class Members with the benefits to which they are entitled under the terms
14 of the Agreement.

15 10. Settlement Consideration.

16 a. Defendant shall pay any Court-ordered Attorneys’ Fees and Expenses,
17 Plaintiffs’ incentive awards, any and all Settlement Administration Expenses separately from the
18 Settlement Agreement. The claims submitted by Class Members shall be administered and
19 implemented by Heffler Claims Group, LLC under the terms set forth in the Settlement
20 Agreement.

21 11. Binding Effect. The terms of the Agreement and of this Order shall be forever
22 binding on the Parties and all Class Members who have not submitted valid exclusion requests, as
23 well as their heirs, guardians, executors, administrators, representatives, agents, attorneys,
24 partners, successors, predecessors-in interest, and assigns (“Releasing Parties”), and those terms
25 shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits or
26 other proceedings maintained by or on behalf of any such persons, to the extent those claims,
27 lawsuits or other proceedings involve matters that were or could have been raised in the Action or
28 are otherwise encompassed by the Release set forth in the Agreement.

1 12. Release. The following Release, which is also set forth in Section 6 of the
2 Agreement, is expressly incorporated herein in all respects, including all defined terms used
3 therein, is effective as of the date of this Order, and forever discharges the Released Persons from
4 any claims or liabilities arising from or related to the Released Claims:

5 a. Upon the Effective Date, the Releasing Parties shall be deemed to have,
6 and by operation of the Final Order and Final Judgment shall have, fully, finally and forever
7 released, relinquished, and discharged all Released Claims against the Released Persons.

8 b. In connection with such waiver and relinquishment, the Releasing Parties
9 hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims
10 or facts in addition to or different from those that they now know or believe exist with respect to
11 Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release
12 all of the Released Claims, whether known or unknown, suspected or unsuspected, that they have
13 against the Released Parties. In furtherance of such intention, the Release herein given by the
14 Releasing Parties shall be and remain in effect as a full and complete general release
15 notwithstanding the discovery or existence of any such additional different claims or facts.
16 Plaintiffs and Class Members are not releasing any claims for personal injuries. Plaintiffs
17 acknowledge, and the Class Members shall be deemed by operation of the Final Judgment to have
18 acknowledged, that the foregoing waiver was separately bargained for and constitutes a material
19 element of the Settlement of which this Release is a part.

20 13. Permanent Injunction. Excluding those individuals who have timely and validly
21 opted-out of the Settlement, all Class Members and/or their representatives are hereby
22 permanently barred and enjoined from bringing, filing, commencing, prosecuting, maintaining,
23 intervening in, participating in, continuing or receiving any benefits from, as class members or
24 otherwise, any lawsuit (including putative class actions), arbitration, administrative, regulatory or
25 other proceeding in any jurisdiction that is covered by the Release. All Class Members and all
26 persons in active concert or participation with Class Members are permanently barred and
27 enjoined from organizing or soliciting the participation of any Class Members who did not timely
28 exclude themselves from the Class into a separate class or group for purposes of pursuing a

1 putative class action, any claim or lawsuit in any jurisdiction that is covered by the Release.
2 Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this permanent
3 injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority
4 over the Action. However, Class Members do not waive their right to contact, in any way or for
5 any purpose, any state or federal agency regarding the activities of any Party, nor do they waive
6 any right to enjoy any benefits obtained by a state or federal agency.

7 14. Enforcement of Settlement. Nothing in this Order shall preclude any action to
8 enforce the terms of the Agreement; nor shall anything in this Order preclude Plaintiffs or other
9 Class Members from participating in the claims process described in the Agreement if they are
10 entitled to do so under the terms of the Agreement.

11 15. Attorneys' Fees and Expenses and Plaintiffs' Incentive Awards. The Court is
12 concurrently issuing a separate Order with respect to Attorneys' Fees and Expenses and the
13 Incentive Awards to the representative Plaintiffs, entitled Final Order Approving Attorneys' Fees
14 and Expenses and Incentive Awards.

15 16. Modification of Settlement Agreement. The Parties are hereby authorized, without
16 needing further approval from the Court, to agree to written amendments, modifications, or
17 expansions of the Agreement and its implementing documents (including all exhibits) without
18 further notice to the Class or approval by the Court if such changes are consistent with this Order
19 and do not materially alter, reduce, or limit the rights of Class Members under the Agreement.

20 17. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and the
21 Final Order Approving Attorneys' Fees and Expenses and Incentive Awards. Without in any way
22 affecting the finality of these Final Orders and/or the accompanying Final Judgment, this Court
23 expressly retains jurisdiction as to all matters relating to the administration, consummation,
24 enforcement, and interpretation of the Agreement, of these Final Orders, and for any other
25 necessary purpose, including, without limitation (*see Kokkonen v. Guardian Life Ins. Co. of Am.*,
26 511 U.S. 375, 381-82 (1994)):

27 a. enforcing the terms and conditions of the Agreement and resolving any
28 disputes, claims or causes of action that, in whole or in part, are related to or arise out of the

1 Agreement, this Order or the Final Order Approving Attorneys' Fees and Expenses and Incentive
2 Awards (including, without limitation, whether a person or entity is or is not a Class Member; and
3 whether claims or causes of action allegedly related to this case are or are not barred by this
4 Order; and whether persons or entities are enjoined from pursuing any claims against Defendant);

5 b. entering such additional Orders, if any, as may be necessary or appropriate
6 to protect or effectuate this Order and the Final Order Approving Attorneys' Fees and Expenses
7 and Incentive Awards (including, without limitation, orders enjoining persons or entities from
8 pursuing any claims against Defendant), or dismissing all claims on the merits and with prejudice,
9 and permanently enjoining Class Members from initiating or pursuing related proceedings, or to
10 ensure the fair and orderly administration of this settlement; and

11 c. entering any other necessary or appropriate Orders to protect and effectuate
12 this Court's retention of continuing jurisdiction; provided, however, that nothing in this paragraph
13 is intended to restrict the ability of the Parties to exercise their rights as provided in the
14 Agreement.

15 18. No Admissions. Neither this Order nor the Agreement (nor any other document
16 referred to herein, nor any action taken to carry out this Order) is, may be construed as, or may be
17 used as an admission or concession by or against Defendant or the Released Persons of the
18 validity of any claim or defense or any actual or potential fault, wrongdoing, or liability
19 whatsoever or the propriety of class certification. Defendant continues to deny that the Action
20 meets the requisites for class certification under FRCP 23 for any purpose other than settlement.
21 Entering into or carrying out the Agreement, and any negotiations or proceedings related to it,
22 shall not in any event be construed as, or deemed evidence of, an admission or concession as to
23 Defendant's denials or defenses and shall not be offered or received in evidence in any action or
24 proceeding against any Party hereto in any court, administrative agency, or other tribunal for any
25 purpose whatsoever, except as evidence of the Settlement or to enforce the provisions of this
26 Order and the Settlement Agreement; provided, however, that this Order and the Agreement may
27 be filed in any action by or against Defendant or Released Parties to support a defense of res
28 judicata or collateral estoppel.

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19. Dismissal. The Action (including all individual and Class claims presented therein) are hereby dismissed on the merits and with prejudice, without fees or costs to any Party except as otherwise provided in this Order, the Final Order Approving Attorneys' Fees and Expenses and Incentive Awards, and the Agreement.

20. Occurrence of Terminating Conditions. In the event that the Effective Date does not occur, certification shall be automatically vacated and this Order, the Final Order Approving Attorneys' Fees and Expenses and Incentive Awards, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

DATED: _____

UNITED STATES DISTRICT JUDGE