

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

J.W., a Minor, by and through her guardian
Angela Johnson, CRYSTAL SCHULTZ,
MICHELE EUSEBE, JUSTIN MEDINA,
ARTHUR PODROYKIN, and KATHERINE
CHAUDHRY, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

LIVANOVA USA, INC.,

Defendant.

CIVIL ACTION NO. 4:24-CV-02250

**PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, APPLICATION FOR ATTORNEYS' FEES, COSTS AND
SERVICE AWARDS TO PLAINTIFFS AND MEMORANDUM IN SUPPORT**

Pursuant to Fed. R. Civ. P. 23, Plaintiffs¹ respectfully submit this Motion for Final Approval of Class Action Settlement and Application for Attorneys' Fees, Costs, and Services Awards, supported by a Joint Declaration of Class Counsel ("Joint Decl."), attached as *Exhibit B*, and a Declaration of the Settlement Administrator ("Admin. Decl."), attached as *Exhibit C*.

I. INTRODUCTION

On December 6, 2024, this Court preliminarily approved the Settlement between Plaintiffs and Defendant LivaNova USA, Inc. resolving all disputes arising from the Data Security Incident. *See* ECF No. 31. The Agreement provides for substantial Settlement Class Member Benefits for approximately 129,000 individuals, including: (1) a non-reversionary, all cash \$1,205,000.00 Settlement Fund, from which Settlement Class Members may elect to receive Cash Payments and

¹ All capitalized terms used herein shall have the same meanings as those defined in the Settlement Agreement, attached as *Exhibit A*.

Credit/Data Monitoring; and (2) non-monetary relief consisting of comprehensive cybersecurity improvements. Agreement ¶ 62.

Plaintiffs and Class Counsel now move the Court for Final Approval and apply for an award of attorneys' fees and costs and Service Awards for the Class Representatives. The Settlement satisfies all Final Approval criteria. Currently, there are zero objections and zero Settlement Class members have opted-out. Admin. Decl. ¶¶ 14-15. This overwhelmingly positive response affirms the Court's initial conclusion that the Settlement is fair, reasonable, and adequate. Class Counsel has fully evaluated the strengths, weaknesses, and equities of the Parties' respective positions, and believe the Settlement fairly resolves their differences. The Court should grant Final Approval of the Settlement and Class Counsel's Application for Attorneys' Fees, Costs, and Service Awards.

II. INCORPORATION BY REFERENCE

In the interest of judicial efficiency, for factual and procedural background on this case, Plaintiffs refer this Court to and hereby incorporate Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 30) and its accompanying exhibits.

III. SUMMARY OF THE SETTLEMENT

Plaintiffs seek Final Approval for the Settlement Class defined as "All persons in the United States whose Private Information was potentially compromised as a result of the Data Security Incident." Agreement ¶ 62. Excluded from the Settlement Class are all persons who are governing board members of Defendant; governmental entities; the Court, Court's immediate family, and Court staff; and any individual who timely and validly opts-out of the Settlement. *Id.*

A. Settlement Consideration

The Settlement's non-reversionary all cash \$1,205,000.00 Settlement Fund will be the total sum paid by Defendant to settle this Action and will be used to pay: (1) all Settlement Class

Member Benefits; (2) all Settlement Administration Costs; (3) any Service Awards to Class Representatives; and (4) any attorneys' fees and costs awarded to Class Counsel. Agreement ¶ 70.

1. Cash Payments

Cash Payment A – Documented Losses. Settlement Class Members may elect a Cash Payment for up to \$5,000.00 (subject to *pro rata* increase or decrease based upon total value of all Valid Claims) per Settlement Class Member. *Id.* ¶ 74. Settlement Class Members must elect Cash Payment A on the Claim Form attesting under penalty of perjury to incurring documented Data Security Incident related losses and submitting reasonable supporting documents. *Id.* Settlement Class Members will not be reimbursed for expenses reimbursed for the same expenses by another source, including compensation provided in connection with the credit monitoring and identity theft protection product offered as part of Defendant's notification letter or otherwise. *Id.* If a Settlement Class Member does not submit reasonable documentation supporting a loss, or if the Claim is rejected by the Settlement Administrator for any reason, and the Settlement Class Member fails to cure, the Claim will be rejected, and the Settlement Class Member's Claim will be treated as if he or she elected Cash Payment B. *Id.*

Cash Payment B – Flat Cash Payment. As an alternative to Cash Payment A, a Settlement Class Member may elect to receive Cash Payment B, a flat cash payment estimated to be \$100.00 (subject to *pro rata* increase or decrease based upon total Valid Claims). *Id.*

2. Credit/Data Monitoring

In addition to a Cash Payment, Settlement Class Members may elect up to three years of Credit/Data Monitoring with one credit bureau, valued at \$90.00 per year. *Id.*

4. Business Practice Changes

Defendant has provided Plaintiffs with assurances that it has undertaken or will undertake

reasonable steps to further secure its systems and environments such that the improvements made or which will be made will protect Settlement Class members' information from future unauthorized disclosure. *Id.* ¶ 76.

5. Releases

The Releasing Parties will release the Released Parties for claims relating to the Data Security Incident. *Id.* ¶ 113. Regardless of whether they submit a Valid Claim, Settlement Class Members who do not opt-out of the Settlement will release all claims, whether known or unknown. *Id.* ¶¶ 113-117. The Releases are narrowly tailored to the claims in the Action. Joint Decl. ¶ 13.

6. Funds Remaining After Distribution

The Settlement is designed to exhaust the Settlement Fund. *Id.* ¶ 112. However, if funds remain from uncashed checks 20 days following the 180-day check negotiation period, a subsequent payment will be evenly made to all Settlement Class Members with approved Claims for Cash Payments who cashed or deposited the initial payment, provided the average check amount is at least \$3.00. Distribution of the remaining amounts in the Settlement Fund shall continue up to a maximum of \$500 for any Settlement Class Member until the average check or digital payment is less than \$3.00, whereupon all remaining funds shall be distributed *cy pres* to a Court approved recipient. *Id.* Plaintiffs recommend the Texas Bar Foundation (<https://txbf.org/>).

IV. NOTICE PROGRAM, CLAIMS, OPT-OUTS, AND OBJECTIONS

A. Notice Program Satisfies Rule 23 and Due Process

The Settlement Administrator implemented the Notice Program. *See generally* Admin. Decl.; Joint Decl. ¶ 26. Postcard Notices were sent to all Settlement Class members for whom a physical address was known by the Defendant; and Email Notices were sent for those whose physical addresses were not known, but an email address was available. *Id.* Those Settlement Class

members whose emails bounced-back or were otherwise undeliverable received a Postcard Notice. *Id.* A Long Form Notice with greater detail is also available on the Settlement Website or by mail upon request by a Settlement Class member. Admin. Decl. ¶ 9. Postcard Notices returned as undeliverable were re-mailed to any new address available through USPS information or to better addresses that were found using a third-party address lookup service. *Id.* ¶ 6. As of February 18, 2025, individual notice efforts have reached approximately 74.77% of the Settlement Class members. *Id.* ¶ 16. Further, to ensure the best notice practicable, Notice by digital publication was accomplished to capture the awareness of any Settlement Class members who may not have received an Email Notice or Postcard Notice. *Id.* ¶ 10.

The Postcard Notice and Email Notice clearly and concisely summarized the Settlement and the Settlement Class members' legal rights, and directed them to the Settlement Website for additional information, including the Long Form Notice and Settlement Agreement and how to submit a Claim. *Id.* Ex. 1-2. The publication notice also provided this information. *Id.*, Ex. 4.

The Settlement Administrator established a dedicated Settlement Website for Settlement Class Members to obtain detailed information about the Action, review important documents and relevant dates and provides contact information for the Settlement Administrator. *Id.* ¶ 11. As of February 17, 2025, there have been 30,186 visits to the Settlement Website. *Id.* The Settlement Administrator also established a toll-free telephone line for the Settlement Class to call with Settlement-related inquiries and answer frequently asked questions of individuals in the Settlement Class who call with or otherwise communicate such inquiries. *Id.* ¶ 12. As of February 17, 2025, there have been 635 calls to the toll-free line for a total of 2,333 minutes. *Id.*

The Notice Program provided was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present

their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The Notice conveyed the required information to the Settlement Class, allowing reasonable time for those interested in making an appearance to do so. “There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements.” *O’Donnell v. Harris Cnty., Texas*, No. CV H-16-1414, 2019 WL 4224040, at *26 (S.D. Tex. Sept. 5, 2019). Instead, a settlement notice need only satisfy the broad reasonableness standards imposed by due process. *Id.* Here, the Notice adequately informed Settlement Class Members of the nature of the Action, the Settlement Class definition, the claims at issue, the Settlement Class member’ rights to object or opt-out, and/or enter an appearance through an attorney, and the binding effect of Final Approval and class judgment. *See* Admin. Decl., Ex. 1-3, 5. The Notice utilized clear and concise language that is easy to understand. Moreover, the Settlement Administrator—with the assistance of the Parties—took all necessary measures to ensure Notice reached as many of the Settlement Class Members as possible. Direct notice reached 74.44% of the Settlement Class. *Id.* ¶ 16. Such notice complies with the program approved by this Court in its Preliminary Approval Order, meets due process considerations, and weighs in favor of Final Approval. *Id.* ¶ 17.

B. Claims, Opt-Outs, and Objections

The Claim submission process was structured to give all Settlement Class members adequate time to review the Settlement terms, submit their Claims, and decide whether to opt-out of or object to the Settlement. Joint Decl. ¶ 27. The opt-out and objection deadline is March 5, 2025. Agreement ¶¶ 47-48. As of February 17, 2025, the Settlement Administrator has received 1,663 Claim Forms, zero opt-out requests and zero objections. Admin. Decl. ¶¶ 13=15. Claim Forms are still subject to final audits, including a full assessment of each Claim’s validity and a review for duplicate submissions. *Id.* Class Counsel will update the Court with the final results of

the Notice Program at the Final Approval Hearing, including responding to an objection, if one is filed.

V. SETTLEMENT CLASS CERTIFICATION

The Court granted Preliminary Approval on December 6, 2024. ECF No. 30-31. In the Court's Preliminary Approval Order, the Court, for settlement purposes only, preliminarily certified the Action as a class action for the Settlement Class, finding prerequisites of numerosity, commonality, typicality, adequacy, predominance, and superiority were satisfied pursuant to Fed. R. Civ. P. 23(a) and (b)(3), and that the Settlement Class should be certified pursuant to Fed. R. Civ. P. 23(b)(2). The Court appointed Plaintiffs as Class Representatives pursuant to Fed. R. Civ. P. 23(e)(2)(A), and Jeff Ostrow of Kopelowitz Ostrow P.A., Mariya Weekes of Milberg Coleman Bryson Phillips Grossman PLLC, and Scott E. Cole of Cole & Van Note as Class Counsel. The Court also appointed Verita Global as the Settlement Administrator and approved the Notices and Claim Form. Because nothing has changed regarding class certification, the Court should finally certify the Settlement Class. For efficiency, Plaintiffs incorporate by reference their Settlement Class certification arguments from the Motion for Preliminary Approval. ECF No. 30 at 9-13.

VI. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.

A. Legal Standard for Final Approval

The final approval standard for a proposed class action settlement under Fed. R. Civ. P. 23(e)(2) is whether it is "fair, reasonable and adequate." Common-law criteria preceded the Rule 23(e)(2) factors. *In Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983), the Fifth Circuit laid out six fairness, reasonableness, and adequacy factors: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the

plaintiffs' success on the merits; (5) the range of possible recovery and (6) the opinions of the class counsel, class representatives and absent class members. *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 639 n.11 (5th Cir. 2012) (quoting *Reed*, 703 F.2d at 172).

The Rule 23(e)(2) factors are whether:

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

“Because the Rule 23 and case-law factors overlap, courts in this circuit often combine them in analyzing class settlements.” *O'Donnell*, 2019 WL 4224040, at *8; *Hays v. Eaton Grp. Attorneys, LLC*, No. 17-88JWD-RLB, 2019 WL 427331, at *9 (M.D. La. Feb. 4, 2019); *Al's Pals Pet Care v. Woodforest Nat'l Bank, NA*, No. H-17-3852, 2019 WL 387409, at *3 (S.D. Tex. Jan. 30, 2019). *See also* Fed. R. Civ. P. 23(e)(2), Committee Notes to 2018 amendments (“The goal of this amendment is not to displace any [circuit case-law] factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.”). “When considering [Rule 23(e)(2)] factors, the court should keep in mind the strong presumption in favor of finding a settlement fair.” *Purdie v. Ace Cash Express, Inc.*, No. 301CV1754L, 2003 WL 22976611, at *4 (N.D. Tex. Dec. 11, 2003).

Indeed, because “compromise is the essence of a settlement,” “the settlement need not accord the plaintiff class every benefit that might have been gained after full trial.” *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1214 (5th Cir. 1978); *Cotton v. Hinton*, 559 F.2d 1326 (5th Cir. 1977). Accordingly, “absent fraud, collusion, or the like, [courts] should be hesitant to substitute

[their] own judgment for that of counsel.” *Klein*, 705 F. Supp. 2d at 649. “Nothing has occurred that would alter the Court’s initial assessment that the Settlement is fair, reasonable, and adequate.” *Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLG, 2021 WL 4935978, at *3 (W.D. Tex. Aug. 26, 2021). Here, the Settlement Class’s response (only zero opt-outs and zero objections) emphasizes the Settlement is fair, reasonable and adequate. Thus, Final Approval should be granted.

B. Plaintiffs and Class Counsel Have Adequately Represented the Settlement Class.

As with Rule 23(a) adequacy of representation requirement, plaintiffs must establish that: (1) there is no antagonism or conflict of interest between the class representatives and other members of the class; and (2) counsel and the class representatives are competent, willing, and able to protect the interests of absent class members. *Feder v. Elec. Data. Sys. Corp.*, 429 F.3d 125, 130 (5th Cir. 2005). Here, the Settlement Class members are all potentially affected by the same Data Security Incident as the Class Representatives, and thus they have common interests with the Settlement Class. Joint Decl. ¶ 34. Moreover, the Class Representatives have ably represented the Settlement Class, maintaining contact with Class Counsel, reviewing and approving pleadings, assisting in the Action’s investigation, remaining available for consultation throughout mediation, reviewing the Settlement documents, and answering Class Counsel’s questions. *Id.* ¶ 33.

Class Counsel have also vigorously pursued the Settlement Class’ interests in securing a Settlement bringing immediate, valuable benefits, while avoiding the risks of continued litigation. *Id.* ¶ 40. To do so, they leaned on their extensive experience in data breach litigation, their detailed investigation of this particular matter, and informal discovery exchanged during the course of their negotiations. *Id.* As such, Fed. R. Civ. P. 23(e)(2)(A) supports Final Approval.

C. The Settlement Results From Arms-Length Negotiations and Without Fraud or Collusion.

“The Court may . . . presume that no fraud or collusion occurred between opposing counsel in the absence of any evidence to the contrary.” *O’Donnell*, 2019 WL 427331 at *10 (quoting *Welsh v. Navy Fed. Credit Union*, No. 16-CV-1062-DAE, 2018 WL 7283639, at *12 (W.D. Tex. Aug. 20, 2018)). “A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion.” *2 McLaughlin on Class Actions* § 6:7 (8th ed. 2011). Here, there is no evidence of fraud or collusion. After a full exchange of information related to liability and damages, the Parties participated in an in-person mediation with the assistance of respected mediator, the Honorable Diane Welsh (Ret.). Joint Decl. ¶ 10. Thereafter, the Parties spent weeks negotiating, drafting, and finalizing the finer points of the Settlement in the Agreement. *Id.* ¶ 11. Moreover, the proposed Settlement does not favor any Settlement Class member over any other, favoring approval. *See Vaughn v. Am., Honda Motor Co.*, 627 F. Supp. 2d 738, 748 (E.D. Tex. 2007). Accordingly, the presumption of reasonableness should apply here, and both Fed. R. Civ. P. 23(e)(2)(B) and the first *Reed* factor are satisfied.

D. The Settlement provides substantial relief to the Settlement Class, in light of the uncertainty of prevailing on the merits, the effectiveness of the proposed distribution of relief, and the attorneys’ fees sought. (Fed. R. Civ. P. 23(e)(2)(C)).

The third and most important Rule 23(e)(2)(c) factor weighs heavily in favor of granting Preliminary Approval and overlaps with the second, fourth, and fifth *Reed* factors (complexity, length, and expense of litigating; probability of prevailing on the merits; and range of possible recovery and certainty of damages). The Settlement guarantees Settlement Class Members real relief for harms and protections from potential future fall-out from the Data Security Incident. Joint Decl. ¶ 23. First, all Settlement Class Members may select three years of Credit/Data Monitoring

valued at \$90.00 per person, per year to protect assets and providing identity protection. Agreement ¶ V(c); Joint Decl. ¶ 20. Second, they may Claim Cash Payment A (up to \$5,000.00 for documented losses, subject to *pro rata* adjustment) or Cash Payment B (\$100.00 estimated flat cash payment, subject to *pro rata* adjustment). Agreement ¶ V(a)(b). These benefits are consistent with, and in fact exceed, other approved settlements. Joint Decl. ¶ 21.

Although Plaintiffs are confident in the merits of their claims, the litigation risks cannot be disregarded. *Id.* ¶ 17. Besides the risk of losing at trial, Plaintiffs anticipate substantial additional costs if litigation continues, including experts. *Id.* Plaintiffs would need to defeat a motion to dismiss, counter a later motion for summary judgement, and both gain and maintain certification of the Settlement Class, with a near inevitable interlocutory appeal attempt. *Id.* Because the “legal issues involved in [in data breach litigation] are cutting-edge and unsettled . . . many resources would necessarily be spent litigating substantive law as well as other issues.” *In re Target Corp. Customer Data Sec. Breach Litig.*, No. 14-2522, 2015 WL 7253765, at *2 (D. Minn. Nov. 17, 2015). Due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases generally face substantial hurdles—even just to make it past the pleading stage. *See, e.g., Logan v. Marker Group, Inc.*, 4:22-CV-00174, 2024 WL 3489208 (S.D. Tex. July 18, 2024) (dismissing all but one claim). Class certification is another hurdle. *See, e.g., In re Blackbaud, Inc., Customer Data Breach Litig.*, No. 3:20-mn-02972-JFA, 2024 WL 2155221 (D.S.C. May 14, 2024) (denying class certification in a data breach case).

Through the Settlement, Plaintiffs and Settlement Class members gain significant benefits without risking not receiving any relief at all if the case continues. The Settlement provides immediate and substantial benefits to over 129,000 Settlement Class members—similar to the relief and benefits obtained in other data breach class actions—and on a much quicker timeline.

Relevant to the results obtained is the relief afforded in similar data breach class actions. A few recent examples of approved data breach settlements from around the country, which demonstrate how the instant Settlement compares very favorably, and exceeds many similar common fund data breach settlements, include: *See, e.g., Kondo v. Creative Serv.*, No. 1:22-cv-10438-DJC, ECF No. 34, 39 (D. Mass. Sept. 7, 2023) (\$1,200,000 for approx. 165,000 members); *Julien v. Cash Express, LLC*, No. 2022-CV-221 (Putnam Cty., Tenn.) (\$850,000 common fund for 106,000 class members); *Tucker v. Marietta Area Health Care*, No. 2:22-CV-00184, ECF No. 35, 38 (S.D. Ohio Dec. 8, 2023) (\$1,750,000 for approx. 214,000 members); *Mendoza, et al. v. Crystal Bay Casino LLC*, No. 3:23-cv-00092-MMD-CLB, ECF No. 39, 46 (D. Nev. Aug. 5, 2024) (\$675,000 for approx. 94,000 members); *Reynolds v. Marymount Manhattan College*, No. 1:22-cv-06846, ECF No. 58, 73 (S.D.N.Y.) (\$1,300,000 common fund for approx. 191,000 class members).

As this Motion details below, the 33.33% of the common Settlement Fund for attorneys' fees is regularly granted in the Fifth Circuit. *See, e.g., Miller v. Global Geophysical Servs., Inc.*, No. 14-cv-0708, 2016 WL 11645372, at *1 (S.D. Tex. Jan. 14, 2016); *Frost v. Oil States Energy Servs., LLC*, No. 4:15-cv-1100, 2015 WL 12780763, *2 (S.D. Tex. Nov. 19, 2015).

E. The Settlement treats Settlement Class Members equitably. (Fed. R. Civ. P. 23(e)(2)(D)).

Here, the Settlement does not improperly discriminate between any segments of the Settlement Class. Joint Decl. ¶ 24. All Settlement Class members are eligible to make a Claim for a Cash Payment and Credit/Data Monitoring, subject to proper claim completion and validation by the Settlement Administrator. Accordingly, this factor also weighs in favor of Final Approval.

F. The remaining *Reed* factors also weigh in favor of Final Approval.

The remaining *Reed* factors also support Final Approval. As to the third factor (stage of the

litigation and available discovery), the Settlement was reached only after extensive investigation by the Parties and an informal exchange of information such that Class Counsel could fully understand the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses. Where Parties possess ample information with which to evaluate the merits of competing positions, a lack of formal discovery will not prevent settlement approval. *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004); *Cotton*, 559 F.2d at 1331.

As to the sixth factor (opinions of class counsel, class representatives, and absent class members), there is no antagonism to the Settlement. Admin. Decl. ¶¶ 14-15. Plaintiffs approve of its terms, as do proposed Class Counsel, based on their deep experience litigating data breach and other class actions. Joint Decl. ¶¶ 30-31. Following Notice, there are zero objections to the Settlement and only zero opt-outs. If any objections subsequent are filed, Class Counsel will respond to them.

With each Rule 23(e)(2) and the *Reed* factors favoring Final Approval, the Settlement should be approved as fair, reasonable, and adequate.

VIII. APPLICATION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

Pursuant to the Settlement and the Notices, and consistent with recognized class action practice and procedure, Class Counsel respectfully request an award of attorneys' fees of \$401,666.67 which is equal to 33.33% of the \$1,205,000.00 Settlement Fund, and \$21,229.91 for reasonable litigation costs. Joint Decl. ¶¶ 34, 47-48. Fifth Circuit precedent governing common fund settlements confirms this Court has discretion to use either the percentage of the fund or lodestar method to determine whether the requested fee award is appropriate. Class Counsel seek an award under the percentage method, the favored method in the Fifth Circuit. The award requested is reasonable and well within the range of fee awards in this Circuit. Also, the requested

litigation costs sought and Service Awards for the Class Representatives are reasonable.

A. The Law Awards Class Counsel Fees from the Common Fund Created Through Their Efforts.

Fed. R. Civ. P. 23(h) authorizes awards in class action settlements for “reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Under the well-settled “common fund” doctrine, attorneys who achieve a recovery for a class via a common fund are entitled to an award of attorneys’ fees and costs from that fund as compensation for their work. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970). In class action settlements, courts retain an “independent duty” to “ensure that attorneys’ fees are reasonable and divided up fairly among plaintiffs’ counsel.” *In re High Sulfur Content Gasoline Prod. Liab. Litig.*, 517 F.3d 220, 227 (5th Cir. 2008).

To calculate attorneys’ fees in common fund cases, courts in the Fifth Circuit can apply: (1) the percentage of the fund method, in which the court awards fees as a reasonable percentage of the common fund; or (2) the lodestar method, in which the court computes fees by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate and, in its discretion, applying an upward or downward multiplier. *Union Asset*, 669 F.3d at 644. The percentage method, blended with application of the Fifth Circuit’s “*Johnson* factors” (defined *infra*) is the preferred one for common fund class actions to assess the reasonableness of the attorneys’ fees sought and should be applied in this Action. *Union Asset*, 669 F.3d at 643.

B. Application of the Johnson Factors

In applying the percentage of the fund method, this Court is to apply the 12 factors from *Johnson v. Ga. Highway Exp., Inc.*, 488 F.2d 714, 718 (5th Cir. 1974) (“*Johnson* factors”):

- (1) The time and labor required;
- (2) The novelty and difficulty of the questions;
- (3) The skill requisite to perform the legal service properly;
- (4) The preclusion of other employment by the attorney due to acceptance of the case;
- (5) The customary fee

[for similar work in the community]; (6) Whether the fee is fixed or contingent; (7) Time limitations imposed by the client or the circumstances; (8) The amount involved and the results obtained; (9) The experience, reputation, and ability of the attorneys; (10) The “undesirability” of the case; (11) The nature and length of the professional relationship with the client; and (12) Awards in similar cases.

Johnson, 488 F.2d at 717-19. The Court need not consider each factor in making its determination. See *Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 331 (5th Cir. 1995). Each of the *Johnson* factors will vary, depending on the case, and rather than imposing a rigid application, the Fifth Circuit entrusts lower courts to apply those factors in view of the case’s particular circumstances. *Brantley v. Surles*, 804 F.2d 321, 325-26 (5th Cir. 1986).²

1. *The Claims Against Defendant Required Substantial Time and Labor.*

Class Counsel’s coordinated work paid dividends for the Settlement Class. Joint Decl. ¶ 47. Class Counsel’s time and resources devoted to prosecuting and settling this Action justify the requested fee. *Id.* Prosecuting and settling these claims demanded considerable time and labor, making this fee request reasonable. *Id.* ¶ 46. The organization of Class Counsel ensured that work was coordinated to maximize efficiency and minimize duplication of effort. *Id.* As this Court recently observed in *Burnett v. CallCore Media, Inc.*, No. 4:21-cv-03176, 2024 WL 3166453, at *6 (S.D. Tex. June 25, 2024), this time and labor factor turns on more than the number of hours worked because an early settlement can signal counsel’s efficiency and effectiveness in avoiding lengthy litigation. It is more important to emphasize the value of the hours worked.

To date, Class Counsel have spent 362.2 hours prosecuting this Action against Defendant and estimate spending at least 50 additional hours. Joint Decl. ¶ 48.³ Class Counsel devoted substantial time investigating the claims; researching and developing the legal claims at issue;

² *Johnson* factors (7) and (11) are not applicable in this case.

³ Should the Court seek more information regarding Class Counsel’s lodestar, such information will be provided to the Court for *in camera* consideration.

working with experts, exchanging informal discovery, consolidating and organizing the related actions, and preparing for and attending a successful mediation; negotiating and drafting that Agreement; seeking Preliminary Approval; complying with the Preliminary Approval Order to ensure the Notice Program and Claim process were implemented; and preparing this Motion. *Id.* ¶ 46. Time will also be spent preparing for and attending the Final Approval Hearing, followed by substantial time working with the Settlement administration should Final Approval be granted to ensure Valid Claims are paid and the Settlement implemented. *Id.* Each of those efforts was essential to achieving the Settlement. *Id.* ¶ 47.

2. *The Novelty and Difficulty of the Relevant Questions Required Skilled and Experienced Counsel.*

Class Counsel’s legal work has conferred a substantial benefit on the Settlement Class in the face of significant litigation obstacles. This factor weighs heavily in support of the requested attorneys’ fee award. Courts routinely recognize the novelty and difficulty of the questions present in a case as a significant factor to be considered in making a fee award. Data breach class actions are notoriously risky and complex cases that present novel issues of law and fact as data security continues to develop and evolve. *Fox v. Iowa Health Sys.*, No. 3:18-cv-00327, 2021 WL 826741, at *5 (W.D. Wis. Mar. 4, 2021) (“Data breach litigation is evolving; there is no guarantee of the ultimate result . . . [they] are particularly risky, expensive, and complex.”); *In re Sonic Corp. Customer Data Sec. Breach Litig.*, No. 1:17-md-2807, 2019 WL 3773737, at *7 (N.D. Ohio Aug. 12, 2019) (recognizing that “[data breach litigation is complex and risky. This unsettled area of law often presents novel questions for courts. And of course, juries are not always predictable.”). *See also, e.g., Logan*, 2024 WL 3489208 at *13 (dismissing all but one claim); *In re Blackbaud*, 2024 WL 2155221, at *28 (denying class certification in a data breach case).

In evaluating the quality of representation by Class Counsel, the Court should also consider

opposing counsel. Defendant is represented by extremely capable counsel who are worthy, highly competent adversaries. Joint Decl. ¶ 38.

3. *Class Counsel Achieved a Successful Result in the Face of Risks and Undesirable Challenges.*

Given the significant litigation risks Class Counsel faced, the Settlement represents a successful result, with \$1,205,000.00 in cash recovered for the Settlement Class, affording them meaningful Settlement benefits designed to meet the typical repercussions faced by consumers following a data breach. The risk involved is emphasized by the fact that, historically, data breach class actions face substantial hurdles in surviving the class certification stage. *See, e.g., In re Blackbaud*, 2024 WL 2155221 at *1 (denying motion for class certification); *Fulton-Green v. Accolade*, No. 18-274, 2019 WL 4677954, at *8 (E.D. Pa. Sept. 24, 2019) (noting data breach class actions are “a risky field of litigation because [they] are uncertain and class certification is rare”); *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). Further, maintaining class certification through trial is another overarching risk. Joint Decl. ¶ 17. Considering Defendant has compelling defenses, continuing to pursue this case posed a significant risk for Plaintiffs and the Settlement Class, and makes litigating data breach cases less desirable. *Id.* Therefore, Class Counsel’s risks weigh in favor of Class Counsel’s requested fee.

4. *Class Counsel Assumed Considerable Risk to Pursue This Action on a Pure Contingency Basis and Lost Opportunity for Other Employment.*

In undertaking to prosecute this case entirely on a contingent fee basis, Class Counsel assumed a significant risk of nonpayment or underpayment, while foregoing the opportunity to work on other cases. *Id.* ¶ 43. That risk warrants an appropriate fee. *Burnett*, 2024 WL 3166453 at *7 (“The risk of ‘receiving little to no recovery is a major factor in considering an award of attorneys’ fees.’” (citation omitted)). Class Counsel remains completely uncompensated for the time invested in the Action, in addition to the substantial costs they have advanced. Joint Decl. ¶

44. Public policy concerns—ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs holding small individual claims—also support the requested fee. *Id.*

5. *The Requested Fee Comports with the Market for Fee Awards in Contingent Fee Cases and Fee Awards in Similar Class Actions.*

The attorneys' fee award sought here is within the range of fees typically awarded in similar cases in the Fifth Circuit and in this District. Courts in the Fifth Circuit as a rule award fees in the 30% to 36% range. *See, e.g., Welsh v. Navy Fed. Credit Union*, No. 5:16-CV-1062-DAE, 2018 WL 7283639, at *16 (W.D. Tex. Aug. 20, 2018) (“When the percentage method is used, fee awards commonly fall between 20% at the low end and 50% at the upper end[.]”); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-cv-1152-M, 2018 WL 1942227, at *12 (N.D. Tex. Apr. 25, 2018) (awarding one-third of the Settlement Fund); *Miller*, 2016 WL 11645372 at *1 (same); *Frost*, 2015 WL 12780763 at *2 (same). Class Counsel's fee request is also reasonable considering the market rate in the private marketplace where a typical contingent fee for a non-class case is 33.33%. *See, e.g., Buetten v. Harless*, No. 3:09-cv-00791-K, 2013 WL 12303143, at *11 (N.D. Tex. Nov. 13, 2013) (“The percentage method is also consistent with, and is intended to mirror, the private marketplace for negotiated contingent fee arrangements.”).

Examples of attorneys' fee awards of 33.33% or higher in data breach cases include: *Garza v. HealthAlliance, Inc.*, No. 72450/2023 (NY Sup. Ct., Westchester Cty.) (approving 35% of the settlement fund); *In re Fortra File Transfer Software Data Sec. Breach Litig.*, No. 24-MD-03090, 2025 WL 457896, at *11-12 (S.D. Fla. Feb. 11, 2025) (approving 33.33% of the settlement fund); *In re Planet Home Lending, LLC Data Breach*, No. 3:24-cv-127 (KAD) (D. Conn.), ECF No. 48 (same); *In re CorrectCare Data Breach Litig.*, No. 5:22-319-DCR, 2024 WL 4211480, at *4 (E.D. Ky. Sept. 14, 2024) (same); *Kondo, et al. v. Creative Services, Inc.*, No. 1:22-cv-10438-DJC, ECF

No. 39 (D. Mass. Sept. 7, 2023) (same); *In re Sovos Compliance Data Security Incident Litigation*, No. 1:23-cv-12100 (D. Mass.), ECF No. 12 (same); *Alliance Ophthalmology, PLLC v. ECL Group, LLC*, Nos. 1:22-CV-296, 1:22-CV-468, 2024 WL 3203226, at *14-16 (M.D.N.C. June 27, 2024); *Abrams, et al. v. The Savannah College of Art and Design Inc.*, No. 1:22-cv-04297-LMM, ECF No. 29 (N.D. Ga. Sept. 23, 2023) (same); *Phelps, et al. v. Toyotetsu North America*, No. 6:22-cv-00106-CHB-HA, ECF No. 47 (E.D. Ky. Oct. 25, 2023) (same); *In re: Forefront Data Breach Litigation*, No. 1:21-cv-000887-LA, 2023 WL 6215366, at *9 (E.D. Wis. Mar. 22, 2023) (same); and *Davidson v. Healthgrades Operating Company, Inc.*, No. 1:21-cv-01250-RBJ, ECF No. 50 (D. Colo. Aug. 22, 2022) (same).

B. Class Counsel’s Cost Reimbursement Request Is Reasonable

District courts allow reasonable litigation costs to be paid from the common fund. *See In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1089 (S.D. Tex. 2012); Fed. R. Civ. P. 23(h) (authorizing recovery of “nontaxable costs”); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 334 (W.D. Tex. 2007). The costs sought to be reimbursed were all advanced by Class Counsel and were necessarily and reasonably incurred in the prosecution of this case, including court fees, mediation fees, research, and other services. *Id.* Therefore, the requested \$21,229.91 litigation costs should be awarded to Plaintiffs’ counsel.

C. The Requested Service Awards Are Reasonable

Class Counsel move this Court to approve a \$2,500.00 Service Award to each Plaintiff for their service as a Class Representative. Courts approve reasonable service awards to compensate the named plaintiffs for their services provided and risks taken. *See, e.g., Armstrong v. Kimberly-Clark Corp.*, No. 3:20-CV-3150-M, 2024 WL 1123034, at *7 (N.D. Tex. Mar. 14, 2024) (awarding \$2,500 service awards); *Diaz v. World Acceptance Corp.*, No. 1:19-CV-957-RP, 2021 WL

2709677, at *2 (W.D. Tex. Jan. 7, 2021) (same).

Likewise, the Plaintiffs here have been instrumental in assisting Class Counsel throughout this proceeding. Joint Decl. ¶ 54. Plaintiffs initiated and remained in contact with Class Counsel; considered and reviewed the pleadings in this case and the Agreement; supervised, monitored, and periodically visited with Class Counsel; provided background documents and followed the progress of this litigation to ensure that Settlement Class received the best recovery possible given the particular circumstances and risks of the Action. *Id.* Balancing the services Plaintiffs rendered against the modest amount of the \$2,500.00 each requested, for a total of \$15,000.00, the Court should find such amount is reasonable.

V. CONCLUSION

Plaintiffs and Class Counsel respectfully request this Court enter an Order: (1) granting Final Approval to the Settlement; (2) affirming certification of the Settlement Class for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3); (3) confirming the appointment of Plaintiffs Crystal Schultz, Michele Eusebe, Justin Medina, Arthur Podroykin, and Katherine Chaudhry as Class Representatives; (4) confirming the appointments of Jeff Ostrow, Mariya Weekes, and Scott Cole as Class Counsel; (5) confirming the appointment of Verita as Settlement Administrator; (6) awarding Class Counsel \$401,666.67 for attorneys' fees and \$21,229.91 for costs; (7) approving payment of the Settlement Administration Costs; (8) overruling timely objections, if any; and (9) entering final judgment dismissing the Action with prejudice and reserving jurisdiction over Settlement implementation. Plaintiffs attach a proposed Final Approval Order as *Exhibit D*.

Dated: February 18, 2025

Respectfully submitted,

/s/ Jeff Ostrow

Jeff Ostrow, Esq.*

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**Admitted Pro Hac Vice*

CERTIFICATE OF CONFERRAL

I hereby certify Plaintiffs and Defendant conferred regarding the relief requested, and this motion is unopposed.

/s/ Jeff Ostrow

Jeff Ostrow

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was served on all counsel of record on February 18, 2025 via CM/ECF, in accordance with LR5.3 and Fed. R. Civ. P. 5(b).

/s/ Jeff Ostrow
Jeff Ostrow

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

J.W., a Minor, by and through her guardian
Angela Johnson, CRYSTAL SCHULTZ,
MICHELE EUSEBE, JUSTIN MEDINA,
ARTHUR PODROYKIN, and KATHERINE
CHAUDHRY, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

LIVANOVA USA, INC.

Defendant.

CIVIL ACTION NO. 4:24-CV-02250

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Settlement” or “Agreement”),¹ dated as of December 2, 2024, is entered into between Plaintiffs, on behalf of themselves and the Settlement Class, on the one hand, and Defendant LivaNova USA, Inc., on the other hand. The Parties hereby agree to the following terms in full settlement of the Action, subject to a Final Approval Order entered by the Court.

I. Background

1. Defendant is a medical device company based in Texas that manufactures products for cardiac surgery and neuromodulation.

2. In the course of operating its business, Defendant maintains a limited amount of personally identifiable information and personal health information pertaining to its employees and patients of Defendant’s healthcare provider customers,

¹ All capitalized terms herein shall have the same meanings as those ascribed to them in Section II below.

3. On or about November 19, 2023, Defendant discovered that an unauthorized party had obtained Private Information from its computer systems on or around October 26, 2023.

4. The affected information varied by individual, but included names, telephone numbers, email and postal addresses, Social Security numbers, dates of births, medical information (e.g. treatment, condition, diagnosis, prescription, physician information, medical record numbers and device serial numbers), and health insurance information.

5. On May 31, 2024, Defendant began sending out notice letters to affected persons, informing them that their Private Information had been compromised in the Data Security Incident.

6. As a result of the Data Security Incident, commencing in June 2024, Defendant was named in six putative Related Class Actions that are materially and substantively identical, as they have overlapping claims, seek to represent the same putative class members, and arise out of the same Data Security Incident.

7. Plaintiffs in the Related Actions conferred and agreed to move to consolidate the Related Actions and to appoint Class Counsel as Interim Co-Lead Counsel.

8. Thereafter, the Court consolidated the Related Actions into this Action and appointed Mariya Weekes, Jeff Ostrow, and Scott Cole as Interim Co-Lead Class Counsel for the putative classes.

9. On September 23, 2024, Plaintiffs filed a Consolidated Class Action Complaint in the Action.

10. Thereafter, Class Counsel prepared written discovery, including interrogatories and requests for production. They also drafted a comprehensive Rule 30(b)(6) notice of deposition topics.

11. Class Counsel also consulted with multiple data experts to understand how the breach occurred, the type of information involved, and whether the information was published on the Dark Web.

12. The Parties began discussing settlement and scheduled a mediation with the Honorable Diane Welsh (Ret.), an experienced data breach mediator, on October 2, 2024, in Philadelphia, Pennsylvania.

13. In advance of the mediation, Plaintiffs propounded informal discovery requests to learn as much as possible in advance of mediation. The Parties also exchanged mediation briefs outlining their positions with respect to liability, damages, and settlement-related issues.

14. The Parties mediated on October 2, 2024, and after completing arms-length negotiations, agreed upon the material terms of a settlement.

15. Thereafter, on October 4, 2024, the Parties filed a Joint Motion to Stay and Notice of Mediated Class Settlement.

16. The Parties now agree to settle the Action and Related Actions entirely, without any admission of liability or wrongdoing, with respect to all Released Claims of the Releasing Parties. Defendant has entered into this Agreement to resolve all controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the litigation costs and expenses, distractions, burden, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Complaint (and similarly does not concede any of the allegations in the other complaints in the Related Actions), and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaints. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this

Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiffs have entered into this Agreement to recover on the claims in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede that the claims alleged in the Complaint lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, Defendant, and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt and sufficient of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

II. Definitions

16. “Action” means the lawsuit entitled: *J.W., a Minor v. LivaNova USA, Inc.*, Case No. 4:24-CV-02250, filed in the United States District Court for the Southern District of Texas, and the Related Actions consolidated thereto.

17. “Application for Attorneys’ Fees, Costs, and Service Awards” means the application made with the Motion for Final Approval seeking Service Awards for Class Representatives and Class Counsel’s attorneys’ fees and reimbursement for costs.

18. “CAFA Notice” means the notice required by the Class Action Fairness Act of 2008, 28 U.S.C. § 1715 (“CAFA”).

19. “Cash Payment” means compensation paid to Settlement Class Members who elected either Cash Payment A or Cash Payment B.

20. “Cash Payment A” means the Settlement Class Member Benefit that Settlement Class members, who incurred documented losses, may elect under Section V herein.

21. “Cash Payment B” means the Settlement Class Member Benefit consisting of a \$100.00 cash payment, subject to *pro rata* increase or reduction, that Settlement Class Members may elect under Section V herein.

22. “Claim” means the submission of a Claim Form by a Claimant.

23. “Claim Form” means the proof of claim, substantially in the form attached hereto as *Exhibit 4*, which may be modified, subject to the Parties’ approval, to meet the requirements of the Settlement Administrator.

24. “Claim Form Deadline” shall be 15 days before the initial scheduled Final Approval Hearing and is the last day by which a Claim Form may be submitted to the Settlement Administrator for a Settlement Class member to be eligible for a Cash Payment.

25. “Claimant” means a Settlement Class member who submits a Claim Form.

26. “Class Counsel” means: Mariya Weekes, Jeff Ostrow, and Scott Cole.

27. “Class List” means a list of all individuals in the Settlement Class. Defendant shall prepare and provide the Class List to the Settlement Administrator for Notice using information in its records. Class List shall include the Settlement Class’s names, email address (if available) postal address, and telephone number (if available).

28. “Class Representatives” means Crystal Schultz, Michele Eusebe, Justin Medina, Arthur Podroykin, and Katherine Chaudhry.

29. “Complaint” means the Consolidated Class Action Complaint filed in the Action on June 18, 2024.

30. “Court” means the United States District Court for the Southern District of Texas and the Judge(s) assigned to the Action.

31. “Credit/Data Monitoring” means up to three years of credit/data monitoring

Settlement Class Members may elect under Section V herein.

32. “Data Security Incident” means the alleged incident that occurred on or around October 26, 2023, in which unauthorized third parties purportedly gained access to Settlement Class Members’ Private Information from Defendant’s systems.

33. “Defendant” means LivaNova USA, Inc.

34. “Defendant’s Counsel” means Neil Gilman and Reiko Koyama of Hunton Andrews Kurth LLP.

35. “Effective Date” of this Agreement means the last date by which all of the following have occurred: (a) The Parties have executed this Agreement; (b) The Parties have submitted to the Court and the Court has entered the Final Approval Order without material changes to the Parties’ proposed Final Approval Order; and (c) The time for seeking rehearing, appellate or other review of the Final Approval Order has expired, or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing review, appeal, or certiorari could be taken has finally expired.

36. “Email Notice” means the email notice of the Settlement, substantially in the form attached hereto as *Exhibit 1*, that the Settlement Administrator shall disseminate to the Settlement Class by email to those on the Class List for which Defendant possesses an email address.

37. “Escrow Account” means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described herein.

38. “Final Approval” means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order agreed to by the Parties, substantially in the form attached to the Motion for Final Approval.

39. “Final Approval Hearing” means the hearing held before the Court during which the Court will consider granting Final Approval of the Settlement and the Application for Attorneys’ Fees, Costs, and Service Awards.

40. “Final Approval Order” means the final order that the Court enters granting Final Approval of the Settlement. The proposed Final Approval Order shall be agreed to by the Parties and will be attached as an exhibit to the Motion for Final Approval. The Final Approval Order also includes the orders, which may be entered separately, determining the amount of attorneys’ fees and costs awarded to Class Counsel.

41. “Long Form Notice” means the long form notice of the Settlement, substantially in the form attached hereto as *Exhibit 3*, that shall be posted on the Settlement Website and shall be available to Settlement Class Members by mail on request made to the Settlement Administrator.

42. “Motion for Final Approval” means the motion that Plaintiffs and Class Counsel shall file with the Court seeking Final Approval of the Settlement.

43. “Motion for Preliminary Approval” means the motion that Plaintiffs shall file with the Court seeking Preliminary Approval of the Settlement.

44. “Notice” means the Email Notice, Postcard Notice, Long Form Notice, Settlement Website, and settlement telephone line that Plaintiffs and Class Counsel will ask the Court to approve in connection with the Motion for Preliminary Approval.

45. “Notice Program” means the methods provided for in this Agreement for giving Notice and consists of the Email Notice, Postcard Notice, Long Form Notice, Settlement Website, and Settlement telephone line.

46. “Notice of Deficiency” means the notice sent by the Settlement Administrator to a Settlement Class member who has submitted an invalid Claim.

47. “Objection Period” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing.

48. “Opt-Out Period” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing.

49. “Party” means each of the Plaintiffs and the Defendant, and “Parties” means Plaintiffs and Defendant collectively.

50. “Plaintiffs” means J.W., a minor by and through her guardian, Angela Johnson, Crystal Schultz, Michele Eusebe, Justin Medina, Arthur Podroykin, and Katherine Chaudhry.

51. “Postcard Notice” means the postcard notice of the Settlement, substantially in the form attached hereto as *Exhibit 2*, that the Settlement Administrator shall disseminate to the Settlement Class by mail.

52. “Preliminary Approval” means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order, substantially in the form attached as an exhibit to the Motion for Preliminary Approval.

53. “Preliminary Approval Order” means the order preliminarily approving the Settlement and proposed Notice Program.

54. “Private Information” means Settlement Class members’ information that may have been exposed in the Data Security Incident, which may include: names, telephone numbers, email and postal addresses, Social Security numbers, dates of birth, medical information (e.g. treatment, condition, diagnosis, prescription, physician information, medical record numbers and device serial numbers), and health insurance information, and other personally identifiable information

or personal health information.

55. “Related Actions” means the following actions that were consolidated into the Action: *J.W., a minor by and through her guardian, Angela Johnson v. LivaNova USA, Inc.*, Case No. 4:24-cv-02250; *Schultz v. LivaNova USA, Inc.*, Case No. 4:24-cv-02276; *Eusebe v. LivaNova USA, Inc.*, Case No. 4:24-cv-0230; *Medina v. LivaNova, Inc.*, Case No. 4:24-cv-02357; *Podroykin v. LivaNova USA, Inc.*, Case No. 4:24-cv-02482; and *Chaudhry v. LivaNova USA, Inc.*, Case No. 4:24-cv-02506.

56. “Releases” means the releases and waiver set forth in Section XIII of this Agreement.

57. “Released Claims” means the claims described in Section XIII of this Agreement. “Released Parties” means Defendant, and its past, present, and future parents, subsidiaries, divisions, departments, affiliates, predecessors, successors and assigns, and any and all of their past, present, and future directors, officers, executives, officials, principals, stockholders, heirs, agents, insurers, reinsurers, members, attorneys, accountants, actuaries, fiduciaries, advisors, consultants, representatives, partners, joint venturers, licensees, licensors, independent contractors, subrogees, trustees, executors, administrators, predecessors, successors and assigns, and any other person acting on Defendant’s behalf, in their capacity as such. It is expressly understood that to the extent a Released Party is not a party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

58. “Releasing Parties” means (i) Plaintiffs and all Settlement Class Members, (ii) each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, affiliates, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the entirety, agents, attorneys, (iii) any entities in which a Plaintiff and/or other participating

Settlement Class Member has or had a controlling interest or that has or had a controlling interest in him, her, or it, (iv) any other person or entity (including any governmental entity) claiming by or through, on behalf of, for the benefit of, derivatively for, or as representative of a Plaintiff and/or any other Settlement Class Member, and all those who claim through them or on their behalf, and (v) the respective past and present directors, governors, executive-committee members, officers, officials, employees, members, partners, principals, agents, attorneys, advisors, trustees, administrators, fiduciaries, consultants, service providers, representatives, successors in interest, assigns, beneficiaries, heirs, executors, accountants, accounting advisors, and auditors of any or all of the above persons or entities identified in (i)-(iv).

59. “Service Awards” shall mean the payment the Court may award the Plaintiffs for serving as Class Representatives.

60. “Settlement Administrator” means Verita Global or “Verita.”

61. “Settlement Administration Costs” means all costs and fees of the Settlement Administrator regarding Notice and settlement administration.

62. “Settlement Class” means all persons in the United States whose Private Information was potentially compromised as a result of the Data Security Incident. Excluded from the Settlement Class are (a) all persons who are governing board members of Defendant; (b) governmental entities; (c) the Court, the Court’s immediate family, and Court staff; and (d) any individual who timely and validly opts-out of the Settlement.

63. “Settlement Class Member” means any member of the Settlement Class.

64. “Settlement Class Member Benefit” means the Cash Payment and, if applicable, Credit Monitoring, elected by Settlement Class Members.

65. “Settlement Fund” means the non-reversionary \$1,205,000.00 cash fund that

Defendant has agreed to pay under the terms of the Settlement.

66. “Settlement Website” means the website the Settlement Administrator will establish as a means for the Settlement Class members to submit Claim Forms and obtain notice and information about the Settlement, including hyperlinked access to this Agreement, the Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Final Approval, Application for Attorneys’ Fees, Costs, and Service Awards, and Final Approval Order, as well as other documents as the Parties agree to post or the Court orders posted. The Settlement Website shall remain online and operable for six months after Final Approval.

67. “Valid Claim” means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the provisions of the Settlement; (b) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim Form Deadline, or, if submitted online, submitted by 11:59 p.m. Eastern time on the Claim Form Deadline; and (e) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim, including, but not limited to, answers related to questions regarding the validity or legitimacy of the physical or e-signature. Failure to respond to the Settlement Administrator’s Notice of Deficiency may result in a determination that the Claim is not a Valid Claim.

III. Settlement Fund

68. Within 30 days after Preliminary Approval and receipt of all necessary information required to make payment (e.g., wiring instructions and a W-9 form), Defendant shall deposit or cause to be deposited \$200,000.00 into the Escrow Account to allow the Settlement Administrator

to pay Settlement Administration Costs. Within 15 days after the Effective Date, Defendant shall deposit or cause to be deposited \$1,005,000 into the Escrow Account.

69. Under no circumstances shall Defendant be obligated to pay or cause to be paid more than one \$1,205,000. No funds shall revert back to Defendant, except in the event this Agreement is voided, cancelled, or terminated, as described in Paragraphs 118-122 in this Agreement. In the event the Effective Date does not occur, no portion of the Settlement shall be returned to Defendant.

70. The Settlement Fund shall be used to pay: (1) Settlement Class Member Benefits to those Settlement Class Members who submit a Valid Claim; (2) any Service Awards awarded to Class Representatives; (3) any attorneys' fees and costs awarded to Class Counsel; and (4) all Settlement Administration Costs.

71. The funds in the Escrow Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise shall be paid from the Escrow Account, including any taxes or tax detriments that may be imposed on Defendant, Defendant's Counsel, Plaintiffs, and/or Class Counsel with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise, shall be paid out of the Escrow Account. Defendant, Defendant's Counsel, Plaintiffs, and Class Counsel shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Defendant, Defendant's Counsel, Plaintiffs, and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

72. Other than the payment of the Settlement Fund monies as described in Paragraph 68 of this Agreement, Defendant shall have no responsibility, financial obligation, or liability whatsoever with respect to the Settlement Fund of Escrow Account, investment of the Settlement Fund or Escrow Account, payment of federal, state, and local income, employment, unemployment, excise and any other taxes, penalties, interest or other charges related to taxes imposed on the Settlement Fund or Escrow Account or its disbursement, payment of administrative, legal, accounting, or other cost occasioned by the use or administration of the Settlement Fund or the Escrow Account.

IV. Certification of the Settlement Class

73. Plaintiffs shall propose and recommend to the Court that the Settlement Class be certified for Settlement purposes. Defendant agrees solely for purposes of the Settlement provided for in this Agreement, and the implementation of such Settlement, that this Action shall proceed as a class action; provided however, that if a Final Approval Order is not issued, then any certification shall be null and void and, for the avoidance of doubt, Defendant shall retain all rights to object to any future requests to certify a class. Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent motion for class certification of any class in the Action.

V. Settlement Consideration

74. When submitting a Claim for a Cash Payment, Settlement Class Members must choose either Cash Payment A or Cash Payment B. Additionally, Settlement Class Members may elect to receive Credit Monitoring. If a Settlement Class Member does not submit a Valid Claim or opt-out, the Settlement Class Member will release his or her claims against Defendant without receiving a Settlement Class Member Benefit.

a. Cash Payment A – Documented Losses

Settlement Class Members may submit a claim for a Cash Payment under this section for up to \$5,000.00 per Settlement Class Member upon presentment of documented losses related to the Data Security Incident. To receive a documented loss payment, a Settlement Class Member must elect Cash Payment A on the Claim Form attesting under penalty of perjury to incurring documenting losses. Settlement Class Members will be required to submit reasonable documentation supporting the losses. Settlement Class Members shall not be reimbursed for expenses if they have been reimbursed for the same expenses by another source, including compensation provided in connection with the identity protection and credit monitoring services offered as part of the notification letter provided by Defendant or otherwise. If a Settlement Class Member does not submit reasonable documentation supporting a loss, or if their Claim is rejected by the Settlement Administrator for any reason, and the Settlement Class Member fails to cure his or her Claim, the Claim will be rejected and the Settlement Class Member's Claim will be treated as if he or she elected Cash Payment B.

b. Cash Payment B – Flat Cash Payment

As an alternative to Cash Payment A above, a Settlement Class Member may elect to receive Cash Payment B, which is a flat cash payment in the amount of \$100.00 (subject to pro rata adjustment based upon total Claim submission).

c. Credit/Data Monitoring

In addition to electing a Cash Payment, Settlement Class Members may elect up to three years of Credit/Data Monitoring. Credit/Data Monitoring has a value of \$90.00 per year per Settlement Class Member.

75. ***Pro Rata Adjustments on Cash Payments*** – Settlement Class Cash Payments will

be subject to a *pro rata* increase in the event the amount of Valid Claims is insufficient to exhaust the entire Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Settlement Fund, the amount of the Cash Payments will be reduced *pro rata* accordingly. For purposes of calculating the *pro rata* increase or decrease, the Settlement Administrator must distribute the funds in the Settlement Fund first for payment of Credit Monitoring and then for Cash Payments. Any *pro rata* increases or decreases to Cash Payments will be on an equal percentage basis. In the unexpected event the value of Credit/Data Monitoring on its own exhausts the amount of the Settlement Fund, the length of the Credit/Data Monitoring provided will be reduced as necessary to bring the cost within the Settlement Fund.

76. **Business Practice Changes** – Plaintiffs have received assurances that Defendant either has undertaken or will undertake reasonable steps to further secure its systems and environments. Defendant has provided confidential discovery regarding the number of individuals in the Settlement Class, the facts and circumstances of the Data Security Incident and Defendant’s response thereto, and the changes and improvements that have been made or are being made to protect class members’ Private Information.

VI. Settlement Approval

77. Upon execution of this Agreement by all Parties and Class Counsel, Class Counsel shall file a Motion for Preliminary Approval. The proposed Preliminary Approval Order shall be attached to the motion as an exhibit and shall be in a form agreed to by Class Counsel and Defendant.

78. The Motion for Preliminary Approval shall, among other things, request the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3)

approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the Claim Form and Claim process; (5) approve the procedures for individuals in the Settlement Class to opt-out of or object to the Settlement; (6) stay the Action and Related Actions pending Final Approval of the Settlement; and (7) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and Defendant's Counsel.

VII. Settlement Administrator

79. The Parties agree that, subject to Court approval, Verita shall be the Settlement Administrator. The Parties shall jointly oversee the Settlement Administrator. The Settlement Administrator shall fulfill the requirements set forth in the Preliminary Approval Order and the Agreement and comply with all applicable laws, including, but not limited to, the Due Process Clause of the United States Constitution.

80. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, handling the Claims process, administering the Settlement Fund, and distributing the Cash Payments to Settlement Class Members who submit Valid Claims.

81. The Settlement Administrator's duties include to:

a. Complete the Court-approved Notice Program by noticing the Settlement Class by Postcard Notice, sending Long Form Notices and paper Claim Forms on request from individuals in the Settlement Class, reviewing Claim Forms, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class Members who submit a Valid Claim;

- b. Establish and maintain the Settlement Fund in the Escrow Account approved by the Parties;
- c. Establish and maintain a post office box to receive opt-out requests from the Settlement Class, objections from Settlement Class Members, and Claim Forms;
- d. Establish and maintain the Settlement Website to provide important information about the Settlement and to receive electronic Claim Forms;
- e. Establish and maintain an automated toll-free telephone line for the Settlement Class to call with Settlement-related inquiries, and answer frequently asked questions of individuals in the Settlement Class who call with or otherwise communicate such inquiries;
- f. Respond to any mailed Settlement Class member inquiries;
- g. Process all opt-out requests from the Settlement Class;
- h. Provide weekly reports to Class Counsel and Defendant's Counsel that summarize the number of Claims submitted, Claims approved and rejected, Notices of Deficiency sent, opt-out requests and objections received that week, the total number of opt-out requests and objections received to date, and other pertinent information;
- i. In advance of the Final Approval Hearing, prepare a declaration confirming the Notice Program was completed in accordance with the terms of this Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, indicating the number of Claim Forms received, providing the names of each individual in the Settlement Class who timely and properly requested to opt-out from the Settlement Class, indicating the number of objections received, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;
- j. Distribute, out of the Settlement Fund, Cash Payments by electronic means

or by paper check;

k. Send Settlement Class Members who elect Credit/Data Monitoring emails instructing how to activate their Credit/Data Monitoring service;

l. Pay Court-approved attorneys' fees and costs, and Service Awards out of the Settlement Fund;

m. Pay Settlement Administration Costs out of the Settlement Fund following approval by Class Counsel;

n. Pay any required taxes out of the Settlement Fund; and

o. Any other Settlement Administration function at the instruction of Class Counsel and Defendant's Counsel, including, but not limited to, verifying that the Settlement Fund has been properly administered and that the Cash Payments have been properly distributed.

82. The Notice Program and Notices will be reviewed and approved by the Settlement Administrator, but may be revised as agreed upon by the Parties prior to submission to the Court for approval. Immaterial revisions to the Notices may also be made prior to dissemination.

VIII. Notice to the Settlement Class

83. Defendant will serve or cause to be served the CAFA Notice no later than 10 days after this Agreement is filed with the Court.

84. Defendant will make available to Class Counsel and the Settlement Administrator the Class List no later than 30 days after entry of the Preliminary Approval Order.

85. Within 15 days following receipt of the Class List, the Settlement Administrator shall commence the Notice Program provided herein, using the forms of Notice approved by the Court. Notice shall be provided by email for all Settlement Class Members for whom Defendant possesses an email address. Postcard Notice shall be disseminated via U.S. Mail to the Settlement

Class's mailing addresses, to the extent known, for all other Settlement Class Members. Notice shall also be published on the Settlement Website.

86. The Notice shall include, among other information: a description of the material terms of the Settlement; how to submit a Claim Form; the Claim Form Deadline; the last day of the Opt-Out Period for individuals in the Settlement Class to opt-out of the Settlement Class; the last day of the Objection Period for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs and Service Awards; the Final Approval Hearing date; and the Settlement Website address at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Defendant's Counsel shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. If the date or time for the Final Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to reflect the new date. No additional notice to the Settlement Class is required if the date or time for the Final Approval Hearing changes.

87. The Settlement Administrator shall establish the Settlement Website no later than the day before Notice is first initiated. The Settlement Administrator shall ensure the Settlement Website makes available the Court-approved online Claims Form that can be submitted directly on the Settlement Website or in printable version that can be sent by U.S. Mail to the Settlement Administrator.

88. **Opt-Outs** – The Long Form Notice also shall include a procedure for individuals in the Settlement Class to opt-out of the Settlement; and the Postcard Notice shall direct individuals in the Settlement Class to review the Long Form Notice to obtain the opt-out instructions. Individuals in the Settlement Class may opt-out of the Settlement Class at any time during the Opt-

Out Period by mailing a request to opt-out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Period. The opt-out request must be personally signed by the Settlement Class member and contain the name, address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the Settlement Class. Any individual in the Settlement Class who does not timely and validly request to opt out shall be bound by the terms of this Agreement even if he or she does not submit a Valid Claim.

89. **Objections** – The Long Form Notice also shall include a procedure for the Settlement Class to object to the Settlement and/or Application for Attorneys’ Fees, Costs, and Service Awards, and the Postcard Notice shall direct the Settlement Class to review the Long Form Notice to obtain the objection instructions. Objections must be mailed to the Clerk of the Court, Class Counsel, Defendant’s Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Objection Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

90. For an objection to be considered by the Court, the objection must also set forth:

- a. the name of this Litigation (*J.W. v. LivaNova USA*, Case No. 4:24-cv-2250);
- b. the objector’s full name, mailing address, telephone number, and email address (if any);
- c. the specific reasons for the objection, accompanied by any legal support for the objection known to the objector or objector’s counsel;

d. the number of times the objector has objected to a class action settlement within the 5 years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;

e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards;

f. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;

g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

h. the identity of all counsel (if any) representing the objector and whether they will appear and address the Court at the Final Approval Hearing;

i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);

j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

k. the objector's signature (an attorney's signature is not sufficient).

91. Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel.

92. The Settlement Administrator shall perform reasonable address traces for those Postcard Notices that are returned as undeliverable. By way of example, a reasonable tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 45 days before the original date set for the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces.

93. The Notice Program shall be completed no later than 45 days before the original date set for the Final Approval Hearing.

IX. Claim Form Process and Disbursement of Cash Payments

94. The Notice will explain to the Settlement Class that they may be entitled to a Settlement Class Member Benefit and how to submit a Claim Form.

95. Claim Forms may be submitted online through the Settlement Website or through U.S. Mail by sending them to the Settlement Administrator at the address designated on the Claim Form.

96. The Settlement Administrator shall collect, review, and address each Claim Form received to determine whether the Claim Form meets the requirements set forth in this Settlement and is thus a Valid Claim. The Settlement Administrator shall examine the Claim Form before designating the Claim as a Valid Claim to determine that the information on the Claim Form is reasonably complete. The Settlement Administrator shall have the sole authority to determine whether a Claim by any Claimant is a Valid Claim.

97. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate claims. No Settlement Class Member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class Member. The Settlement Administrator shall use its best efforts to determine whether there is any duplication of claims, and if there is, contact the Settlement Class Member in an effort to determine which Claim Form is the appropriate one for consideration.

98. The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim process. The Settlement Administrator may, in its discretion, deny in whole or in part any Claim Form to prevent actual or possible fraud or abuse. By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse. If any fraud is detected or reasonably suspected, the Settlement Administrator and Parties may require information from Claimants or deny Claims, subject to the supervision of the Parties and ultimate oversight by the Court.

99. Claim Forms that do not meet the terms and conditions of this Settlement shall be promptly rejected by the Settlement Administrator and the Settlement Administrator shall advise the Claimant or Settlement Class Member of the reason(s) why the Claim Form was rejected. However, if the Claim Form is rejected for containing incomplete or inaccurate information, and/or omitting required information, the Settlement Administrator may send a Notice of Deficiency explaining what information is missing or inaccurate and needed to validate the Claim and have it submitted for consideration. The Settlement Administrator shall notify the Claimant using the

contact information provided in the Claim Form. The additional information and/or documentation can include, for example, answers to questions regarding the validity of the Claimant's physical or e-signature. A Claimant shall have until the Claim Form Deadline, or 15 days from the date the Notice of Deficiency is sent to the Claimant via mail and postmarked or via email, whichever is later, to reply to the Notice of Deficiency and provide the required information. If the Claimant timely and adequately provides the requested information and/or documentation, the Claim shall be deemed a Valid Claim and processed by the Settlement Administrator. If the Claimant does not timely and completely provide the requested information and/or documentation, the Settlement Administrator shall reduce or deny the Claim unless Defendant and Class Counsel otherwise agree.

100. Where a good faith basis exists, the Settlement Administrator may reduce or reject a Claim for, among other reasons, the following:

- a. Failure to fully complete and/or sign the Claim Form;
- b. Illegible Claim Form;
- c. The Claim Form is fraudulent;
- d. The Claim Form is duplicative of another Claim Form;
- e. The Claimant is not a Settlement Class Member;
- f. The Claimant submitted a timely and valid request to opt out of the Settlement Class.
- g. The person submitting the Claim Form requests that payment be made to a person or entity other than the Claimant for whom the Claim Form is submitted;
- h. Failure to submit a Claim Form by the Claim Form Deadline; and/or
- i. The Claim Form otherwise does not comply with the requirements of this Settlement.

101. The Settlement Administrator's reduction or denial of a Claim is final, subject to the following dispute resolution procedures:

a. The Settlement Administrator shall have 30 days from the Claim Form Deadline to approve or reject Claims based on findings of fraud or duplication.

b. A request for additional information by sending a Notice of Deficiency shall not be considered a denial for purposes of this Paragraph.

c. If a Claim is rejected for fraud or duplication, the Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. Class Counsel and Defendant's Counsel shall be provided with copies of all such notifications to Claimants.

d. The Settlement Administrator's determination as to whether to approve, deny, or reduce a Claim shall be final and binding.

102. The Settlement Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Settlement Administrator, the decision reached, and all reasons supporting the decision, if requested by Class Counsel or Defendant's Counsel. Additionally, Class Counsel and Defendant's Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

103. No person or entity shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Settlement.

104. No later than 75 days after Final Approval or 75 days after the Effective Date, whichever is later, the Settlement Administrator shall distribute the Settlement Class Member Benefits.

105. Cash Payments to Settlement Class Members will be made electronically or by paper check. Settlement Class Members with Valid Claims shall receive an email instructing them to select the type of payment they wish to receive. Upon issuance of the email, Settlement Class Members shall have 30 days to select their method of payment. Settlement Class Members who do not open their email or provide incorrect or incomplete electronic payment information shall receive a paper check in the mail. Settlement Class Members receiving payment by check shall have 180 days to negotiate the check.

106. The Settlement Administrator will send an email to Settlement Class Members with Valid Claims that elected Credit/Data Monitoring with information on how to enroll in the Credit/Data Monitoring, including the activation code.

X. Final Approval Order and Final Judgment

107. Plaintiffs shall file their Motion for Final Approval of the Settlement, inclusive of the Application for Attorneys' Fees, Costs, and Service Awards, no later than 45 days before the original date set for the Final Approval Hearing. At the Final Approval Hearing, the Court may choose to hear argument on Plaintiffs' Motion for Final Approval of the Settlement and Application for Attorneys' Fees, Costs, and Service Awards. In the Court's discretion, the Court also may hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Application for Attorneys' Fees, Costs, and Service Awards, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

108. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and final judgment thereon, and whether to grant the Application for Attorneys' Fees, Costs, and Service Awards. Such proposed Final Approval Order shall, among

other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice Program satisfies Due Process requirements;
- d. Bar and enjoin all Releasing Parties from asserting any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; bar and enjoin all Releasing Parties from pursuing any Released Claims against Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- e. Release Defendant and the Released Parties from the Released Claims; and
- f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, Plaintiffs, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

XI. Service Awards, Attorneys' Fees and Costs

109. **Service Awards** – In recognition of the time and effort the Class Representatives expended in pursuing this Action and in fulfilling their obligations and responsibilities as Class Representatives, and of the relief conferred on all Settlement Class Members by the Settlement, Class Counsel shall request a Service Award for the Class Representatives in the amount not to exceed \$2,500.00 each. If approved, the Service Awards shall be paid by the Settlement Administrator out of the Settlement Fund within 30 days of the Effective Date. The Service Award payments to the Class Representatives shall be separate and apart from their entitlement to benefits from the Settlement Fund.

110. *Attorneys' Fees and Costs* – Class Counsel shall apply to the Court for an award of attorneys' fees of up to 33.33% of the Settlement Fund, plus reimbursement of costs. The attorneys' fees and cost awards approved by the Court shall be paid by the Settlement Administrator out of the Settlement Fund by wire transfer to an account designated by Class Counsel, within 30 days of the Effective Date.

111. This Settlement is not contingent on approval of the request for attorneys' fees and costs or Service Awards, and if the Court denies the request or grants amounts other than what was requested, the remaining provisions of the Agreement shall remain in force. The provisions for attorneys' fees and costs and the Service Awards were not negotiated until after all material terms of the Settlement.

XII. Disposition of Residual Funds

112. The Settlement is designed to exhaust the Settlement Fund. In the event there are funds remaining from uncashed checks in the Settlement Fund 20 days following the 180-day check negotiation period, a subsequent payment will be evenly made to all Settlement Class Members with approved claims for Cash Payments who cashed or deposited the initial payment they received, provided the average check amount is equal to or greater than \$3.00. The distribution of this remaining Net Settlement Fund shall continue up to a maximum of \$500 for any Settlement Class Member until the average check or digital payment in a distribution is less than \$3.00, whereupon all remaining funds shall be distributed to an appropriate mutually agreeable *cy pres* recipient to be approved by the Court.

XIII. Releases

113. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully, finally, and irrevocably released and forever discharged the Released Parties of, and

shall be forever barred from instituting, maintaining, or prosecuting, any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, asserted or unasserted, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, whether on behalf of themselves or others, that result from, arise out of, are based upon, or relate to (a) the Data Security Incident; or (b) any of the alleged violations of laws or regulations cited in the Complaint, the Action, or the Related Actions.

114. Plaintiffs and Settlement Class Members covenant and agree they will not take any step whatsoever to assert, sue on, continue, pursue, maintain, prosecute, or enforce any Released Claim, directly or indirectly, whether on behalf of themselves or others, against any of the Released Parties in any jurisdiction.

115. Individuals in the Settlement Class who opt-out of the Settlement prior to the Opt-Out Deadline do not release their claims and will not obtain any benefits under the Settlement. With respect to the Released Claims, Plaintiffs and Settlement Class Members, expressly understand and acknowledge it is possible that unknown economic losses or claims exist or that present losses may have been underestimated in amount or severity. Plaintiffs and Settlement Class Members explicitly took that into account in entering into this Agreement, and a portion of the consideration and the mutual covenants contained herein, having been bargained for between Plaintiffs and Defendant with the knowledge of the possibility of such unknown claims for economic loss, were given in exchange for a full accord, satisfaction, and discharge of all such claims. Consequently, Plaintiffs and the Settlement Class Members shall be deemed to have, and by operation of the Settlement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code

(to the extent it is applicable, or any other similar provision under federal, state or local law to the extent any such provision is applicable), which reads:

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.

116. Plaintiffs or Settlement Class Members may hereafter discover facts other than or different from those that he or she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he or she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Agreement. Further, each of those individuals agrees and acknowledges that he or she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action and Related Actions shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he or she never receives actual notice of the Settlement and/or never receives a Cash Payment from the Settlement.

117. Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Settlement Class Members; and (b) Plaintiffs and Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting any Released Claim against the Released Parties, whether on behalf of Plaintiffs, any Settlement Class Member or others, in any jurisdiction,

including in any federal, state, or local court or tribunal.

XIV. Termination of Settlement

118. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

a. Court approval of the Settlement consideration set forth in Section V and the Releases set forth in Section XIII of this Agreement;

b. The Court has entered the Preliminary Approval Order substantially in the form attached to the Motion for Preliminary Approval;

c. The Court has entered the Final Approval Order substantially in the form agreed to by the Parties and attached to the Motion for Final Approval, and all objections, if any, are overruled, and all appeals taken from the Final Approval Order are resolved in favor of Final Approval; and

d. The Effective Date has occurred.

119. If any of the conditions specified in the preceding paragraph are not met, then this Agreement shall be cancelled and terminated.

120. Defendant shall have the option to terminate this Agreement if more than 1% of the Settlement Class opt-out of the Settlement. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this paragraph within 10 days after the end of the Opt-Out Period, or the option to terminate shall be considered waived.

121. In the event this Agreement is terminated or fails to become effective, then the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement, and the parties shall jointly file a status report in the Court seeking to reopen the Action. In such event, the terms and provisions of this Agreement shall have no further force and

effect with respect to the Parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

122. In the event this Agreement is terminated or fails to become effective, all funds in the Settlement Fund shall be promptly returned to Defendant. However, Defendant shall have no right to seek from Plaintiffs, Class Counsel, or the Settlement Administrator the Settlement Administration Costs paid by Defendant. The Settlement Administrator all remaining amounts in the Settlement Fund to Defendant within 21 days of termination.

XV. Effect of Termination

123. The grounds upon which this Agreement may be terminated are set forth in Section XIV. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, Defendant', and Defendant's Counsel's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims, and defenses will be retained and preserved.

124. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

XVI. No Admission of Liability

125. This Agreement reflects the Parties' compromise and settlement of disputed claims.

This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. Defendant has denied and continues to deny each of the claims and contentions alleged in the Complaint. Defendant specifically denies that a class could or should be certified in the Action or Related Actions for litigation purposes. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action or Related Actions.

126. Class Counsel believe the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted discovery, and conducted independent investigation of the alleged claims. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

127. This Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

128. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission

of, or evidence of, the validity of any claim made by the Plaintiffs or the Settlement Class, or of any wrongdoing or liability of the Released Parties; or (b) 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 Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

129. In addition to any other defenses Defendant may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

XVII. Miscellaneous Provisions

130. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

131. Binding Effect. This Agreement shall be binding upon, and inure to and for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

132. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

133. Obligation to Meet and Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in an attempt to resolve the dispute.

134. Integration and No Reliance. This Agreement constitutes a single, integrated

written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

135. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

136. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the state of Texas, without regard to the principles thereof regarding choice of law.

137. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required.

138. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and 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 also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released

Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order.

139. Notices. All notices provided for herein, shall be sent by email with a hard copy sent by first class mail to:

If to Plaintiffs or Class Counsel:

Jeff Ostrow
Kopelowitz Ostrow P.A.
1 West Las Olas Blvd., Ste. 500
Fort Lauderdale, FL 33301
ostrow@kolawyers.com

Mariya Weekes
Milberg Coleman Bryson
Phillips & Grossman PLLC
201 S. Sevilla Avenue, Ste. 200
Coral Gables, FL 33134
mweekes@milberg.com

Scott Cole
Cole & Van Note
555 12th Street, Ste. 2100
Oakland, CA 94607
sec@colevannote.com

If to Defendant or Defendant's Counsel:

Neil Gilman
Hunton Andrews Kurth LLP
2200 Pennsylvania Ave., N.W
Washington, D.C. 20037
ngilman@hunton.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

140. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Defendant's Counsel and, if the

Settlement has been approved preliminarily by the Court, approved by the Court.

141. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

142. Authority. Class Counsel (for Plaintiffs and the Settlement Class), and Defendant's Counsel (for Defendant), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Plaintiffs and Defendant to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

143. Agreement Mutually Prepared. Neither Plaintiffs nor Defendant shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

144. Independent Investigation and Decision to Settle. The Parties understand and acknowledge they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they 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 Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they and their experts used to make certain determinations, arguments, and settlement positions. The Parties agree this Settlement is fair, reasonable, and adequate, and will

not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

145. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

146. Exhibits. The exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.

147. Representations/Warranties Regarding Other Potential Plaintiffs or Legal Claims. Class Counsel represent and warrant that they do not represent any clients, or have knowledge of any potential clients, with claims or potential claims against the Released Parties aside from the Released Claims. Plaintiffs and Class Counsel each represent and warrant that neither of them is aware of any potential plaintiff, or any attorney other than Class Counsel, who intends to make demands or bring litigation against the Released Parties. Plaintiffs and Class Counsel each further represent and warrant that neither of them has been notified or otherwise informed of any such intention or consideration thereof. Plaintiffs and Class Counsel each further represent and warrant that neither of them has been referred to any other attorney or any other individual alleging to have,

asserting, pursuing, or seeking to pursue any claims against the Released Parties. Class Counsel represent and warrant that they have removed all advertisements, including social media posts, soliciting potential clients to pursue claims against Defendant or any of the Released Parties. Class Counsel further represent and warrant that they have removed any other publications, including social media posts, announcing, publicizing, or describing the Released Claims, to the extent published by Class Counsel.

148. Bar to Future Suits. Upon entry of the Final Approval Order, the Releasing Parties shall be enjoined from prosecuting any Released Claim in any proceeding against the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this paragraph.

Signature Page to Follow

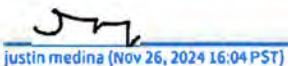
PLAINTIFFS


Crystal Schultz (Nov 23, 2024 1:01 EST)

CRYSTAL SCHULTZ



MICHELE EUSEBE


justin medina (Nov 26, 2024 16:04 PST)

JUSTIN MEDINA


Arthur Maverick (Nov 26, 2024 15:59 CST)

ARTHUR PODROYKIN

Signed by:

DCD8AF4F52F14BC

KATHERINE CHAUDHRY

CLASS COUNSEL

Jeffrey Ostrow
Jeffrey Ostrow (Nov 26, 2024 19:28 EST)
JEFF OSTROW
KOPELOWITZ OSTROW P.A.

Mariya Weekes
Mariya Weekes (Nov 26, 2024 19:29 EST)
MARIYA WEEKES
MILBERG COLEMAN BRYSON
PHILLIPS & GROSSMAN PLLC

Scott Cole
SCOTT COLE
COLE & VAN NOTE, P.A.

DEFENDANT

Michael Hutchinson
By: Michael Hutchinson
Its Chief Legal Counsel

DEFENDANT'S COUNSEL

Neil Gilman
NEIL GILMAN
HUNTON ANDREWS KURTH LLP

**EXHIBIT 1
(EMAIL NOTICE)**

To:
From:
Subject: LivaNova Data Breach Settlement

ClaimID:
PIN:

If your private information was compromised in a data security incident experienced by LivaNova USA, Inc. on or around October 26, 2023, you may be entitled to benefits from this class action settlement.

A federal district court authorized this Notice.

A \$1,205,000 Settlement has been reached with Defendant LivaNova USA, Inc. in a class action lawsuit, *J.W., a Minor, et al. v. LivaNova USA, Inc.*, Case No. 4:24-cv-02250 (S.D. Tex), relating to an alleged incident that occurred on or around October 26, 2023, during which unauthorized third parties purportedly gained access to Private Information from LivaNova's systems.

Who is included? LivaNova's records indicate that you are included in the Settlement Class. More specifically, the Settlement Class includes all persons in the United States whose Private Information was potentially compromised as a result of the Data Security Incident.

What does the Settlement provide? The Settlement provides Settlement Class Members with the right to claim a Cash Payment for either (A) reimbursement of documented losses (maximum payment of up to \$5,000) **or** (B) a \$100 flat Cash Payment (subject to *pro rata* increase or decrease) from the proposed Settlement; **and** up to three years of Credit/Data Monitoring.

All Cash Payments are subject to a *pro rata* increase or decrease depending on the total value of all Claims received.

How do I get Settlement Class Member Benefits? You must complete and submit a Claim Form by **Month XX, 2024**. You may submit a Claim Form, using the ClaimID and PIN above, online at [www.\[website\].com](http://www.[website].com). Claim Forms may also be printed from the Settlement Website or requested by calling the Settlement Administrator and submitted by mail and postmarked by **Month XX, 2024**.

What are my other options? If you do not want to be legally bound by the Settlement, you must opt-out of the Settlement by **Month XX, 2024**. Unless you opt-out, you will not be able to sue LivaNova or released parties for any claim released by the Settlement or the related actions. If you do not opt-out of the Settlement, you may object to the Settlement and notify the Court that you or your lawyer intend to appear at the Court's Final Approval Hearing. Objections are due **Month XX 2024**.

The Court's Final Approval Hearing. The Court will hold a Final Approval Hearing in this case on **Month XX, 2024, at X:X0 X.m.** at the U.S. District Court Southern District of Texas. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) \$2,500 for Service Awards to each Class Representative; and (3) Class Counsel's request for attorneys' fees of up to 33.33% of the Settlement Fund or \$401,666.67, and reimbursement of litigation costs. You may appear at the hearing, but you do not have to. You also may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

Want more information? For more information, including a copy of the Settlement Agreement and other important documents, and a more detailed description of the Settlement, the benefits available, and the releases, please go to [www.\[website\].com](http://www.[website].com) or call 1-XXX-XXX-XXXX.

EXHIBIT 2
(POSTCARD NOTICE)

First-Class
Mail
US Postage
Paid
Permit #__

*J.W., a Minor, et al. v. LivaNova USA,
Inc. Settlement Administrator*
P.O. Box
City, State ZIP-XXXX

«Barcode»

Postal Service: Please do not mark barcode

«ClassMemberID»

«First1» «Last1»

«CO»

«Addr1» «Addr2»

«City», «St» «Zip»

«Country»

LEGAL NOTICE

**If your private information
was compromised in a data
security incident
experienced by LivaNova
USA, Inc. on or around
October 26, 2023, you may
be entitled to benefits from
this class action settlement.**

A federal district court authorized this Notice.

1-XXXX-XXXX-XXXX

www.[website].com

XXXX

A \$1,205,000 Settlement has been reached with Defendant LivaNova USA, Inc. in a class action lawsuit, *J.W., a Minor, et al. v. LivaNova USA, Inc.*, Case No. 4:24-cv-02250 (S.D. Tex), relating to an alleged incident that occurred on or around October 26, 2023, in which unauthorized third parties purportedly gained access to private information from LivaNova’s systems.

Who is included? LivaNova’s records indicate that you are included in the Settlement Class. More specifically, the Settlement Class includes all persons in the United States whose Private Information was potentially compromised as a result of the Data Security Incident.

What does the Settlement provide? The Settlement provides Settlement Class Members with the right to claim a Cash Payment for either (A) reimbursement of documented losses (maximum payment of up to \$5,000) **or** (B) approx. \$100 flat cash payment (subject to *pro rata* increase or decrease) from the proposed Settlement; **and** up to three years of Credit/Data Monitoring.

All Cash Payments are subject to a pro rata increase or decrease depending on the total value of all Claims received.

How do I get Settlement benefits? You must complete and submit a Claim Form by **Month XX, 2024**. You may submit a Claim Form online at [www.\[website\].com](http://www.[website].com). Claim Forms may also be printed from the website or requested by calling the Settlement Administrator and submitted by mail and postmarked by **Month XX, 2024**.

What are my other options? If you do not want to be legally bound by the Settlement, you must opt-out of the Settlement by **Month XX, 2024**. Unless you opt-out, you will not be able to sue LivaNova or released parties for any claim released by the Settlement or the related actions. If you do not opt-out of the Settlement, you may object to the Settlement and notify the Court that you or your lawyer intend to appear at the Court’s Final Approval Hearing. Objections are due **Month XX 2024**.

The Court’s Final Approval Hearing. The Court will hold a Final Approval Hearing in this case on **Month XX, 2024**, at **X:X0 X.m.** at the U.S. District Court Southern District of Texas. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) \$2,500 for Service Awards to each Class Representative; and (3) Class Counsel’s request for attorneys’ fees of up to 33.33% of the Settlement Fund or \$401,666.67 in attorneys’ fees, and reimbursement of litigation costs. You may appear at the hearing, but you do not have to. You also may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

For more information, including a copy of the Settlement Agreement and other important documents, and a more detailed description of the settlement, the benefits available, and the releases, please go to [www.\[website\].com](http://www.[website].com) or call 1-XXX-XXX-XXXX.

Postage
Required

J.W., a Minor v. LivaNova USA
c/o Settlement Administrator
PO Box XXXX
(city, state, zip code)

**EXHIBIT 3
(LONG FORM NOTICE)**

Notice of LivaNova USA Data Security Incident Class Action Settlement

If your private information was compromised in a data security incident experienced by LivaNova USA, Inc. on or around October 26, 2023, you may be entitled to benefits from this class action settlement.

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

Please read this Notice carefully and completely, your legal rights are affected whether you act or don't act.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

- A Settlement has been reached in a class action lawsuit against LivaNova USA, Inc. (“LivaNova” or “Defendant”). The Settlement resolves claims brought by individuals impacted by the Data Security Incident that occurred on or around October 26, 2023, during which unauthorized third parties purportedly gained access to Private Information from LivaNova’s systems (“Data Security Incident”).
- You may be eligible to receive a Cash Payment for either (A) reimbursement for documented losses (maximum payment of up to \$5,000) or (B) a \$100 flat cash payment from the proposed Settlement. All Cash Payments are subject to a *pro rata* increase or decrease depending on the total value of all Claims received.
- In addition to the Cash Payment, you may elect up to three years of Credit/Data Monitoring services.
- To receive a Cash Payment and/or Credit/Data Monitoring services, you must complete and submit a Claim Form.
- Please read this notice carefully. Your legal rights will be affected, and you have a choice to make now.

Summary of Your Legal Rights and Options		Deadline
SUBMIT A CLAIM FORM	The only way to get a Cash Payment and/or Credit/Data Monitoring. Please note that submitting a Claim Form will <u>not</u> automatically enroll you in Credit/Data Monitoring Services. To enroll, you must follow the instructions that will be sent to you using the email address you provided after the Settlement is approved.	Online or Postmarked by [DATE] .
EXCLUDE YOURSELF BY OPTING OUT	Get no Cash Payment and/or Credit/Data Monitoring. Keep your right to file your own lawsuit against the Defendant for the same claims resolved by this Settlement.	Postmarked by [DATE] .
OBJECT TO THE SETTLEMENT AND/OR ATTEND THE FINAL APPROVAL HEARING	Tell the Court the reasons why you do not believe the Settlement should be approved. You can also ask to speak to the Court at the Final Approval Hearing on [DATE] about the fairness of the Settlement, with or without your own attorney.	Received by [DATE] .
DO NOTHING	Get no Cash Payment and/or Credit/Data Monitoring and be bound by the terms of the Settlement.	

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Cash Payments will be made and Credit/Data Monitoring services will be available if the Court approves the Settlement after any appeals are resolved.

Questions? Go to www.XXXXXXXXXXXXXXXXXX.com or call 1-XXX-XXX-XXXX.

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BASIC INFORMATION

1. Why did I get this Notice?

You received this Notice because you have been identified as a person whose Private Information may have been accessed or exposed during the Data Security Incident. Similarly situated individuals brought a proposed class action lawsuit against LivaNova, alleging LivaNova was negligent due to its data security practices. LivaNova denied the allegations and denied that it would be found liable. The Parties have now reached a proposed Settlement of the lawsuit and related actions.

A court authorized this Notice because you have a right to know about your rights under the proposed class action Settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after objections and appeals are resolved, a Settlement Administrator appointed by the Court will distribute the Settlement Class Member Benefits that the Settlement allows, and the pending legal claims against the Defendant will be released and dismissed. Please note that these claims will be released even if you do not file a Claim or receive any Settlement compensation (unless you timely opt-out of the Settlement).

This Notice explains the lawsuit, the Settlement, your rights, what Settlement Class Member Benefits are available, who is eligible for them, and how to get them. The case is *J.W., a minor, et al. v. LivaNova USA* Case No. 4:24-cv-2250 currently pending in the United States District Court for the Southern District of Texas. The Honorable Alfred H. Bennett, United States District Court Judge, is in charge of this case.

2. What is this lawsuit about?

The lawsuit claims that (1) on or about November 19, 2023, LivaNova discovered that an unauthorized third-party obtained Private Information from its computer systems (“Data Security Incident”); (2) the Data Security Incident exposed certain Private Information pertaining to LivaNova’s customers and employees; (3) and LivaNova began notifying affected persons about the Data Security Incident on May 31, 2024. The Defendant denies any allegations of wrongdoing and denies that Plaintiffs would prevail or be entitled to any relief should this matter continue to be litigated.

The affected Private Information varied by impacted individual and included data such as name, contact information (e.g., phone number, email and postal address), Social Security number, date of birth, medical information (e.g., treatment, condition, diagnosis, prescription, physician, medical record number and device serial number), and health insurance information.

3. What is a class action?

In a class action one or more people called “Class Representatives” sue on behalf of themselves and other people who have similar claims. This group of people is called the “class,” and the people in the class are called “Settlement Class members” or the “Settlement Class.” One court resolves the issues for all Settlement Class Members, except for people who exclude themselves from the class. The persons who sued here (*J.W., a minor*, by and through her guardian Angela Johnson, Crystal Schultz, Michele Eusebe, Justin Medina, Arthur Podroykin, and Katherine Chaudhry) are called the Plaintiffs. The company they sued—LivaNova USA, Inc.—is called the Defendant.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Instead, both sides agreed to a Settlement. That way, they avoid the costs and risks of a trial, and Settlement Class Members can get benefits or compensation. The Class Representatives and Class Counsel think the Settlement is in the best interest of the Settlement Class.

WHO IS IN THE SETTLEMENT?

5. Who is in the Settlement?

The Settlement Class is defined as: “all persons in the United States whose Private Information was potentially compromised as a result of the Data Security Incident. Excluded from the Settlement Class are (a) all persons who are governing board members of Defendant; (b) governmental entities; (c) the Court, the Court’s immediate family, and Court staff; and (d) any individual who timely and validly opts-out of the Settlement.”

6. Are there exceptions to being included?

Yes, the following are not included in the Settlement Class: (a) all persons who are governing board members of Defendant; (b) governmental entities; (c) the Court, the Court’s immediate family, and Court staff; and (d) Settlement Class Members who submit a valid request to opt-out of the Settlement by the Opt-Out Deadline.

7. What should I do if I am not sure whether I am included?

If you are not sure whether you are included in the Settlement Class, you can ask for free help by calling the Settlement Administrator, at 1-XXX-XXX-XXXX or you can visit [www.\[website\].com](http://www.[website].com) for more information.

THE SETTLEMENT BENEFITS

8. What does the Settlement provide?

Under the Settlement, the Defendant will establish a non-reversionary all cash Settlement Fund in the amount of \$1,205,000. These funds will be used to pay for all Valid Claims made by Settlement Class Members, Settlement Administration Costs, any Court-awarded Service Awards to the Class Representatives, and any Court-awarded attorneys’ fees and costs. Any remaining funds will be sent to an appropriate mutually agreeable *cy pres* recipient to be approved by the court.

9. What can I get from the Settlement?

Settlement Class Members may file a Claim for one or more of the following Settlement Class Member Benefits.

CASH PAYMENT: Settlement Class Members may submit a Claim for a Cash Payment from the Settlement Fund. You may choose ONE of the following two Cash Payment options.

Cash Payment A – Documented Losses. Settlement Class Members may submit a claim for reimbursement of documented monetary losses fairly traceable to the Data Security Incident up to \$5,000 per individual (“Documented Losses”). Documented Losses may 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 the Data Security Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. You will not be reimbursed for expenses if you have been previously reimbursed for the same expenses by another source. **You must provide proper documentation to make a successful claim for Documented Losses.**

OR

Cash Payment B – Flat Cash Payment. As an alternative to Cash Payment A above, you may elect to receive Cash Payment B, which is a flat cash payment in the amount of approx. \$100.

Claims for Cash Payments are subject to a *pro rata* increase or decrease depending upon the number of Valid Claims filed and approved.

CREDIT/DATA MONITORING SERVICES: In addition to a Cash Payment, Settlement Class Members may submit a Claim for up to three years of Credit/Data Monitoring services.

10. What am I giving up if I stay in the Class?

If you are a Settlement Class Member and you do not opt-out of the Settlement, you will give up your right to sue, continue to sue, or be part of any other lawsuit against Defendant or other released parties concerning the claims released by this Settlement. These claims will be released even if you do not file a Claim or receive any Settlement compensation. The Settlement Agreement describes the legal claims that you give up if you remain in the Settlement Class. The entire text of the Settlement Agreement can be viewed at [www.\[website\].com](http://www.[website].com).

How to Get Settlement Benefits – Making A Claim

11. How can I get a Cash Payment?

You must complete and submit a Claim Form by **[DATE]**. Claim Forms may be submitted online at [www.\[website\].com](http://www.[website].com) or printed from the website and mailed to the address on the form.

Be sure to read the Claim Form instructions carefully, include all required information, and your signature.

The Settlement Administrator will review your claim to determine the validity and amount of your payment.

This is a closed class. The benefits are available only to Settlement Class Members with a unique ID. All claims submitted by non-Settlement Class Members will be rejected.

12. How can I get Credit/Data Monitoring?

You must complete and submit a Claim Form by **[DATE]**. Claim Forms may be submitted online at [www.\[website\].com](http://www.[website].com) or printed from the website and mailed to the address on the form. Please note that submitting a Claim Form will not automatically enroll you in Credit/Data Monitoring Services. To enroll, you must follow the instructions that will be sent to you using the email address you provided after the Settlement is approved.

13. When will I get my Cash Payment or Credit/Data Monitoring?

The Court will hold a hearing on **[DATE]**, to decide whether to approve the Settlement. Cash Payments and Credit/Data Monitoring services will be made after the Settlement is approved and becomes final (meaning there is no appeal from the order approving the Settlement). Updates regarding the Settlement will be posted on the Settlement website, [www.\[website\].com](http://www.[website].com).

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

Jeff Ostrow of Kopelowitz Ostrow P.A., Mariya Weekes of Milberg Coleman Bryson Phillips & Grossman PLLC, and Scott Cole of Cole & Van Note have been appointed to represent the Settlement Class. These lawyers are called Class Counsel. You will not be charged for their services.

15. Should I get my own lawyer?

If you want your own lawyer, you may hire one, but you will be responsible for any payment for that lawyer's services. For example, you can ask your own lawyer to appear in court for you if you want someone other than Class Counsel to speak for you. You may also appear for yourself without a lawyer.

16. How will the lawyers be paid?

The attorneys representing the Settlement Class have not yet received any payment for their legal services or any reimbursement of the costs or out-of-pocket expenses they have incurred. Class Counsel plans to ask the Court to award attorney's fees from the Settlement Fund. The request for attorneys' fees, costs, and expenses will be for up to 33.33% of the Settlement Fund or \$401,666.67.

The Settlement Class is represented by the Plaintiffs named above, some of whom have been designated as the "Class Representatives." Class Representatives may make a Claim for Settlement Class Member Benefits, like all other Settlement Class Members, but will also each request a \$2,500 award for the efforts they have expended on behalf of the Settlement Class.

The Court will determine whether to approve the amount of attorneys' fees, costs, and expenses requested by Class Counsel, as well as the amount of the Service Awards for the Class Representatives. As part of Plaintiffs' Motion for Final Approval of the Settlement, Class Counsel will file an Application for Attorneys' Fees, Costs, and Service Awards no later than [DATE]. Once filed, the Motion for Final Approval will be available on the Settlement Website, [www.\[website\].com](http://www.[website].com).

EXCLUDING YOURSELF FROM THE SETTLEMENT**17. How do I get out of the Settlement?**

If you are a Settlement Class Member and you do not want the benefits from the Settlement, and you want to keep your right, if any, to sue the Defendant or released parties on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself from—or "opting out" of—the Settlement Class.

You may opt-out of the Settlement by [DATE]. To opt-out, you must send your request to the address below that contains the following information:

- Your full name, address, telephone number, email address (if any) and must be personally signed by you;
- A clear statement indicating your request to opt-out of the Settlement Class and the Settlement.

You should also include the following in your letter or postcard: the name of this Litigation, or a decipherable approximation (*J.W. v. LivaNova USA, Inc.* Case No. 4:24-cv-2250).

You must mail your opt-out request via First-Class postage prepaid U.S. Mail, postmarked no later than [DATE] to:

J.W. v. LivaNova USA Settlement Administrator
P.O. Box XXXX
XXXXXX

If you fail to include the required information, your request will be deemed invalid and you will remain a Settlement Class Member and be bound by the Settlement, including all releases.

18. If I am a Settlement Class Member and don't opt-out, can I sue the Defendant for the same thing later?

No. You must opt-out of the Settlement to keep your right to sue Defendant or other released parties for any of the claims resolved by the Settlement.

19. What happens if I opt-out?

If you opt-out of the Settlement, you will not have any rights as a member of the Settlement Class. You will not receive a Cash Payment and/or Credit/Data Monitoring services as part of the Settlement. You will not be bound by the Settlement, releases, or by any further orders or judgments in this case. You will keep the right, if any, to sue on the claims alleged in the case at your own expense.

In addition, if you opt-out of the Settlement you cannot object to this Settlement because the Settlement no longer affects you. If you object to the Settlement and request to opt-out, your objection will be voided and you will be deemed to have opted-out.

COMMENTING ON OR OBJECTING TO THE SETTLEMENT

20. How do I tell the Court I don't like the Settlement?

If you are a Settlement Class Member and you do not opt-out of the Settlement, you can object to the Settlement if you do not think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve it. You can't ask the Court to change or order a different settlement; the Court can only approve or deny this Settlement. If the Court denies approval, no Settlement Class Member Benefits will be distributed and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to any part of the proposed Settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

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

- a) the name of this Litigation (*J.W. v. LivaNova USA* Case No. 4:24-cv-2250);
- b) your full name, current mailing address, telephone number and email address (if any);
- c) the specific reasons for your objection or objections, accompanied by any legal support for the objection known to you or your counsel;
- d) the number of times you have objected to a class action settlement within the 5 years preceding the date of your objection along with the caption of each case and a copy of any orders related to or ruling upon your prior objections that were issued by the trial and appellate courts in each listed case;
- e) the identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards;
- f) the number of times your counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case;
- g) Any and all agreements that relate to the objection or the process of objecting—whether written or oral—between you and your counsel and any other person or entity;
- h) The identity of all counsel (if any) representing you who will appear at the Final Approval Hearing;
- i) A list of everyone who will be called to testify at the Final Approval Hearing in support of your objection (if any);
- j) a statement indicating whether you intend to personally appear at the Final Approval Hearing; and
- k) Your original signature (an attorney's signature is not sufficient).

Completed objections must be submitted via postal mail to the Clerk of the Court and copies must be mailed to Class Counsel, Defense Counsel, and the Settlement Administrator postmarked no later than [DATE].

Court	Class Counsel	Defense Counsel	Settlement Administrator
Clerk of the Court United States District Court for the Southern District of Texas 515 Rusk Street Houston, TX 77002	Jeff Ostrow Kopelowitz Ostrow P.A. 1 West Las Olas Blvd., Ste. 500 Fort Lauderdale, FL 33301 Mariya Weekes Milberg Coleman Bryson Phillips & Grossman PLLC 201 S. Sevilla Avenue, Ste. 200 Coral Gables, FL 33134 Scott Cole Cole & Van Note, P.A. 555 12 th Street, Ste. 2100 Oakland, CA 94607	Neil Gilman Hunton Andrews Kurth LLP 200 Park Avenue New York, NY 10166	<i>J.W. v. LivaNova USA</i> Settlement Administrator P.O. Box XXXX XXXXXX

21. What’s the difference between objecting and opting out?

Objecting is telling the Court that you don’t like something about the Settlement. You can object to the Settlement only if you are a Settlement Class Member and do not opt-out of the Settlement. Opting-out of the Settlement is telling the Court that you don’t want to be part of the Settlement. If you opt-out of the Settlement, you cannot object to it because it does not affect you.

THE COURT’S FINAL APPROVAL HEARING

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

The Court will hold a Final Approval Hearing (at [Date and Time], at United States District Court for the Southern District of Texas, 515 Rusk Street, Houston, Texas 77002 before Judge Alfred H. Bennett. The hearing may be held virtually, and if it is, instructions on how to attend will be posted on the Settlement Website. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and Class Counsel’s Application for Attorney’s fees, Costs Service Awards. If there are objections, the Court will consider them. The Court may choose to hear from people who have asked to speak at the hearing. At or after the hearing, the Court will decide whether to approve the Settlement. There is no deadline by which the Court must make its decision.

The Court may reschedule the Final Approval Hearing or change any of the deadlines described in this Notice. The date of the Fairness Hearing may change without further notice to the Settlement Class Members. Be sure to check the website, [www.\[website\].com](http://www.[website].com) for updates.

23. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you send an objection, you do not have to come to the hearing to talk about it. As long as you mailed or filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

24. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you should include a statement in your written objection (*see* Question 20) that you intend to appear at the hearing. Be sure to include your name, address, and signature as well. It is the judge’s discretion to let you speak at the Final Approval Hearing. You cannot speak at the hearing if you opt-out.

IF I DO NOTHING

25. What happens if I do nothing at all?

If you are a Settlement Class Member and do nothing, you will not get a Cash Payment and/or Credit/Data Monitoring from this Settlement, and you will not be able to sue the Defendant or other released parties for the claims released by the Settlement Agreement.

GETTING MORE INFORMATION

26. Are more details about the Settlement available?

This Notice summarizes the proposed Settlement—more details are in the Settlement Agreement and other case documents available at [www.\[website\].com](http://www.[website].com); by reviewing the case docket and filings online at www.txs.uscourts.gov; or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of Texas, 515 Rusk Street, Houston, TX 77002 between 8:00 a.m. and 4:45 p.m., Monday through Friday, excluding Court holidays.

27. How do I get more information?

Visit the website, [www.\[website\].com](http://www.[website].com), where you will find more information, including the Claim Form, a copy of the Settlement Agreement, and answers to questions about the Settlement and other information to help you determine whether you are eligible for a payment.

Contact the Settlement Administrator:

J.W. v. LivaNova USA Settlement Administrator
P.O. Box XXXX
City, ST XXXX-XXXX
1-XXX-XXX-XXXX

PLEASE DO NOT CONTACT THE COURT, THE COURT CLERK’S OFFICE, OR DEFENDANT TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

**EXHIBIT 4
(CLAIM FORM)**

CLAIM FORM

J.W., a Minor, et al. v. LivaNova USA, Inc.

Case No. 4:24-CV-02250

United States District Court for the Southern District of Texas

The **DEADLINE** to submit or mail this Claim Form is: **Month XX, 2025**

GENERAL INSTRUCTIONS

If your Private Information was compromised or potentially compromised in the Data Security Incident experienced by LivaNova USA, Inc. on or around October 26, 2023, you are a "Settlement Class Member." If you received a Notice about this class action Settlement addressed to you, then the Settlement Administrator has already determined that you are a Settlement Class member.

As a Settlement Class member, you are eligible to Claim a Cash Payment of either (A) reimbursement of documented monetary losses (up to \$5,000, subject to *pro rata* adjustment based on total Valid Claims) **or** (B) a Flat Cash Payment of approx. \$100 (subject to *pro rata* adjustment based on total Valid Claims); **and** up to three years of Credit/Data Monitoring services.

CLAIMANT INFORMATION

The Settlement Administrator will use this information for all communications regarding this Claim Form and the Settlement. If this information changes before the Settlement Class Member Benefits are issued, you must notify the Settlement Administrator.

First Name	M.I.	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Alternative Name(s)

<input type="text"/>

Mailing Address, Line 1: Street Address/P.O. Box

<input type="text"/>

Mailing Address, Line 2:

<input type="text"/>

City:	State:	Zip Code:
<input type="text"/>	<input type="text"/>	<input type="text"/>

Telephone Number (Home)	Telephone Number (Mobile)
<input type="text"/>	<input type="text"/>

Email Address (Required for Credit Monitoring Services)

<input type="text"/>

Date of Birth (mm/dd/yyyy)	Class Member ID on front of mailed Class Notice (if known)
<input type="text"/>	<input type="text"/>

BENEFIT SELECTION

You may select a Cash Payment of either (A) reimbursement of documented monetary losses (up to \$5,000) **or** (B) a Flat Cash Payment of approx. \$100) **and** up to three years of Credit/Data Monitoring services. All Cash Payments are subject to pro rata adjustment based on total Valid Claim submission.

Questions? Go to [www.\[website\].com](http://www.[website].com) or call 1-XXX-XXX-XXXX.

1. CASH PAYMENT: You may choose from one of the following Cash Payment Options:

A. Reimbursement of Documented Monetary Losses. All members of the Settlement Class who provide valid **documentation** of monetary losses as set out below are eligible for reimbursement of such **documented** monetary losses that are fairly traceable to the Data Incident, not to exceed \$5,000 per member of the Settlement Class.

I would like to receive Reimbursement of Documented Monetary Losses, which I have described below:

Cost Type (Fill all that apply)	Approximate Date of Loss	Amount of Loss
<input type="radio"/> Out-of-pocket expenses incurred as a result of the Data Incident, such as notary, fax, postage, copying, mileage and long-distance phone charges.	<input type="text"/> / <input type="text"/> / <input type="text"/> (mm/dd/yy)	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/>
	<input type="text"/> / <input type="text"/> / <input type="text"/> (mm/dd/yy)	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/>
	<input type="text"/> / <input type="text"/> / <input type="text"/> (mm/dd/yy)	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/>
<p>Examples of Supporting Third Party Documentation: Telephone bills and receipts for notary, fax, postage, and mileage reflecting out-of-pocket expenses. Please note that these examples of reimbursable documented out-of-pocket losses are not meant to be exhaustive, but exemplary. You may make claims for any documented out-of-pocket losses that you believe are reasonably related to the Data Incident or to mitigating the effects of the data security Incident.</p>		
<input type="radio"/> Fees for credit reports, credit monitoring, or other identity theft insurance products purchased on or after the Data Incident through the date of claim submission.	<input type="text"/> / <input type="text"/> / <input type="text"/> (mm/dd/yy)	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/>
	<input type="text"/> / <input type="text"/> / <input type="text"/> (mm/dd/yy)	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/>
	<input type="text"/> / <input type="text"/> / <input type="text"/> (mm/dd/yy)	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/>
<p>Examples of Supporting Documentation: Receipts or account statements reflecting purchases made for Credit Monitoring or identity theft insurance services.</p>		
<input type="radio"/> Compensation for proven monetary loss, professional fees including attorneys' fees, accountants' fees, and fees for credit repair services, fees associated with freezing or unfreezing credit with any credit reporting agency incurred as a result of the Data Incident.	<input type="text"/> / <input type="text"/> / <input type="text"/> (mm/dd/yy)	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/>
	<input type="text"/> / <input type="text"/> / <input type="text"/> (mm/dd/yy)	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/>
	<input type="text"/> / <input type="text"/> / <input type="text"/> (mm/dd/yy)	\$ <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> . <input type="text"/> <input type="text"/>
<p>Examples of Supporting Documentation: Invoices or statements reflecting payments made for professional fees/services.</p>		

Questions? Go to [www.\[website\].com](http://www.[website].com) or call 1-XXX-XXX-XXXX.

EXHIBIT B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

J.W., a Minor, by and through her guardian
Angela Johnson, CRYSTAL SCHULTZ,
MICHELE EUSEBE, JUSTIN MEDINA,
ARTHUR PODROYKIN, and KATHERINE
CHAUDHRY, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

LIVANOVA USA, INC.,

Defendant.

CIVIL ACTION NO. 4:24-CV-02250

**JOINT DECLARATION OF CLASS COUNSEL JEFF OSTROW, MARIYA WEEKES,
AND SCOTT COLE IN SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND
APPLICATION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

We, Jeff Ostrow, Mariya Weekes, and Scott Cole, declare as follows:

1. We are Class Counsel¹ for the Settlement Class in the above-captioned case. This Declaration supports Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, Application for Attorneys' Fees, Costs, and Service Awards to Plaintiffs, and Memorandum in Support.

2. Unless otherwise noted, we have personal knowledge of the facts in this declaration and could testify to them if called on to do so.

3. On April 25, 2024, Defendant, LivaNova USA, Inc., announced a Data Security Incident impacting Private Information, including some Social Security numbers and certain

¹ All capitalized terms herein shall have the same meanings as those defined in Section II of the Settlement Agreement.

medical information, of approximately 129,000 individuals, including employees and customers.

4. Defendant is a global medical technology company specializing in neuromodulation devices and cardiopulmonary products. In its capacity as a business associate to health care providers, Defendant maintains certain information about individuals receiving Defendant's neuromodulation devices. This information varies by individual but may include names, contact information (e.g., phone number, email and postal address), Social Security number, date of birth, medical information (e.g., treatment, condition, diagnosis, prescription, physician, medical record number and device serial number), and health insurance information.

5. On or about November 19, 2023, Defendant discovered that an unauthorized party had infiltrated and extracted Private Information from its computer systems on or around October 26, 2023. On May 31, 2024, Defendant began sending notice letters to individuals advising that their Private Information had been potentially compromised in the Data Security Incident.

6. As a result of the Data Security Incident, commencing in June 2024, Defendant was named in six Related Actions in connection with its alleged failure to safeguard the Private Information it maintained on behalf of the Settlement Class. Defendant denies all liability and wrongdoing.

7. After commencing litigation, Class Counsel prepared written discovery, including interrogatories, document requests, and a comprehensive Fed. R. Civ. P. 30(b)(6) notice. Class Counsel also consulted with multiple experts to understand how the breach occurred, the type of information involved, and whether the information was published on the Dark Web.

8. The Parties began discussing settlement and scheduled mediation with the Honorable Diane Welsh (Ret.), an experienced data breach mediator, on October 2, 2024.

9. Before mediation, Plaintiffs propounded informal discovery requests to be prepared

to negotiate. The Parties also exchanged mediation briefs outlining their positions as to liability, damages, and settlement-related issues.

10. After a full exchange of information related to liability and damages, the Parties participated in an in-person mediation in Philadelphia, Pennsylvania. The Parties successfully agreed to the material settlement terms through their significant arms-length negotiations. On October 4, 2024, they filed a Joint Motion to Stay and Notice of Mediated Settlement.

11. Over several weeks, the Parties diligently drafted, negotiated, and finalized the Settlement Agreement, Notices, and Claim Form, and agreed to the Settlement Administrator. The Settlement Agreement was signed on December 2, 2024.

12. The Parties did not discuss attorneys' fees and costs until after they reached agreement on all material Settlement terms.

13. The agreed upon Releases are narrowly tailored to the claims made in the Action.

14. The Settlement was reached in the absence of collusion and is the result of good faith, informed, and arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues at stake.

15. Although Plaintiffs believe the claims asserted in this Action are meritorious and the Settlement Class would ultimately prevail at trial, continued litigation against Defendant poses significant risks that make any recovery for the Settlement Class uncertain.

16. The Settlement's fairness is underscored by consideration of the obstacles that the Settlement Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of the litigation.

17. Although Plaintiffs are confident in the merits of their claims, the litigation risks cannot be disregarded. Besides the risk of losing at trial, Plaintiffs anticipate substantial additional

costs if litigation continues, including experts. Plaintiffs would need to defeat a motion to dismiss, counter a later motion for summary judgment, and both gain and maintain certification of the Settlement Class, with a near inevitable interlocutory appeal attempt.

18. Despite the risks involved with further litigation, the Settlement provides outstanding benefits, including Cash Payments and Credit/Data Monitoring for all Settlement Class members.

19. The Settlement calls for the creation of a non-reversionary all cash \$1,205,000.00 Settlement Fund to be established by Defendant to settle this Action and will be used to pay: (1) all Settlement Class Member Benefits; (2) all Settlement Administration Costs; (3) any Service Awards to Class Representatives; and (4) any attorneys' fees and costs awarded to Class Counsel.

20. All Settlement Class Members may select three years of Credit/Data Monitoring valued at \$90.00 per person, per year to protect financial assets and provide identity protection. Additionally, they may Claim Cash Payment A (up to \$5,000.00 for documented losses, subject to *pro rata* adjustment) or Cash Payment B (\$100.00 estimated flat cash payment, subject to *pro rata* adjustment).

21. As reflected in the Motion for Final Approval, these Settlement Class Member Benefits are consistent with, and in fact exceed, other approved settlements.

22. Defendant also has agreed to valuable injunctive relief in the form of additional security measures that they commit to implement on or before Final Approval.

23. The Settlement guarantees Settlement Class members real relief for harms and protections from potential future fall-out from the Data Security Incident.

24. The Settlement does not improperly discriminate between any segments of the Settlement Class

25. Class Counsel worked closely with the Settlement Administrator.

26. The Notice Program was implemented in compliance with the Agreement and the Preliminary Approval Order and the Claims process is ongoing. The proposed Notice Program was designed to satisfy Rule 23(c)(2)(B) and the *Manual for Complex Litigation*. Direct and individual notice via email or first-class mail to each Settlement Class member occurred.

27. The Claim Form submission process and distribution of Settlement Class Member Benefits is fair, convenient, and effective. The Claim submission process was structured to give all Settlement Class members adequate time to review the Settlement terms, submit their Claims, and decide whether to opt-out of or object to the Settlement.

28. Claim Forms (submitted mailed or online) are due to the Settlement Administrator by Claim Form Deadline, which is March 20, 2025. The Claim Form is in plain language for easy completion and the overall process is straightforward.

29. Settlement Class Members will promptly receive Cash Payments by electronic means or paper check issued by the Settlement Administrator. Those Settlement Class Members who elect Credit/Data Monitoring will receive emails with account activation codes.

30. Although the Parties entered into a Settlement relatively early in litigation, the Settlement negotiations were hard-fought, and the Parties expended significant time and energy on this Action. This Action has been thoroughly investigated by counsel experienced in data breach litigation. Moreover, Class Counsel's informal exchange of discovery and mediation with an experienced mediator has ensured a fair, reasonable, and adequate Settlement.

31. It is the opinion of Class Counsel, based on the experience detailed below, that the Settlement is a fair, reasonable, and adequate resolution of Plaintiffs' and Settlement Class members' claims.

32. Plaintiffs were appointed as the Class Representatives in the Preliminary Approval Order. The Settlement calls for reasonable Service Awards for the Class Representatives of up to \$2,500.00. The Service Awards are intended to compensate them for their efforts on the Settlement Class' behalf.

33. The Class Representatives have ably represented the Settlement Class and have been instrumental in assisting Class Counsel throughout this proceeding. Plaintiffs initiated and remained in contact with Class Counsel; assisted in the investigation of the Action; considered and reviewed the pleadings in this case and the Agreement; supervised, monitored, and periodically visited with Class Counsel, remaining available for consultation throughout mediation; and provided background documents and followed the progress of this litigation to ensure the Settlement Class received the best recovery possible given the particular circumstances and risks of the Action. Plaintiffs are committed to continuing to assist Class Counsel through and following Final Approval.

34. Settlement Class members are all potentially affected by the same Data Security Incident as the Class Representatives, and thus the Class Representatives have common interests with the Settlement Class.

35. Plaintiffs have the same interest in the Settlement relief, and the absent Settlement Class members have no diverging interests.

36. After agreeing to the Settlement's material terms, Class Counsel negotiated attorneys' fees and costs as part of the total Settlement Class Member Benefits. Class Counsel seek a \$401,666.67 attorneys' fees award (33.33% of the Settlement Fund) under the Fifth Circuit's percentage of the fund method and reimbursement of \$21,229.91 for litigation costs. The Notices advised the Settlement Class of these intended requests and further information of how to object.

37. Class Counsel are highly qualified and have a great deal of experience litigating complex consumer class actions, including in the data privacy context. *See* Class Counsel resumes attached hereto as *Exhibits 1 – 3*. This experience proved beneficial to Plaintiffs and the Settlement Class during Settlement negotiations.

38. In evaluating the quality of representation by Class Counsel, the Court should also consider opposing counsel. Defendant is represented by extremely capable counsel who are worthy, highly competent adversaries.

39. Class Counsel have devoted substantial time and resources to prosecuting this Action and will continue to do so. Before commencing litigation, Class Counsel investigated the potential claims against Defendant, interviewed potential plaintiffs, and gathered information regarding the Data Security Incident.

40. Class Counsel have also vigorously pursued the Settlement Class' interests in securing a Settlement bringing immediate, valuable benefits, while avoiding the risks of continued litigation. To do so, they leaned on their experience in data breach litigation, their detailed investigation of this particular matter, and informal discovery exchanged during the course of their negotiations.

41. Class Counsel have not been paid for their extensive efforts in securing the Settlement benefits for the Settlement Class and has not been reimbursed for litigation costs incurred.

42. Class Counsel took this case on a contingency basis unaware if they were going to get paid for their attorneys' fees and costs advanced. Class Counsel assumed the risk of this engagement and worked diligently and efficiently to obtain a substantial result.

43. The retention agreements with the Plaintiffs in this Action were contingent fee

agreements. No payment of attorneys' fees would occur in this case but for an attorneys' fee award in an individual or class settlement. Class Counsel took on this case with no guarantee they would receive any compensation for their work, which occupied significant resources at Class Counsel firms even before this case was filed. There was a risk of nonpayment or underpayment for Class Counsel's time, with Class Counsel foregoing the opportunity to work on other cases.

44. Class Counsel remains completely uncompensated for the time invested in the Action, in addition to the substantial costs they have advanced. Public policy concerns—ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs holding small individual claims—also support the requested fee. This practice encourages attorneys to assume this risk and allows plaintiffs who would otherwise not be able to hire an attorney to obtain competent counsel.

45. Considering Defendant has compelling defenses, continuing to pursue this case posed a significant risk for Plaintiffs and the Settlement Class, and makes litigating data breach cases less desirable.

46. Prosecuting and settling these claims demanded considerable time and labor, making this attorneys' fee request reasonable. The organization of Class Counsel ensured the work was coordinated to maximize efficiency and minimize duplication of effort. Substantial time and resources were also dedicated to working with experts, exchanging informal discovery, and preparing for and attending a successful mediation. Significant time was then devoted to negotiating and drafting that Agreement, the Preliminary Approval process, and to all actions required thereafter pursuant to the Preliminary Approval Order. Class Counsel has spent substantial time leading up to the filing of this Motion for Final Approval, addressing the Notice Program, Claims process, and preparing the Motion for Final Approval. Time will also be spent

preparing for and attending the Final Approval Hearing. Finally, Class Counsel will devote substantial time to Settlement administration, should Final Approval be granted, to ensure Valid Claims are paid and the Settlement is fully implemented.

47. Class Counsel's coordinated work paid dividends for the Settlement Class. Each of the above-described efforts was essential to achieving the Settlement. Class Counsel's time and resources devoted to prosecuting and settling this Action justify the requested attorneys' fee.

48. Currently, Class Counsel and other Plaintiffs' counsel have incurred a total of approximately 362.2 hours investigating and litigating this Action. They will spend additional time estimated to be at least 50 hours preparing for the Final Approval Hearing, responding to any objection(s), if filed, and then working with the Settlement Administrator to implement the Settlement. Should the Court require additional information concerning the lodestar, it will be provided for *in camera* inspection.

49. Class Counsel request reimbursement for \$21,229.91 for litigation costs, comprised of actual out-of-pocket costs that Class Counsel reasonably and necessarily incurred and paid in connection with the prosecution of the Action and the Settlement, including filing fees, *pro hac vice* applications, mediations fees, and travel. A summary of the costs is below.

Category	Amount
Filing Fees, Service Fees, and Pro Hac Vice Fees	\$2,239.00
Expert Fees	\$5,000.00
Travel	\$3,386.26
Mediation Fees	\$10,604.65
Total	\$21,229.91

I declare under penalty of perjury that the foregoing is true of my own personal knowledge.

Executed on February 18, 2025, in Fort Lauderdale, Florida.

/s/ Jeff Ostrow

Jeff Ostrow

KOPELOWITZ OSTROW P.A.

I declare under penalty of perjury that the foregoing is true of my own personal knowledge.

Executed on February 18, 2025, in Fort Lauderdale, Florida.

/s/ Mariya Weekes

Mariya Weekes

MILBERG COLEMAN BRYSON

PHILLIPS GROSSMAN, PLLC

I declare under penalty of perjury that the foregoing is true of my own personal knowledge.

Executed on February 18, 2025, in Oakland, California.

/s/ Scott Cole

Scott Cole

COLE & VAN NOTE

EXHIBIT 1



FIRM RESUME

One West Las Olas Boulevard, Suite 500
Fort Lauderdale, Florida 33301

Telephone: 954.525.4100

Facsimile: 954.525.4300

Website: www.kolawyers.com

Miami – Fort Lauderdale – Boca Raton

OUR FIRM

For over two decades, Kopelowitz Ostrow Ferguson Weiselberg Gilbert (KO) has provided comprehensive, results-oriented legal representation to individual, business, and government clients throughout Florida and the rest of the country. KO has the experience and capacity to represent its clients effectively and has the legal resources to address almost any legal need. The firm's 25 attorneys have practiced at several of the nation's largest and most prestigious firms and are skilled in almost all phases of law, including consumer class actions, multidistrict litigation involving mass tort actions, complex commercial litigation, and corporate transactions. In the class action arena, the firm has experience not only representing individual aggrieved consumers, but also defending large institutional clients, including multiple Fortune 100 companies.

WHO WE ARE

The firm has a roster of accomplished attorneys. Clients have an opportunity to work with some of the finest lawyers in Florida and the United States, each one committed to upholding KO's principles of professionalism, integrity, and personal service. Among our roster, you'll find attorneys whose accomplishments include Board Certified in their specialty; serving as in-house counsel for major corporations, as city and county attorneys handling government affairs, and as public defenders and prosecutors; achieving multi-millions of dollars through verdicts and settlements in trials, arbitrations, and alternative dispute resolution procedures; successfully winning appeals at every level in Florida state and federal courts; and serving government in various elected and appointed positions.

KO has the experience and resources necessary to represent large putative classes. The firm's attorneys are not simply litigators, but rather, experienced trial attorneys with the support staff and resources needed to coordinate complex cases.

CLASS
ACTION
PLAINTIFF

Since its founding, KO has initiated and served as lead class counsel in dozens of high-profile class actions. Although the actions are diverse by subject area, KO has established itself as one of the leading firms that sue national and regional banks and credit unions related to the unlawful assessment of fees. Their efforts spanning a decade plus have resulted in recoveries in excess of \$500 million and monumental practices changes that have changed the industry and saving clients billions of dollars.

Additionally, other past and current cases have been prosecuted for breaches of insurance policies; data breaches; data privacy; wiretapping; biometric privacy; gambling; false advertising; defective consumer products and vehicles; antitrust violations; and suits on behalf of students against colleges and universities arising out of the COVID-19 pandemic.

The firm has in the past litigated certified and proposed class actions against Blue Cross Blue Shield and United Healthcare related to their improper reimbursements of health insurance benefits. Other insurance cases include auto insurers failing to pay benefits owed to insureds with total loss vehicle claims. Other class action cases include cases against Microsoft Corporation related to its Xbox 360 gaming platform, ten of the largest oil companies in the world in connection with the destructive propensities of ethanol and its impact on boats, Nationwide Insurance for improper mortgage fee assessments, and several of the nation's largest retailers for deceptive advertising and marketing at their retail outlets and factory stores.

CLASS ACTION DEFENSE

The firm also brings experience in successfully defended many class actions on behalf of banking institutions, mortgage providers and servicers, advertising conglomerates, aircraft manufacturer and U.S. Dept. of Defense contractor, a manufacturer of breast implants, and a national fitness chain.

MASS TORT LITIGATION

The firm also has extensive experience in mass tort litigation, including serving as Lead Counsel in the Zantac Litigation, one of the largest mass torts in history. The firm also has handled cases against 3M related to defective earplugs, several vaginal mesh manufacturers, Bayer in connection with its pesticide Roundup, Bausch & Lomb for its Renu with MoistureLoc product, Wyeth Pharmaceuticals related to Prempro, Bayer Corporation related to its birth control pill YAZ, and Howmedica Osteonics Corporation related to the Stryker Rejuvenate and AGB II hip implants. In connection with the foregoing, some of which has been litigated within the multidistrict arena, the firm has obtained tens of millions in recoveries for its clients.

OTHER AREAS OF PRACTICE

In addition to class action and mass tort litigation, the firm has extensive experience in the following practice areas: commercial and general civil litigation, corporate transactions, health law, insurance law, labor and employment law, marital and family law, real estate litigation and transaction, government affairs, receivership, construction law, appellate practice, estate planning, wealth preservation, healthcare provider reimbursement and contractual disputes, white collar and criminal defense, employment contracts, environmental, and alternative dispute resolution.

FIND US ONLINE

To learn more about KO, or any of the firm's other attorneys, please visit www.kolawyers.com.

CLASS ACTION AND MASS TORTS**FINANCIAL
INSTITUTIONS**

Aseltine v. Bank of America, N.A., 3:23-cv-00235 (W.D.N.C.) – Preliminary Approval - \$21 million

McNeil v. Capital One, N.A., 1:19-cv-00473 (E.D.N.Y.) – Preliminary Approval - \$16 million

Devore, et al. v. Dollar Bank, GD-21-008946 (Ct. Common Pleas Allegheny 2024) - \$7 million

Nimsey v. Tinker Federal Credit Union, C1-2019-6084 (Dist. Ct. Oklahoma 2024) - \$5.475 million

Precision Roofing of N. Fla. Inc., et al. v. CenterState Bank, 3:20-cv-352 (S.D. Fla. 2023) - \$2.65 million

Checchia v. Bank of America, N.A., 2:21-cv-03585 (E.D. Pa. 2023) - \$8 million

Quirk v. Liberty Bank, X03-HHD-CV20-6132741-S (Jud. Dist. Ct. Hartford 2023) - \$1.4 million

Meier v. Prosperity Bank, 109569-CV (Dist. Ct. Brazoria 2023) - \$1.6 million

Abercrombie v. TD Bank, N.A., 0:21-cv-61376 (S.D. Fla. 2022) - \$4.35 million

Perks, et al. v. TD Bank, N.A., 1:18-cv-11176 (E.D.N.Y. 2022) - \$41.5 million

Fallis v. Gate City Bank, 09-2019-CV-04007 (Dist. Ct., Cty. of Cass, N.D. 2022) - \$1.8 million

Glass, et al. v. Delta Comm. Cred. Union, 2019CV317322 (Sup. Ct. Fulton Ga. 2022) - \$2.8 million

Roy v. ESL Fed. Credit Union, 19-cv-06122 (W.D.N.Y. 2022) - \$1.9 million

Wallace v. Wells Fargo, 17CV317775 (Sup. Ct. Santa Clara 2021) - \$10 million

Doxey v. Community Bank, N.A., 8:19-CV-919 (N.D.N.Y. 2021) - \$3 million

Coleman v. Alaska USA Federal Credit Union, 3:19-cv-0229-HRH (Dist. of Alaska 2021) - \$1 million

Smith v. Fifth Third Bank, 1:18-cv-00464-DRC-SKB (W.D. Ohio 2021) - \$5.2 million

Lambert v. Navy Federal Credit Union, 1:19-cv-00103-LO-MSN (S.D. Va. 2021) - \$16 million

Roberts v. Capital One, N.A., 16 Civ. 4841 (LGS) (S.D.N.Y. 2021) - \$17 million

Lloyd v. Navy Federal Credit Union, 17-cv-01280-BAS-RBB (S.D. Ca. 2019) - \$24.5million

Farrell v. Bank of America, N.A., 3:16-cv-00492-L-WVG (S.D. Ca. 2018) - \$66.6 million

Bodnar v. Bank of America, N.A., 5:14-cv-03224-EGS (E.D. Pa. 2015) - \$27.5 million

Morton v. Green Bank, 11-135-IV (20th Judicial District Tenn. 2018) - \$1.5 million

Hawkins v. First Tenn. Bank, CT-004085-11 (13th Jud. Dist. Tenn. 2017) - \$16.75 million

Payne v. Old National Bank, 82C01-1012 (Cir. Ct. Vanderburgh 2016) - \$4.75 million

Swift. v. Bancorpsouth, 1:10-CV-00090 (N.D. Fla. 2016) - \$24.0 million

Mello v. Susquehanna Bank, 1:09-MD-02046 (S.D. Fla. 2014) – \$3.68 million

Johnson v. Community Bank, 3:11-CV-01405 (M.D. Pa. 2013) - \$1.5 million

McKinley v. Great Western Bank, 1:09-MD-02036 (S.D. Fla. 2013) - \$2.2 million

Blabut v. Harris Bank, 1:09-MD-02036 (S.D. Fla. 2013) - \$9.4 million

Wolfgeher v. Commerce Bank, 1:09-MD-02036 (S.D. Fla. 2013) - \$18.3 million

Case v. Bank of Oklahoma, 09-MD-02036 (S.D. Fla. 2012) - \$19.0 million

Hawthorne v. Umpqua Bank, 3:11-CV-06700 (N.D. Cal. 2012) - \$2.9 million

Simpson v. Citizens Bank, 2:12-CV-10267 (E.D. Mich. 2012) - \$2.0 million

Harris v. Associated Bank, 1:09-MD-02036 (S.D. Fla. 2012) - \$13.0 million

LaCour v. Whitney Bank, 8:11-CV-1896 (M.D. Fla. 2012) - \$6.8 million

Orallo v. Bank of the West, 1:09-MD-202036 (S.D. Fla. 2012) - \$18.0 million

Taulava v. Bank of Hawaii, 11-1-0337-02 (1st Cir. Hawaii 2011) - \$9.0 million

DATA BREACH AND PRIVACY

In re: Fortra, MDL No. 3090 (S.D. Fla.) – Co-Lead Counsel
Crove, et al. v. Managed Care of North America, Inc., 0:23-cv-61065-AHS (S.D. Fla.) – Co-Lead Counsel
Malinowski, et al. v. IBM Corp. and Johnson & Johnson, 7:23-cv-08421 (S.D.N.Y.) – Co-Lead Counsel
Gordon, et al. v. Zeroed-In Technologies, LLC, et al., 1:23-CV-03284 (D. Md.) – Co-Lead Counsel
Harrell, et al. v. Webtpa Employer Services LLC, 3:24-CV-01158 (N.D. Tex.) - Co-Lead Counsel
Gambino, et al. v. Berry Dunn Mcneil & Parker LLC, 2:24-CV-00146 (D. Me.) - Co-Lead Counsel
Isaac v. Greylock McKinnon Associates, Inc., 1:24-CV-10797 (D. Mass.) - Co-Lead Counsel
Rodriguez, et al. v. Caesars Entertainment, Inc., 2:23-CV-01447 (D. Nev.) - Steering Committee Chair
Owens v. MGM Resorts International, 2:23-cv-01480-RFB-MDC (D. Nev.) - Executive Committee
Doyle v. Luxottica of America, Inc., 1:20-cv-00908-MRB (S.D. Ohio) - Executive Committee
Doe, et al. v. Highmark, Inc., 2:23-cv-00250-NR (W.D. Penn.) - Executive Committee
Silvers, et al. v. HCA Healthcare, Inc., 1:23-cv-01003-LPH (S.D. In.) - Executive Committee
In re: 21st Century Oncology, MDL No. 2737 (M.D. Fla. 2021) - \$21.8 million
In re: CaptureRx Data Breach, 5:21-cv-00523 (W.D. Tex. 2022) - \$4.75 million
Lopez, et al. v. Volusion, LLC, 1:20-cv-00761 (W.D. Tex. 2022) - \$4.3 million
Mathis v. Planet Home Lending, LLC, 3:24-CV-00127 (D. Conn.) - Preliminary Approval - \$2.425 million
Stadnik v. Sovos Compliance, LLC, 1:23-CV-12100 (D. Mass.) - Preliminary Approval - \$3.5 million
Turner v. Johns Hopkins, et al., 24-C-23-002983 (Md. Cir. Ct.) - Preliminary Approval - \$2.9 million
Peterson v. Vivendi Ticketing US LLC, 2:23-CV-07498 (C.D. Cal.) - Preliminary Approval - \$3.25 million
Katz et al. v. Einstein Healthcare Network, No. 02045 (Phila C.P.) - \$1.6 million
Opris et al v. Sincera Reproductive Medicine et al, No. 2:21-cv-03072 (E.D. PA) - \$1.2 million

Ostendorf v. Grange Indemnity Ins. Co., 2:19-cv-01147-ALM-KAJ (E.D. Ohio 2020) - \$12.6 million
Paris, et al. v. Progressive Select Ins. Co., et al., 19-21760-CIV (S.D. Fla. 2023) - \$38 million
Spielman v. USAA, et al., 2:19-cv-01359-TJH-MAA (C.D. Ca. 2023) - \$3 million
Walters v. Target Corp., 3:16-cv-1678-L-MDD (S.D. Cal. 2020) - \$8.2 million
Papa v. Grieco Ford Fort Lauderdale, LLC, 18-cv-21897-JEM (S.D. Fla. 2019) - \$4.9 million
In re Disposable Contact Lens Antitrust Litig., MDL 2626 (M.D. Fla.) - \$88 million
Vandiver v. MD Billing Ltd., 2023LA000728 (18th Jud. Dist. Ill. 2023) - \$24 million
Skerandel v. Costco Wholesale Corp., 9:21-cv-80826-BER (S.D. Fla. 2024) - \$1.3 million
Evans v. Church & Dwight Co., Inc., 1:22-CV-06301 (N.D. Ill. 2023) - \$2.5 million
In Re: Farm-Raised Salmon & Salmon Prod. Antitrust Litig., No. 1:19-cv-21551 (S.D. Fla. 2023) - \$75 million
Perry v. Progressive Michigan, et al., 22-000971-CK (Cir. Ct. Washtenaw) - Class Counsel
In re Apple Simulated Casino-Style Games Litig., MDL No. 2958 (N.D. Cal.) - Executive Committee
In re Google Simulated Casino-Style Games Litig., MDL No. 3001 (N.D. Cal.) - Executive Committee
In re Facebook Simulated Casino-Style Games Litig., No. 5:21-cv-02777 (N.D. Cal.) - Exec. Committee

In re Zantac Prods. Liab. Litig., MDL No. 2924 (S.D. Fla.) - Co-Lead Counsel
In re: National Prescription Opiate Litigation, No. MDL No. 2804 (N.D. Ohio) - \$100 million
In re: Juul Labs, No. MDL No. 2913 (N.D. Cal.) - \$26 million
In re: Davenport Hotel Building Collapse, LACE137119 (Dist. Ct. Scott Cty., Iowa) - Class Counsel
In re: 3M Combat Arms Earplug Prod. Liab. Litig., MDL No. 2885 (N.D. Fla.) - Numerous Plaintiffs
In re: Stryker Prod. Liab. Lit., 13-MD-2411 (Fla. Cir Ct.) - Numerous Plaintiffs

CONSUMER PROTECTION

MASS TORT

JEFF OSTROW**Managing Partner**

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954.332.4200

***Bar Admissions***

Florida Bar

District of Columbia Bar

Court Admissions

Supreme Court of the United States

U.S. Court of Appeals for the Eleventh Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

U.S. District Court, Northern District of Illinois

U.S. District Court, Eastern District of Michigan

U.S. District Court, Western District of Tennessee

U.S. District Court, Western District of Wisconsin

U.S. District Court, Western District of Kentucky

U.S. District Court, Northern District of New York

U.S. District Court, District of Colorado

U.S. District Court, Southern District of Indiana

U.S. District Court, Eastern District of Texas

U.S. District Court, District of Nebraska

Education

Nova Southeastern University, J.D. - 1997

University of Florida, B.S. - 1994

Jeff Ostrow is the Managing Partner of Kopelowitz Ostrow P.A. He established his own law practice in 1997 immediately upon graduation from law school and has since grown the firm to 30 attorneys in 3 offices throughout south Florida. In addition to overseeing the firm's day-to-day operations and strategic direction, Mr. Ostrow practices full time in the area of consumer class actions. He is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics, which is the highest possible rating by the most widely recognized attorney rating organization in the world.

Mr. Ostrow is an accomplished trial attorney who has experience representing both Plaintiffs and Defendants. He has successfully tried many cases to verdict involving multi-million-dollar damage claims in state and federal courts. He is currently court-appointed lead counsel and sits on plaintiffs' executive committees in multiple high profile nationwide multi-district litigation actions involving cybersecurity breaches and related privacy issues.

Additionally, he has spent the past 15 years serving as lead counsel in dozens of nationwide and statewide class action lawsuits against many of the world's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$1 billion for tens of millions of bank and credit union customers, as well as monumental changes in the way they assess fees. Those changes have forever revolutionized an industry, resulting in billions of dollars of savings. In addition, Mr. Ostrow has served as lead class counsel in many consumer class actions against some of the world's largest airlines, pharmaceutical companies, clothing retailers, health and auto insurance carriers, technology companies, and oil conglomerates, along with serving as class action defense counsel for some of the largest advertising and marketing agencies in the world, banking institutions, real estate developers, and mortgage companies. A selection of

Mr. Ostrow often serves as outside General Counsel to companies, advising them in connection with their legal and regulatory needs. He has represented many Fortune 500® Companies in connection with their Florida litigation. He has handled cases covered by media outlets throughout the country and has been quoted many times on various legal topics in almost every major news publication, including the Wall Street Journal, New York Times, Washington Post, Miami Herald, and Sun-Sentinel. He has also appeared on CNN, ABC, NBC, CBS, Fox, ESPN, and almost every other major national and international television network in connection with his cases, which often involve industry changing litigation or athletes in Olympic swimming, professional boxing, the NFL, NBA and MLB.

Mr. Ostrow received a Bachelor of Science in Business Administration from the University of Florida in 1994 and Juris Doctorate from Nova Southeastern University in 1997. He is a licensed member of The Florida Bar and the District of Columbia Bar, is fully admitted to practice before the U.S. Supreme Court, U.S. Court of Appeals for the Ninth Circuit and Eleventh Circuit, the U.S. District Courts for the Southern, Middle, and Northern Districts of Florida, District of Colorado, Southern District of Indiana, Western District of Kentucky, Eastern District of Michigan, Northern District of Illinois, District of Nebraska, Northern District of New York, Western District of Tennessee, Eastern District of Texas, and Western District of Wisconsin. Mr. Ostrow is also member of several bar associations.

In addition to the law practice, he is the founder and president of ProPlayer Sports LLC, a full-service sports agency and marketing firm. He represents both Olympic Gold Medalist Swimmers, World Champion Boxers, and select NFL athletes, and is licensed by both the NFL Players Association as a certified Contract Advisor. At the agency, Mr. Ostrow handles all player-team negotiations of contracts, represents his clients in legal proceedings, negotiates all marketing and NIL engagements, and oversees public relations and crisis management. He has extensive experience in negotiating, mediating, and arbitrating a wide range of issues on behalf of clients with the NFL Players Association, the International Olympic Committee, the United States Olympic Committee, USA Swimming and the World Anti-Doping Agency. He has been an invited sports law guest speaker at New York University and Nova Southeastern University and has also served as a panelist at many industry-related conferences.

He is a lifetime member of the Million Dollar Advocates Forum. The Million Dollar Advocates Forum is the most prestigious group of trial lawyers in the United States. Membership is limited to attorneys who have had multi-million dollar jury verdicts. Additionally, he is consistently named as one of the top lawyers in Florida by Super Lawyers®, a publication that recognizes the best lawyers in each state. Mr. Ostrow is an inaugural recipient of the University of Florida's Warrington College of Business Administration Gator 100 award for the fastest growing University of Florida alumni- owned law firm in the world.

When not practicing law, Mr. Ostrow serves on the Board of Governors of Nova Southeastern University's Wayne Huizenga School of Business and is the Managing Member of One West LOA LLC, a commercial real estate development company with holdings in downtown Fort Lauderdale. He has previously sat on the boards of a national banking institution and a national healthcare marketing company. Mr. Ostrow is a founding board member for the Jorge Nation Foundation, a 501(c)(3) non-profit organization that partners with the Joe DiMaggio Children's Hospital to send children diagnosed with cancer on all-inclusive Dream Trips to destinations of their choice. Mr. Ostrow resides in Fort Lauderdale, Florida, and has 3 sons.



DAVID FERGUSON

Partner

Bar Admissions

The Florida Bar

Court Admissions

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

Education

Nova Southeastern University, J.D. - 1993

Nova Southeastern University, B.S. – 1990

Email: ferguson@kolawyers.com

David L. Ferguson is an accomplished trial attorney and chairs the firm's litigation department. He routinely leads high stakes litigation across a wide array of practice areas, including, but not limited to, employment law, complex business litigation, class actions, product liability, catastrophic personal injury, civil rights, and regulatory enforcement actions.

Mr. Ferguson is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics, a testament to the fact that his peers (lawyers and judges in the community) have ranked him at the highest level of professional excellence. Mr. Ferguson is well regarded as a formidable advocate in court and for providing creative and insightful strategic advice, particularly in emergency and extremely complex situations.

While in law school, Mr. Ferguson served as a Staff Member of the Nova Law Review. He was also a member of the Moot Court Society and the winner of the Moot Court Intramural Competition.

Representation of the Broward Sheriff's Office

Since 2013, Mr. Ferguson has had the privilege of representing the Broward Sheriff's Office ("BSO") in over 150 matters involving many different types of disputes and issues, including: defense of civil rights lawsuits in state and federal court; negotiating collective bargaining agreements with unions; and arbitrations brought by unions or employees subjected to termination or other significant discipline. Mr. Ferguson has had many arbitration final hearings and state and federal jury trials for BSO representing the agency as well as the Sheriff and numerous Deputies individually.

Class/Mass Actions

Mr. Ferguson has experience in class actions against large banks and some of the world's largest companies, including technology companies and oil conglomerates.

Additionally, during his career Mr. Ferguson has defended many large companies in MDL's, and mass and class actions, including medical equipment manufacturers, pharmaceutical companies, an aircraft parts and engine manufacturer and defense contractor, nationwide retailers, and a massive sugar manufacturer.

Mr. Ferguson has a great deal of experience litigating cases involving massive fraud claims, most often for victims, but also for select defendants. Mr. Ferguson's clients have included individual victims who have lost multiple millions of dollars in fraud schemes to large businesses with tremendous damages, including one international lending institution with damages in excess of \$150 million. Additionally, Mr. Ferguson successfully represented several individuals and entities subjected to significant claims by a receiver and the United States Marshals Service in a massive billion-dollar Ponzi scheme involving a notorious Ft. Lauderdale lawyer and his law firm.

Regulatory Agency Enforcement Actions

Mr. Ferguson has extensive experience defending individuals and entities in significant enforcement actions brought by regulatory agencies, including the CFTC, FTC, and SEC.

Employment, Human Resources, and Related Matters

Mr. Ferguson has represented numerous business and individuals in employment and human resource related matters. Mr. Ferguson has represented several Fortune 50 companies, including Pratt & Whitney/UTC, Home Depot, and Office Depot in all phases of employment related matters. Mr. Ferguson has litigated virtually every type of discrimination and employment related claim, including claims based upon race, pregnancy, disability, national origin, religion, age, sexual preference, sexual harassment, worker's compensation, unemployment, FMLA leave, FLSA overtime, unpaid wages, whistleblower, and retaliation.

Mr. Ferguson primarily represents companies, but also represents select individuals who have claims against their present or former employers. In addition to the wide variety of employment claims discussed above, as plaintiff's counsel Mr. Ferguson has also handled federal False Claims Act (Qui Tam) and the Foreign Corrupt Practices Act claims brought by individuals.

Business Disputes

Throughout his legal career, as counsel for plaintiffs and defendants, Mr. Ferguson has handled a myriad of commercial cases involving all types of business disputes, including claims for breach of partnership agreements, breach of shareholder or limited liability company operating agreements; dissolution of corporations and limited liability companies; appointment of receivers; breaches of fiduciary duty; conversion; constructive trust; theft; negligent or intentional misrepresentation or omissions; fraudulent inducement; tortious interference; professional negligence or malpractice; derivative actions, breach of contract, real estate disputes, and construction disputes.

Noncompetition and Trade Secret Litigation

Mr. Ferguson routinely represents companies and individuals in commercial disputes involving unfair and deceptive trade practices, unfair competition and/or tortious interference with contracts or valuable business relationships. Often these cases involve the enforcement of noncompetition agreements and protection of valuable trade secrets. Mr. Ferguson has extensive experience representing businesses seeking to enforce their noncompetition agreements and/or protect trade secrets through suits for injunctive relief and damages and representing subsequent employers and individuals defending against such claims. He has obtained numerous injunctions for his clients and has also successfully defended against them numerous times, including getting injunctions dissolved that were entered against his clients without notice or prior to his representation. Mr. Ferguson has also obtained contempt sanctions and entitlement to punitive damages against individuals and entities who have stolen trade secrets from his clients.



ROBERT C. GILBERT

Partner

Bar Admissions

The Florida Bar

District of Columbia Bar

Court Admissions

Supreme Court of the United States

U.S. Court of Appeals for the 11th Circuit

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

Education

University of Miami School of Law, J.D. - 1985

Florida International University, B.S. - 1982

Email: gilbert@kolawyers.com

Robert C. “Bobby” Gilbert has over three decades of experience handling class actions, multidistrict litigation and complex business litigation throughout the United States. He has been appointed lead counsel, co-lead counsel, coordinating counsel or liaison counsel in many federal and state court class actions. Bobby has served as trial counsel in class actions and complex business litigation tried before judges, juries and arbitrators. He has also briefed and argued numerous appeals, including two precedent-setting cases before the Florida Supreme Court.

Bobby was appointed as Plaintiffs’ Coordinating Counsel in *In re Checking Account Overdraft Litig.*, MDL 2036, class action litigation brought against many of the nation’s largest banks that challenged the banks’ internal practice of reordering debit card transactions in a manner designed to maximize the frequency of customer overdrafts. In that role, Bobby managed the large team of lawyers who prosecuted the class actions and served as the plaintiffs’ liaison with the Court regarding management and administration of the multidistrict litigation. He also led or participated in settlement negotiations with the banks that resulted in settlements exceeding \$1.1 billion, including Bank of America (\$410 million), Citizens Financial (\$137.5 million), JPMorgan Chase Bank (\$110 million), PNC Bank (\$90 million), TD Bank (\$62 million), U.S. Bank (\$55 million), Union Bank (\$35 million) and Capital One (\$31.7 million).

Bobby has been appointed to leadership positions in numerous other class actions and multidistrict litigation proceedings. He is currently serving as co-lead counsel in *In re Zantac (Ranitidine) Prods. Liab. Litig.*, 9:20-md-02924-RLR (S.D. Fla.), as well as liaison counsel in *In re Disposable Contact Lens Antitrust Litig.*, MDL 2626 (M.D. Fla.); liaison counsel in *In re 21st Century Oncology Customer Data Security Breach Litig.*, MDL 2737 (M.D. Fla.); and *In re Farm-Raised Salmon and Salmon Products Antitrust Litig.*, No. 19-21551 (S.D. Fla.). He previously served as liaison counsel for indirect purchasers in *In re Terazosin Hydrochloride Antitrust Litig.*, MDL 1317 (S.D. Fla.), an antitrust class action that settled for over \$74 million.

For the past 18 years, Bobby has represented thousands of Florida homeowners in class actions to recover full compensation under the Florida Constitution based on the Florida Department of Agriculture's taking and destruction of the homeowners' private property. As lead counsel, Bobby argued before the Florida Supreme Court to establish the homeowners' right to pursue their claims; served as trial counsel in non-jury liability trials followed by jury trials that established the amount of full compensation owed to the homeowners for their private property; and handled all appellate proceedings. Bobby's tireless efforts on behalf of the homeowners resulted in judgments exceeding \$93 million.

Bobby previously served as an Adjunct Professor at Vanderbilt University Law School, where he co-taught a course on complex litigation in federal courts that focused on multidistrict litigation and class actions. He continues to frequently lecture and make presentations on a variety of topics.

Bobby has served for many years as a trustee of the Greater Miami Jewish Federation and previously served as chairman of the board of the Alexander Muss High School in Israel, and as a trustee of The Miami Foundation.

JONATHAN M. STREISFELD

Partner

Bar Admissions

The Florida Bar

Court Admissions

Supreme Court of the United States

U.S. Court of Appeals for the First, Second, Fourth, Fifth Ninth, and Eleventh Circuits

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

U.S. District Court, Northern District of Illinois

U.S. District Court, Western District of Michigan

U.S. District Court, Western District of New York

U.S. District Court, Western District of Tennessee

Education

Nova Southeastern University, J.D. - 1997

Syracuse University, B.S. - 1994

Email: streisfeld@kolawyers.com



Jonathan M. Streisfeld joined KO as a partner in 2008. Mr. Streisfeld concentrates his practice in the areas of consumer class actions, business litigation, and appeals nationwide. He is a Martindale Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics.

Mr. Streisfeld has vast and successful experience in class action litigation, serving as class counsel in nationwide and statewide consumer class action lawsuits against the nation's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$500,000,000 for tens of millions of bank and credit union customers, as well as profound changes in the way banks assess fees. Additionally, he has and continues to serve as lead and class counsel for consumers in many class actions involving false advertising and pricing, defective products, data breach and privacy, automobile defects, airlines, mortgages, and payday lending. Mr. Streisfeld has also litigated class actions against some of the largest health and automobile insurance carriers and oil conglomerates, and defended class and collective actions in other contexts.

Mr. Streisfeld has represented a variety of businesses and individuals in a broad range of business litigation matters, including contract, fraud, breach of fiduciary duty, intellectual property, real estate, shareholder disputes, wage and hour, and deceptive trade practices claims. He also assists business owners and individuals with documenting contractual relationships and resolving disputes. Mr. Streisfeld has also provided legal representation in bid protest proceedings.

Mr. Streisfeld oversees the firm's appellate and litigation support practice, representing clients in the appeal of final and non-final orders, as well as writs of certiorari, mandamus, and prohibition. His appellate practice includes civil and marital and family law matters.

Previously, Mr. Streisfeld served as outside assistant city attorney for the City of Plantation and Village of Wellington in a broad range of litigation matters. As a member of The Florida Bar, Mr. Streisfeld served for many years on the Executive Council of the Appellate Practice Section and is a past Chair of the Section's Communications Committee. Mr. Streisfeld currently serves as a member of the Board of Temple Kol Ami Emanu-El.

KEN GRUNFELD

Partner

Bar Admissions

The Pennsylvania Bar

The New Jersey Bar

Court Admissions

U.S. Court of Appeals for the Third, Fourth, Fifth, Ninth, Tenth and Eleventh Circuits

U.S. District Ct, Eastern District of Pennsylvania

U.S. District Ct, Middle District of Pennsylvania

U.S. District Ct, Western District of Pennsylvania

U.S. District Ct, District of New Jersey

U.S. District Ct, Eastern District of Michigan

U.S. District Ct, Western District of Wisconsin

Education

Villanova University School of Law, J.D., 1999

University of Michigan, 1996

Email: grunfeld@kolawyers.com



Ken Grunfeld is one of the newest KO partners, having just started working at the firm in 2023. Having worked at one of Philadelphia's largest and most prestigious defense firms for nearly a decade defending pharmaceutical manufacturers, national railroads, asbestos companies and corporate clients in consumer protection, products liability, insurance coverage and other complex commercial disputes while working, Mr. Grunfeld "switched sides" about 15 years ago.

Since then, he has become one of the city's most prolific and well-known Philadelphia class action lawyers. His cases have resulted in the recovery of hundreds of millions of dollars for injured individuals.

Mr. Grunfeld brings with him a wealth of pre-trial, trial, and appellate work experience in both state and federal courts. He has successfully taken many cases to verdict. Currently, he serves as lead counsel in a number of nationwide class actions. Whether by settlement or judgment, Mr. Grunfeld makes sure the offending companies' wrongful practices have been addressed. He believes the most important part of bringing a wrongdoer to justice is to ensure that it never happens again; class actions can be a true instrument for change if done well.

Mr. Grunfeld has been named a Super Lawyer numerous times throughout his career. He has been a member of the Philadelphia, Pennsylvania, and American Bar Associations, as well as a member of the American Association for Justice (AAJ). He was a Finalist for AAJ's prestigious Trial Lawyer of the Year Award in 2012 and currently serves as AAJ's Vice Chair of the Class Action Law Group. To his strong view that attorneys should act ethically, he volunteers his time as a Hearing Committee Member for the Disciplinary Board of the Supreme Court of Pennsylvania.

Mr. Grunfeld received his undergraduate degree from the University of Michigan. He is an active member of the Michigan Alumni Association, Philadelphia chapter and serves as a Michigan Alumni Student recruiter for local high schools. He received his Juris Doctor from the Villanova University School of Law. He was a member of the Villanova Law Review and graduated Order of the Coif.

Ken is a life-long Philadelphian. He makes his home in Bala Cynwyd, Pennsylvania, where he resides with his wife, Jennifer, and his year-old twins.

KRISTEN LAKE ARDOSO

Partner

Bar Admissions

The Florida Bar

The State Bar of California

Court Admissions

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Central District of California

U.S. District Court, Eastern District of California

U.S. District Court, Northern District of Illinois

U.S. District Court, Eastern District of Michigan

Education

Nova Southeastern University, J.D., 2007

University of Florida, B.A., 2004

Email: cardoso@kolawers.com



Kristen Lake Cardoso is a litigation attorney focusing on consumer class actions and complex commercial litigation. She has gained valuable experience representing individuals and businesses in state and federal courts at both the trial and appellate levels in a variety of litigation matters, including contractual claims, violations of consumer protection statutes, fraud, breach of fiduciary duty, negligence, professional liability, real estate claims, enforcement of non-compete agreements, trade secret infringement, shareholder disputes, deceptive trade practices, and other business torts.

Currently, Ms. Cardoso serves as counsel in nationwide and statewide class action lawsuits concerning violations of state consumer protection statutes, false advertising, defective products, data breaches, and breaches of contract. Ms. Cardoso is actively litigating cases against major U.S. airlines for their failure to refund fares following flight cancellations and schedule changes, as well as cases against manufacturers for their sale and misleading marketing of products, including defective cosmetics and nutritional supplements. Ms. Cardoso has also represented students seeking reimbursements of tuition, room and board, and other fees paid to their colleges and universities for in-person education, housing, meals, and other services not provided when campuses closed during the COVID-19 pandemic. Additionally, Ms. Cardoso has represented consumers seeking recovery of gambling losses from tech companies that profit from illegal gambling games offered, sold, and distributed on their platforms.

Ms. Cardoso is admitted to practice law throughout the states of Florida and California, as well as in the United States District Courts for the Southern District of Florida, Middle District of Florida, Central District of California, Eastern District of California Northern District of Illinois, and Eastern District of Michigan.

Ms. Cardoso attended the University of Florida, where she received her Bachelor's degree in Political Science, cum laude, and was inducted as a member of Phi Beta Kappa honor society. She received her law degree from Nova Southeastern University, magna cum laude. While in law school, Ms. Cardoso served as an Articles Editor for the Nova Law Review, was on the Dean's list, and was the recipient of a scholarship granted by the Broward County Hispanic Bar Association for her academic achievements. When not practicing law, Ms. Cardoso serves as a volunteer at Saint David Catholic School, including as a member of the school Advisory Board and an executive member of the Faculty Student Association. She has also served on various committees with the Junior League of Greater Fort Lauderdale geared towards improving the local community through leadership and volunteering.

STEIN'S ERT

Partner

Bar Admissions

The Florida Bar

The New York Bar

Court Admissions

United States District Court, Southern District of Florida

United States District Court, Middle District of Florida

United States District Court, Southern District of New York

United States District Court, Eastern District of New York

United States District Court, Northern District of Illinois

United States District Court, Central District of Illinois

Education

Georgetown University Law Center, J.D., 2018

Northwestern University, B.S., 2010

Email: sukert@kolaw.com

Steven Sukert has experience in all aspects of complex litigation in federal and state court, including drafting successful dispositive motions and appeals, handling discovery, and arguing court hearings. Steven focuses his practice at KO on complex class actions and multi-district litigations in courts around the country, including in data privacy, bank overdraft fee, and other consumer protection cases.

Before joining KO, Steven gained experience at Munster, Yoakley Stewart, P.A. in Miami in high-stakes commercial cases often involving trade secret and intellectual property claims, consumer contract claims, and legal malpractice claims, as well as in international arbitrations. Steven co-authored an amicus brief in the Florida Supreme Court case *Airbnb, Inc. v. Doe* Case No. SC20-117, and helped organize the American Bar Association's inaugural International Arbitration Masterclass, in 2021.

Steven was born and raised in Miami. He returned to his home city after law school to clerk for the Honorable James Lawrence King in the U.S. District Court for the Southern District of Florida.

In 2018, Steven earned his J.D. from Georgetown University Law Center. While living in the nation's capital, he worked at the U.S. Department of Labor, Office of the Solicitor, where he won the Mary S. Tell EISA Litigation Award from the Civil Fraud Section of the U.S. Department of Justice, where he worked on large Medicare fraud cases and pioneered the use of the False Claims Act in the context of pharmaceutical manufacturers who engaged in price fixing and the Lawyers' Committee for Civil Rights Under Law, where his proposal for writing an amicus brief in the *Janus v. AFSCME* U.S. Supreme Court case was adopted by the organization's board of directors.

Steven has a degree in Molecular Biology from Northwestern University. Prior to his legal career, he worked as a biomedical laboratory researcher at the Diabetes Research Institute in Miami.

CAROLINE HERTER

Associate

***Bar Admissions***

The Florida Bar

Court Admissions

U.S. District Court, Middle District of Florida

U.S. District Court, Southern District of Florida

U.S. Bankruptcy Court, Southern District of Florida

Education

University of Miami School of Law, J.D. - 2020

University of Miami, B.S. – 2016

Email: Herter@kolawyers.com

Caroline Herter is a litigation attorney at the firm's Fort Lauderdale office. Caroline focuses her practice on consumer class actions, mass torts, and white-collar commercial litigation in state and federal courts nationwide. She has gained valuable experience representing individuals and businesses to hold wrongdoers accountable through claims involving personal injury, wrongful death, consumer fraud, products liability, breach of fiduciary duty, civil theft/conversion, corporate veil-piercing, fraudulent transfer, tortious interference, False Claims Act violations, and the like.

Before joining KO, Caroline worked at a boutique law firm in Miami where she represented plaintiffs in matters involving creditor's rights, insolvency, and asset recovery. She now applies this experience throughout her practice at KO, often combining equitable remedies with legal claims to ensure the best chance of recovery for her clients.

Notable cases that Caroline has been involved in include *In Re: Champlain Towers South Collapse Litigation*, where she was a member of the team serving as lead counsel for the families of the 98 individuals who lost their lives in the tragic condominium collapse. The case resulted in over \$1 billion recovered for class members, the second-largest settlement in Florida history. She also co-authored a successful petition for certiorari to the United States Supreme Court in *Olhausen v. Arriva Medical, LLC et al.*, a False Claims Act case involving the standard for determining a defendant's scienter, which led the high Court to reverse the Eleventh Circuit Court of Appeal's earlier ruling against her client.

Caroline earned her law degree from the University of Miami School of Law, summa cum laude, where she received awards for the highest grade in multiple courses. During law school Caroline was an editor of the University of Miami Law Review and a member of the Moot Court Board.

Outside of her law practice, Caroline serves on the Board of Directors of the non-profit organization Americans for Immigrant Justice.

EXHIBIT 2



FIRM RESUME



Milberg Coleman Bryson Phillips Grossman (“Milberg”) is an AV-rated international law firm with more than 100 attorneys and offices across the United States, the European Union, and South America. Combining decades of experience, Milberg was established through the merger of Milberg Phillips Grossman LLP, Sanders Phillips Grossman LLC, Greg Coleman Law PC, and Whitfield Bryson LLP.

Milberg prides itself on providing thoughtful and knowledgeable legal services to clients worldwide across multiple practice areas. The firm represents plaintiffs in the areas of antitrust, securities, financial fraud, consumer protection, automobile emissions claims, defective drugs and devices, environmental litigation, financial and insurance litigation, and cyber law and security.

For over 50 years, Milberg and its affiliates have been protecting victims’ rights. We have recovered over \$50 billion for our clients. Our attorneys possess a renowned depth of legal expertise, employ the highest ethical and legal standards, and pride ourselves on providing stellar service to our clients. We have repeatedly been recognized as leaders in the plaintiffs’ bar and appointed to numerous leadership roles in prominent national mass torts and class actions.

Milberg challenges corporate wrongdoing through class action, mass tort, consumer and shareholder right services, both domestically and globally.

In the United States, Milberg currently holds more than 100 court-appointed full- and co-leadership positions in state and federal courts across the country. Our firm has offices in California, Chicago, Florida, Georgia, Illinois, Kentucky, Louisiana, Mississippi, New Jersey, New York, North Carolina, South Carolina, Tennessee, Washington, Washington D.C., and Puerto Rico. Milberg’s commitment to its clients reaches beyond the United States, litigating antitrust, securities, and consumer fraud actions in Europe and South America, with offices located in the United Kingdom, and the Netherlands. Milberg prides itself on providing excellent service worldwide.

The firm’s lawyers have been regularly recognized as leaders in the plaintiffs’ bar by the National Law Journal, Legal 500, Chambers USA, Time Magazine, Lawdragon, and Super Lawyers, among others.

“A powerhouse that compelled miscreant and recalcitrant businesses to pay billions of dollars to aggrieved shareholders and customers.”
- THE NEW YORK TIMES

PRACTICE AREAS

SECURITIES FRAUD

Milberg pioneered the use of class action lawsuits to litigate claims involving investment products, securities, and the banking industry. Fifty years ago, the firm set the standard for case theories, organization, discovery, methods of settlement, and amounts recovered for clients. Milberg remains among the most influential securities litigators in the United States and internationally.

Milberg and its attorneys were appointed Lead Counsel and Co-Lead Counsel in hundreds of federal, state, and multidistrict litigation cases throughout its history.

ANTITRUST & COMPETITION LAW

For over fifty years, Milberg's Antitrust Practice Group has prosecuted complex antitrust class actions against defendants in the healthcare, technology, agriculture, and manufacturing industries engaged in price-fixing, monopolization and other violations of antitrust law and trade restraints.

FINANCIAL LITIGATION

For over fifty years, Milberg's Antitrust Practice Group has prosecuted complex antitrust class actions against defendants in the healthcare, technology, agriculture, and manufacturing industries engaged in price-fixing, monopolization and other violations of antitrust law and trade restraints.

CONSUMER PROTECTION

Milberg's Consumer Protection Practice Group focuses on improving product safety and protecting those who have fallen victim to deceptive marketing and advertising of goods and services and/or purchased defective products. Milberg attorneys have served as Lead Counsel and Co-Lead Counsel in hundreds of federal, state, and multidistrict litigation cases alleging the sale of defective products, improper marketing of products, and violations of consumer protection statutes.

DANGEROUS DRUGS & DEVICES

Milberg is a nationally renowned firm in mass torts, fighting some of the largest, wealthiest, and most influential pharmaceutical and device companies and corporate entities in the world. Our experienced team of attorneys has led or co-led numerous multidistrict litigations of defective drugs and medical devices.

EMPLOYMENT & CIVIL RIGHTS

Milberg's Employment & Civil Rights attorneys focus on class actions and individual cases nationwide arising from discriminatory banking and housing practices, unpaid wages and sales commissions, improperly managed retirement benefits, workplace discrimination, and wrongful termination.

ENVIRONMENTAL LITIGATION & TOXIC TORTS

Milberg's Environmental Litigation & Toxic Torts Practice Group focuses on representing clients in mass torts, class actions, multi-district litigation, regulatory enforcement, citizen suits, and other complex environmental and toxic tort matters. Milberg and its attorneys have held leadership roles in all facets of litigation in coordinated proceedings, with a particular focus on developing the building blocks to establish general causation, which is often the most difficult obstacle in an environmental or toxic tort case.

STATE & LOCAL GOVERNMENTS

Milberg attorneys are dedicated to defending the Constitutional and statutory rights of individuals and businesses that are subjected to unlawful government exactions and fees by state and local governments or bodies.

INFORMATION TECHNOLOGY

Milberg is a leader in the fields of cyber security, data breach litigation, and biometric data collection, litigating on behalf of clients – both large and small – to change data security practices so that large corporations respect and safeguard consumers' personal data.

APPELLATE

Consisting of former appellate judges, experienced appellate advocates, and former law clerks who understand how best to present compelling arguments to judges on appeal and secure justice for our clients beyond the trial courts, Milberg's Appellate Practice Group boasts an impressive record of success on appeal in both state and federal courts.

LEADERSHIP ROLES

In re: Google Play Consumer Antitrust Litigation
In re: Elmiron (Pentosan Polysulfate Sodium) Products Liability Litigation
In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices & Products Liability Litigation
In re: Blackbaud Inc., Customer Data Breach Litigation
In re: Paragard IUD Products Liability Litigation
In re: Seresto Flea & Tick Collar, Marketing Sales Practices & Product Liability Litigation
In re: All-Clad Metalcrafters, LLC, Cookware Marketing and Sales Practices Litigation
In re: Allergan Biocell Textured Breast Implant Products Liability Litigation
In re: Zicam Cold Remedy Marketing, Sales Practices and Products Liability Litigation
In re: Guidant Corp. Implantable Defibrillators Product Liability Litigation
In re: Ortho Evra Products Liability Litigation
In re: Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation
In re: Kugel Mesh Hernia Patch Products Liability Litigation
In re: Medtronic, Inc. Sprint Fidelis Leads Products Liability Litigation
In re: Stand 'N Seal Products Liability Litigation
In re: Chantix (Varenicline) Products Liability Litigation
In re: Fosamax (alendronate Sodium) Products Liability Litigation
In re: Benicar (Olmesartan) Products Liability Litigation
In re: Onglyza (Saxagliptin) & Kombiglyze Xr (Saxagliptin & Metformin) Products Liability Litigation
In re: Risperdal and Invega Product Liability Cases
In re: Mirena IUS Levonorgestrel-Related Products Liability Litigation
In re: Incretin-based Therapies Product Liability Litigation
In re: Reglan/Metoclopramide
In re: Levaquin Products Liability Litigation
In re: Zimmer Nexgen Knee Implant Products Liability Litigation
In re: Fresenius Granuflo/Naturalyte Dialysate Products Liability Litigation
In re: Propecia (Finasteride) Products Liability Litigation
In re: Transvaginal Mesh (In Re C. R. Bard, Inc., Pelvic Repair System Products Liability Litigation; In Re Ethicon, Inc., Pelvic Repair System Products Liability Litigation; In Re Boston Scientific, Inc., Pelvic Repair System Products Liability; In Re American Medical Systems, Pelvic Repair System Products Liability, and others)
In re: Fluoroquinolone Product Liability Litigation
In re: Depuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation
In re: Recalled Abbott Infant Formula Products Liability Litigation
Home Depot, U.S.A., Inc. v. Jackson
Webb v. Injured Workers Pharmacy, LLC

NOTABLE RECOVERIES

\$4 Billion Settlement

In re: Prudential Insurance Co. Sales Practice Litigation

\$3.2 Billion Settlement

In re: Tyco International Ltd., Securities Litigation

\$1.14 Billion Settlement

In Re: Nortel Networks Corp. Securities Litigation

\$1 Billion-plus Trial Verdict

Vivendi Universal, S.A. Securities Litigation

\$1 Billion Settlement

NASDAQ Market-Makers Antitrust Litigation

\$1 Billion Settlement

W.R. Grace & Co.

\$1 Billion-plus Settlement

Merck & Co., Inc. Securities Litigation

\$775 Million Settlement

Washington Public Power Supply System Securities Litigation

\$586 Million Settlement

In re: Initial Public Offering Securities Litigation

LOCATIONS

PUERTO RICO

1311 Avenida Juan Ponce de León
San Juan, Puerto Rico 00907

CALIFORNIA

280 South Beverly Drive, Penthouse
Beverly Hills, California 90212

402 West Broadway, Suite 1760
San Diego, California 92101

FLORIDA

201 Sevilla Avenue, Suite 200,
Coral Gables, Florida 33134

3833 Central Avenue
St. Petersburg, Florida 33713

ILLINOIS

227 W. Monroe Street, Suite 2100
Chicago, Illinois 60606

LOUISIANA

5301 Canal Boulevard
New Orleans, Louisiana 70124

MICHIGAN

6905 Telegraph Road, Suite 115
Bloomfield Hills, Michigan 48301

NEW JERSEY

1 Bridge Plaza North, Suite 675
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Garden City, New York 11530

405 E 50th Street
New York, New York 10022

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900 West Morgan Street
Raleigh, North Carolina 27603

5 West Hargett Street, Suite 812
Raleigh, North Carolina 27601

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825 Lowcountry Blvd, Suite 101
Mount Pleasant, South Carolina 29464

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800 S. Gay Street, Suite 1100
Knoxville, Tennessee 37929

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1420 Fifth Ave, Suite 2200
Seattle, Washington 98101

17410 133rd Avenue, Suite 301
Woodinville, Washington 98072

WASHINGTON, D.C.

5335 Wisconsin Avenue NW, Suite 440
Washington, D.C. 20015

NETHERLANDS

UNITED KINGDOM



EXHIBIT 3



COLE & VAN NOTE
ATTORNEYS AT LAW

"A single voice has the power to push Big Business toward big change."

FIRM RESUME

OVERVIEW OF OUR PRACTICE

Cole & Van Note (“CVN”) is a boutique class action firm known for aggressive representation and impressive results in the areas of consumer fraud, data breach, environmental and employment litigation. Founded in 1992, CVN has been devoted primarily to such matters, having litigated hundreds of class actions against businesses of all types and in nearly every industry imaginable. The members of CVN have vast experience prosecuting class/complex actions, both in a sole counsel capacity and in leadership positions, oftentimes among many firms, in California and nationwide litigation. They have published numerous scholarly articles dealing with various substantive issues as well as class action litigation/procedure, speak regularly to legal audiences, and have served as consulting experts in class action litigation. CVN’s team of skilled advocates has recovered billions of dollars for tens of millions of workers and consumers, been involved in record-setting settlements and judgments and compelled the correction of innumerable unlawful practices.



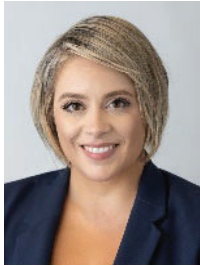
SHAREHOLDERS & ASSOCIATE ATTORNEYS



Scott Edward Cole, founder and shareholder of Cole & Van Note, has extensive leadership experience prosecuting class action cases in federal and state courts nationwide. Mr. Cole has authored numerous scholarly publications and serves as highly regarded guest lecturer on issues surrounding class action procedures and negotiation theory. Mr. Cole has been responsible for shaping the law in trial and appellate courts for decades, authored the book “Fallout” and is available to serve as a mediator of class action disputes.

Credentials: Admitted, State Bar of California, 1992; University of San Francisco School of Law, J.D., 1992; President, University of San Francisco Labor & Employment Law Society; San Francisco State University, B.A., Speech Communications (Individual Major in Rhetoric), 1989, Minor Study in Business Administration, 1989; Admitted, United States District Court for all California Districts, the District of Colorado and the Western District of Michigan; Admitted, United States Court of Appeals (6th, 9th and 10th Circuits). Additionally, Mr. Cole is a former National Association of Securities Dealers Registered Representative (Series 7) and is/has been a

member of the Association of Trial Lawyers of America, California Employment Lawyers Association, American Bar Association, Alameda County Bar Association (e.g., Vice Chair of ACBA's Labor & Employment Law Section Executive Committee), National Employment Lawyers Association and a U.S. Delegate to the InterAmerican Meeting of Labor and Trade Union Lawyers, Havana, Cuba (March 2012). Mr. Cole is also the author of "Fallout," a story based upon his experiences litigating after the 1994 airborne release of toxic chemicals by the Unocal Corporation (also used by various law schools in the curriculum for first year law students).



Laura Van Note, shareholder, is an aggressive and skilled advocate and leads the firm's hiring and career outreach efforts. A 2013 graduate of the University of Missouri, Kansas City School of Law, her practice has focused primarily on class action representation of data breach victims and underpaid workers in employment/civil rights litigation. With a near-perfect track record for results, Ms. Van Note appears in courts across the nation, is licensed in Kansas and Missouri and in numerous federal districts.

Credentials: Admitted, State Bar of California, 2016; Admitted, State Bar of Missouri, 2013; Admitted, State Bar of Kansas, 2015; Admitted, United States District Court for all California Districts, the Eastern District of Wisconsin, District of Kansas, Eastern and Western Districts of Missouri, District of New Mexico, District of Nebraska, District of Colorado and the Northern District of Illinois; University of Missouri, Kansas City School of Law, J.D., 2013 (Order of the Barrister, Dean's List, Captain of the National Trial Advocacy Team, President of the American Constitutional Society for Law and Policy, Teaching Assistant to the Directory of Advocacy); University of Missouri, Kansas City, B.A., History, Minor in French, 2010.



Alicyn Whitley, associate attorney, graduated from Golden Gate University's School of Law near the top of her class in 2018, receiving the Dean's Award for Scholarship and Leadership. While in school, Ms. Whitley worked at numerous Bay Area law firms as well as the U.S. Department of Labor on various civil litigation matters and contract disputes. With her substantial background as an insurance defense attorney handling numerous personal injury, construction defect and employment disputes, Ms. Whitley brings a unique perspective and set of skills to the firm's high profile consumer and

employment class action practice.

Credentials: Admitted, State Bar of California, 2019; Admitted, United States District Courts for Northern and Central California; Golden Gate University School of Law, J.D., 2018; University of Nevada, Las Vegas, B.A., Broadcast Journalism, 2013.



Mark T. Freeman, associate attorney, graduated from Pacific McGeorge School of Law in 2013 near the top of his class. During law school, Mr. Freeman engaged in the McGeorge Trial Advocacy Program (which he completed with Honors) and served as Chief Comment Editor for the McGeorge Law Review. A published author (“BarCram: How To Survive the Last Two Weeks Before You Take (And Pass) the California Bar”), Martindale-Hubbell “AV Preeminent” rated attorney and Certified Mediator, Mr. Freeman is also member of the Consumer Attorneys of California, the Congress of Neutrals and the Contra

Costa County Bar Association. At CVN, Mr. Freeman utilizes his vast litigation experience in the areas of class action consumer, employment and data breach law.

Credentials: Admitted, State Bar of California, 2013; Admitted, United States District Courts for the Northern, Central and Eastern Districts of California; Admitted, 9th Circuit Court of Appeals; Pacific McGeorge School of Law, J.D., 2013 (Order of the Coif; McGeorge Law Review); Saint Mary’s College of California, B.A. in Economics; Minor in English & Creative Writing (Honors: Br. U. Jerome Griffin Award at Graduation (highest award in School of Econ. and Business)), 2010.

SCHOLARLY PUBLICATIONS

The following represent examples of how CVN has elected to give back and help shape the law through our own articles, opinion pieces and the like – some examples of this including:

The Quest for Class Certification, Employment Law Strategist (Sept. & Oct. 2003).

To Be or Not to Be a Penalty: Defining the Recovery Under California’s Meal and Rest Period Provisions, Golden Gate U. L. Rev. (Spring 2005).

To Certify or Not to Certify: A Circuit-By-Circuit Primer of the Varying Standards for Class Certification in Actions under the Federal Labors Standards Act, B.U. Pub. Int. L.J. (Spring 2004).

Kullar v. Footlocker Retail, Inc.: A New Standard for Class Action Settlement Approval, CELA Bulletin (April 2009).

Ninth Circuit Provides Much Needed Guidance on Evidentiary Burdens in Overtime Misclassification Litigation, CELA Bulletin (May 2009).

Putting the “Rest” Back in Rest Break, Alameda County Bar Association - Labor & Employment Section News (Autumn 2009).

Barristers to Blogs: Softening Ethical Restrictions in the Digital Age, Los Angeles Daily Journal (June 14, 2010).

LEADERSHIP ROLES

CVN has held numerous court-appointed sole- and co-leadership positions in state and federal courts across the country. Recent lead counsel appointments include:

- In Re: Rackspace Data Security Litigation, No. SA-22-cv-01296-XR (W.D. Tex.) (court appointed lead counsel)
- Henderson v. Reventics, LLC, Case No. 1:23-cv-00586-MEH (D. Colo.) (court appointed co-lead counsel)
- Hinds v. Community Medical Centers, Inc., Case No. STK-CV-UNPI-2021-10404 (Super. Ct. Cal. San Joaquin Cnty.) (court appointed co-lead counsel)

- Tsvetanova v. UCSD Health, Case No. 37-2021-00039888-CU-PO-CTL (Super. Ct. Cal. San Diego Cnty.) (court appointed co-lead counsel)
- Fedorys v. Ethos Group Inc., Case No. 3:22-cv-2573-M (N.D. Tex.) (court appointed co-lead counsel)
- Moreland v. 1st Franklin Financial Corporation, Case No. 2:23-cv-00038-SCJ (N.D. Ga.) (court appointed co-lead counsel)
- Domitrovich v. MC Dean, Inc., Case No. 1:23-cv-00210-CMH-JFA (E.D. Va.) (court appointed co-lead counsel)
- Deevers v. Wing Financial Services, LLC, Case No. 4:22-cv-00550-CVE-MTS (N.D. Okla.) (court appointed co-lead counsel)
- Darrin v. Huntington Ingalls Industries, Inc., Case No. 4:23-cv-00053-JKW-DEM (E.D. Va.) (court appointed co-lead counsel)
- Guerrero v. Merritt Healthcare Holdings, LLC, Case No. 3:23-cv-00389-MPS (D. Conn.) (court appointed co-lead counsel)
- Prutsman v. Nonstop Administration and Insurance Services, Inc., Case No. 3:23-Cv-01131-VC (N.D. Cal.) (court appointed co-lead counsel)
- In re DISH Network Data Security Incident Litigation, Case No. 1:23-cv-01168-RMR-SBP (D. Colo.) (court appointed co-lead counsel)
- Byers v. OrthoAlaska, LLC, Case No. 3:23-cv-00243-SLG (D. Alaska) (court appointed co-lead counsel)
- Tambroni v. WellNow Urgent Care, P.C., Case No. 1:24-cv-01595 (N.D. Ill.) (court appointed co-lead counsel)
- Dryden v. Tri Counties Bank, Case No. 23CV03115 (Super. Ct. Cal. Butte Cnty.) (court appointed co-lead counsel)
- Brett v. Valley Mountain Regional Center, Case No. STK-CV-UPI-2024-0005025 (Super. Ct. Cal. San Joaquin Cnty.) (court appointed co-lead counsel)
- Cordell v. Patelco Credit Union, Case No. 24CV082095 (Super. Ct. Cal. Alameda Cnty.) (court appointed co-lead counsel)
- Skillings v. Access Sports Medicine and Orthopedics, Case No. 218-2024-CV-01086 (Super. Ct. New Hampshire Rockingham Cnty.) (court appointed co-lead counsel)
- Woodard v. Atlanta Women's Health Group, P.C., Case No 24EV001838H (State Ct. Georgia Fulton Cnty.) (court appointed co-lead counsel)
- In Re: Cleveland Brothers Data Incident Litigation, Case No. 1:23-cv-00501-JPW (M.D. Penn.) (court appointed co-lead counsel)

- Hahn v. Phoenician Medical Center, Inc., Case No. CV2023-010982 (Super. Ct. Az. Maricopa Cnty.) (court appointed executive committee chair)
- Daley v. Risas Holdings LLC, Case No. CV-24-00789-PHX-SMM (D. Az.) (court appointed lead counsel)
- Shweiki v. Donor Network West, Case No. C20-00073, (Super. Ct. Cal. Contra Costa Cnty.) (court appointed lead counsel)
- Lowrey v. Community Psychiatry Mgt., LLC, Case No. 2:23-cv-00185-TLN-DB, (E.D. Cal.) (court appointed co-lead counsel)
- In Re: Blackhawk Network Data Breach Litig., Case No. 3:22-cv-07084-CRB, (N.D. Cal.) (court appointed co-lead counsel)
- In re Dropbox Sign Data Breach Litigation, Case No. 4:24-cv-02637-JSW (N.D. Cal.) (court appointed co-lead counsel)
- Bujok v. MC2 Data, LLC, Case No. 0:24-cv-61864-LEIBOWITZ (S.D. Fla.) (court appointed co-lead counsel)
- Francisco v. Diligent Acquisitions LLC, Case No. 4:24-cv-04468 (S.D. Tex.) (court appointed co-lead counsel)
- Oliver v. Jewish Home Lifecare, Index No. 157811/2024 (N.Y. Sup. Ct., N.Y. County, Index No. 157811/2024) (court appointed co-lead counsel)

EXEMPLAR COMPLEX & CLASS ACTION CASES

CVN's attorneys have represented tens of millions of individuals in legal disputes across hundreds of class action/complex litigation cases around the nation. For well over three decades, CVN's legal team has amassed extensive experience litigating data breach, wage and hour, environmental, and other personal injury and commercial cases. Today, the firm almost exclusively prosecutes multi-state data breach and other consumer-oriented class actions. Drawing from various areas of law, and by nowhere close to an exhaustive list, examples of the range of CVN's practice include matters such as:

Augustus/Davis v. ABM Security Services, Inc. (American Commercial Security Service, Inc.)

Superior Court of California, County of Los Angeles, Case No. BC336416; 2 Cal.5th 257 (2016)

Our firm filed this action for violations of California law for denial of meal and rest periods toward security guards. The action achieved class certification status in 2009. Following summary judgment proceedings, a judgment of over \$89 million was entered against the defendant(s). The judgment hinged on the issue of whether "on-duty" rest breaks were legally sufficient. After the Court of Appeal ruled against Plaintiffs on the issue, the case went to the California Supreme Court where Plaintiffs prevailed and, in so doing, created a new legal standard clarifying that "on-duty" rest breaks are invalid. After 12 years of litigation, successful summary judgment and substantial appellate work, this matter resolved for \$110 million.

Bower v. Steel River Systems LLC

Illinois Fourteenth Judicial Circuit Court (Whiteside County), Case No. 2023-LA-000006

This action arose out of Steel River Systems' 2022 data breach which affected numerous consumers and/or employees. This action settled for an undisclosed amount.

Brett v. Valley Mountain Regional Center

Superior Court of California, County of San Joaquin, Case No. STK-CV-UPI-2024-0005025

This action arose out of Valley Mountain's 2023 data breach which affected 17,000 patients of Defendant's facilities. Cole & Van Note was appointed co-lead class counsel.

Bulow v. Wells Fargo Investments, LLC

United States District Court (N.D. Cal.), Case No. 3:06-CV-7924

This matter was filed as a nation-wide class action against Wells Fargo Investments, on behalf of its Financial Consultants to recover overtime pay, compensation for denied meal and rest periods (California only) and reimbursement for business related service and supply expenses (California only). This matter settled for \$6.9 million.

Byers v. OrthoAlaska, LLC

United States District Court (D. Alaska), Case No. 3:23-cv-00243-SLG

This action arose out of OrthoAlaska's massive data breach which affected countless patients, consumers and/or employees. Cole & Van Note was court-appointed as co-lead class counsel.

Cano v. United Parcel Service, Inc.

Superior Court of California, County of Alameda, Case No. RG03089266

This wage and hour complex litigation matter involved the alleged misclassification of overtime non-exempt Operations Management Specialists, Operational Excellence Specialists and Industrial Engineering Specialist at this company's California facilities. This action settled for \$4.5 million.

Chaidez v. Odwalla, Inc.

Superior Court of California, County of San Mateo, Case No. CIV430598

This wage and hour complex litigation matter involved the alleged misclassification of overtime non-exempt California Route Sales Representatives. CVN served as primary counsel for this proposed class of employees. This action settled for \$2.2 million.

CKE Overtime Cases

Superior Court of California, County of Los Angeles, Case No. BC283274 (JCCP No. 4274)

This class action was brought against fast food chain Carl's Jr. for violations of California's overtime laws on behalf of the company's California restaurant chain Managers. The coordinated litigation provided a settlement fund of \$9.0 million.

Cordell v. Patelco Credit Union

Superior Court of California, County of Alameda, Case No. 24CV082095

This action arose out of the well-publicized 2024 data breach and denial of service impacting well over 1,000,000 Patelco customers. As a result of the event, Patelco customers were blocked access to their funds and other services for weeks, resulting in myriad damages including rejection of loan applications, damage to their credit and the inability to pay everyday life expenses. Cole & Van Note was appointed co-lead class counsel.

Darrin v. Huntington Ingalls Industries, Inc.

United States District Court (E.D. Va.), Case No. 4:23-cv-00053-JKW-DEM

This action arose out of Huntington Ingalls' massive data breach. Cole & Van Note was appointed by the court to a co-lead counsel position.

Davis v. Universal Protection Security Systems, Inc.

Superior Court of California, County of San Francisco, Case No. CGC-09-495528

Our firm filed a claim in 2009 against Universal Protection Security Systems, Inc. for violations of California law for denial of meal and rest periods toward security guards. This case settled under Cole & Van Note's sole leadership for \$4 million.

Deevers v. Wing Financial Services, LLC

United States District Court (N.D. Okla.), Case No. 4:22-cv-00550-CVE-MTS

This action arose out of Wing Financial's 2022 data breach which affected numerous loan consumers. Cole & Van Note was appointed co-lead class counsel.

Despres (Cornn) v. United Parcel Service, Inc.

United States District Court (N.D. Cal.), Case No. 3:03-CV-02001

This wage and hour class action litigation was brought to remedy violations of meal and rest period regulations on behalf of the company's California ground delivery drivers. CVN served as co-counsel for the certified class of drivers. This action settled for \$87 million, an unprecedented settlement amount at the time for such claims.

Domitrovich v. MC Dean, Inc.

United States District Court (E.D. Va.), Case No. 1:23-cv-00210-CMH-JFA

This action arose out of MC Dean's 2021 data breach which affected 45,000 employees. Cole & Van Note was appointed co-lead class counsel.

Dryden v. Tri Counties Bank

Superior Court of California, County of Butte, Case No. 23CV03115

This action arose out of Tri Counties' 2023 data breach which affected nearly 75,000 consumers. Cole & Van Note was appointed co-lead class counsel.

Escow-Fulton v. Sports and Fitness Clubs of America dba 24 Hour Fitness USA, Inc.

Superior Court of California, County of San Diego County, Case Nos. GIC881669/GIC873193)

Our firm filed this class action on behalf of the company's California "Group X" Instructors to recover regular and overtime pay, related penalties and un-reimbursed expenses. The action achieved class certification status in 2009. In 2011, the parties agreed to a partial settlement (of the expense reimbursement claims) for \$10 million. The parties then filed cross-motions for summary adjudication and, on August 2, 2011, the court issued an Order finding 24 Hour Fitness' session rate compensation scheme to be an invalid piece rate. The parties then agreed to settle the unpaid wage claims for another \$9 million, for a total judgment of \$19 million. This was an industry changing case that helped define "piece rate" standard under California law.

Fedorys v. Ethos Group, Inc.

United States District Court (N.D. Tex.), Case No. 3:22-cv-02573-M

This action arose out of Ethos Group's 2022 data breach which affected at least 267,000 consumers. Cole & Van Note was appointed co-lead class counsel.

Guerrero v. Merritt Healthcare Holdings, LLC

United States District Court (D. Conn.), Case No. 3:23-cv-00389-MPS

This action arose out of Merritt Healthcare's 2022 data breach which affected over 77,000 patients. Cole & Van Note was appointed co-lead class counsel.

Hakeem v. Universal Protection Service, LP

Superior Court of California, County of Sacramento, Case Nos. 34-2020-00286228-CU-OE-GDS; 34-201900270901-CU-OE-GDS

After an exhaustive multi-year process including venue transfer, consolidation, migration of litigants from one case to the other, multiple appeals and, generally, extremely hard-fought litigation, these two security guard class actions achieved a consolidated judgment under Cole & Van Note's sole leadership for \$10 million.

Henderson v. Reventics, LLC

United States District Court (D. Colo.), Case No. 1:23-cv-00586-MEH

This action arose out of Reventics' massive 2022 data breach which affected over four million patients, consumers and employees. Cole & Van Note was appointed co-lead class counsel.

Hinds v. Community Medical Centers

Superior Court of California, County of San Joaquin, Case No. STK-CV-UNPI-2021-0010404

This action arose out of Community Medical Centers' massive 2021 data breach which affected countless patients, consumers and/or employees. After reviewing competing requests for leadership over these consolidated actions, Cole & Van Note was appointed by the court to a co-lead counsel position. This action resulted in a multi-million-dollar judgment.

In re Apple Inc. Device Performance Litigation

United States District Court (N.D. Cal.), Case No. 5:18-md-02827-EJD

Following Apple's December 2017 admission that it throttled back performance of its iPhones (versions 6, 6 Plus, 6s, 6s Plus, SE, 7 and 7 Plus) to mask the problem of defective batteries and unexpected iPhone shut-downs, Cole & Van Note filed a class action to recover damages for consumers nationwide. Cole & Van Note served on the Plaintiffs' Steering Committee. This action settled for \$500 million.

In re DISH Network Data Security Incident Litigation

United States District Court (D. Colo.), Case No. 1:23-cv-01168-RMR-SBP

This action arose out of DISH Network's massive data breach which affected over 300,000 workers. Cole & Van Note was appointed by the court to a co-lead counsel position.

In re Dropbox Sign Data Breach Litigation

United States District Court (N.D. Cal.), Case No. 4:24-cv-02637-JSW

This action arose out of Dropbox's massive data breach. Cole & Van Note was appointed by the court to a co-lead counsel position.

In re Rackspace Security Litigation

United States District Court (W.D. Tex.), Case No. SA-22-cv-01296

This action arises out of Rackspace Technology's 2022 massive ransomware event which shut down functionality for tens of thousands of individuals and businesses across the United States

and overseas. Cole & Van Note served as court-appointed sole lead counsel for the nationwide class and representative plaintiffs from over 30 states.

In re Tosco SFR Litigation

Superior Court of California, County of Contra Costa, Case No. C97-01637

During incidents in April 1997 and January 1998, the Tosco Refinery in Rodeo, California released tons of airborne toxic chemicals. These harmful substances traveled into neighboring communities, seriously affecting the health of citizens and local workers. CVN served as Lead Counsel in this complex litigation and represented thousands of members of the community in that role. The multi-million-dollar fund created through this litigation under Cole & Van Note's sole leadership was disbursed among thousands of claimants and significantly change practices at this refinery ever since.

In re Unocal Refinery Litigation

Superior Court of California, County of Contra Costa, Case No. C94-04141

In response to Unocal's 16-day airborne release of chemicals over the County of Contra Costa in 1994, CVN filed a class action against the corporation on behalf of thousands of victims and thereafter served as one of a handful of firms (among dozens of law firms of record) on the Plaintiffs' Steering Committee. After hard-fought litigation, the matter eventually settled for \$80 million. This litigation, Mr. Cole's efforts to commence it and his grassroots work and exposure of the toxic event to the media provide the backdrop for Mr. Cole's book, "Fallout," published in 2018 (2605 Media LLC). In the end, the impact of this litigation was sweeping, substantially changing practices at this refinery and industry regulations, helping to establish a toxic release community monitoring system that spawned similar systems across the nation, establishing parks, improved roadways and an unprecedented community-industry Good Neighbor agreement.

In re Walgreen Co. Wage and Hour Litigation

United States District Court (C.D. Cal.), Case No. 2:11-CV-07664

Our firm served as court-appointed Lead Counsel after an adversarial hearing process in this consolidated action of nine lawsuits bringing a variety of wage and hour claims on behalf of California workers. The case settled under Cole & Van Note's sole leadership for \$23 million.

In re Westley Tire Fire Litigation

Superior Court of California, County of Santa Clara, Case No. CV 801282

On September 22, 1999, lightning struck and ignited a pile of approximately 7 million illegally stored waste tires in Westley, California, a town about 70 miles east of San Francisco. Over the subsequent five weeks, the fire spewed smoke and carcinogens over a large portion of the State of California. CVN served as the (sole) Lead and (shared) Liaison Counsel over a Plaintiffs' Steering/Management Committee in the consolidated actions against the owners and operators of this tire pile and related entities. These cases sought compensation for those individuals and businesses suffering personal and/or property damages as a result of these toxic substances and the fire's fall-out. In 2001, CVN reached a settlement with one defendant (CMS Generation Co.)

for \$9 million. In 2003, the Court granted final approval of the settlement. In 2005, two of the remaining defendants settled for roughly \$1.4 million (over \$10 million aggregate).

Kullar v. Foot Locker, Inc.

Superior Court of California, County of San Francisco, Case No. CGC-05-447044; 168 Cal.App.4th 116 (2008)

This class action was brought on behalf of California employees allegedly forced to purchase shoes of a distinctive color or design as a term and condition of their employment and in violation of state law. After the Court approved a multi-million settlement, two separate appeals challenged the settlement, but the Court of Appeal affirmed the trial court's judgment. This oft-cited case established in California what's now known as the "*Kullar standard*" for court approval of class action settlements.

Kurihara v. Best Buy Co., Inc.

United States District Court (N.D. Cal.), Case No. C 06-01884 MHP (EMC)

This class action was brought on behalf of Best Buy's California employees against this chain retailer for violations of California law (for denial of meal and rest periods). This case was granted class certification and Cole & Van Note then settled it for \$5 million following an oft-cited ruling which clarified the distinction between class composition and entitlement to a recovery.

Lett v. TTEC

United States District Court (N.D. Cal.), Case No. 3:22-cv-00018

This action arose out of TTEC Service Corporation's massive data breach in 2021 which affected countless patients, consumers and employees. CVN helped negotiate a \$2.5 million settlement for the class of victims.

Mambuki v. Securitas Security Services USA, Inc.

Superior Court of California, County of Santa Clara, Case No. 1-05-CV-047499 (JCCP No. 4460)

Our firm filed a claim against this defendant for violations of California law (for denial of meal and rest periods) on behalf of the company's California-based security guards. This coordinated proceeding settled in 2008 for \$15 million.

Mendoza v. CaptureRx

United States District Court (W.D. Texas), Case No. 5:21-CV-00523-OLG

This class action against NEC Networks, LLC, d/b/a CaptureRx ("CaptureRx"), as well as Rite Aid and Community Health Centers of the Central Coast arising out of the massive data breach in 2021 which affected a minimum of 1.6 million people. The hacked information included sensitive personally identifiable information and personal health information. These consolidated cases settled in 2022 for a total value of \$4.75 million.

Moreland, et al. v. 1st Franklin Financial Corporation

United States District Court (N.D. Ga.), Case No. 2:23-cv-00038-SCJ

This action arose out of 1st Franklin Financial's 2022 data breach affecting this company's loan consumers. Cole & Van Note was appointed co-lead class counsel.

O'Brien v. Edward D. Jones & Co., LP

United States District Court (N.D. Ohio), Case No. 1:08-CV-00529

We filed a nation-wide (and New York State) class action against this financial securities company on behalf of the company's financial services representatives to recover overtime pay and related penalties. CVN served on a Lead Counsel Committee in this action, which settled in 2007 for \$19 million.

Onyeige v. Union Telecard Alliance, LLC

United States District Court (N.D. Cal.), Case No. 3:05-CV-03971; MDL No. 1550

Our firm filed an action against Union Telecard Alliance, LLC alleging negligent misrepresentation and deceptive advertising practices related to its marketing of pre-paid telephone calling cards. This action settled for \$22 million.

Prutsman v. Nonstop Administration and Insurance Services, Inc.

United States District Court (N.D. Cal.), Case No. 3:23-cv-01131-VC

This action arose out of Nonstop's massive 2022 data breach which affecting consumers, employees and health care affiliates. Cole & Van Note was appointed co-lead class counsel.

Ramirez v. The Coca Cola Company

Superior Court of California, County of San Bernardino, Case No. RCV 056388 (JCCP No. 4280)

This was one of two companion actions CVN prosecuted against this soft drink giant for violations of California's overtime laws. This action was brought on behalf of over 4,000 hourly workers at the company's bottling, distribution and sales centers who were allegedly forced to work "off-the-clock" for Coca Cola and/or whose time records were ordered modified by the company. This well-publicized action resolved under Cole & Van Note's leadership for \$12 million.

Riordan v. Western Digital Corp.

United States District Court (N.D. Cal.), Case No. 5:21-CV-06074

This action arose out of the well-publicized widespread criminal data deletion of consumer hard drives in 2021. According to the lawsuit, the company knew of vulnerabilities in, at least, six of its products for years which, ultimately, led to the erasure of data for countless purchasers of these products. CVN served as sole counsel for the victims.

Roman/Toussaint v. HanesBrands, Inc.

United States District Court (M.D. N.C.), Case No. 1:22-cv-00879-LCB-LPA

This case involved a data breach of HanesBrands' network system in which worker information was accessed and/or reviewed by cybercriminals.

Tambroni v. WellNow Urgent Care, P.C.

United States District Court (N.D. Ill.), Case No. 1:24-cv-01595

This action arose out of WellNow's 2023 data breach affecting over 400,000 patients. Cole & Van Note was appointed co-lead class counsel.

Thomas v. Cal. State Auto. Assoc.

Superior Court of California, County of Alameda, Case No. CH217752

Our firm filed this class action litigation on behalf of all California claims adjusters working for CSAA after mid-January 1997. This lawsuit alleged that, during those years, CSAA misclassified these workers as exempt "administrators" and refused to pay them for overtime hours worked. This lawsuit settled for \$8 million for nearly 1,200 workers.

Tierno v. Rite Aid Corporation

United States District Court (N.D. Cal.), Case No. 3:05-CV-02520

Our firm filed this action against Rite Aid Corporation on behalf of its salaried California Store Managers. It was alleged that defendant, purportedly the nation's third largest drug store chain, failed to pay overtime to those workers and denied them their meal and rest periods. In 2006, the federal court certified the class in this action, and approved a hard-fought settlement, achieved under Cole & Van Note's sole leadership, of \$6.9 million.

Tsvetanova v. Regents of the University of California, dba U.C. San Diego Health

Superior Court of California, County of San Diego, Case No. 37-2021-00039888-CU-PO-CTL

This action arose out of U.C. San Diego Health's massive data breach between December 2020 and April 2021 which affected countless patients, consumers and employees. After reviewing numerous requests for leadership over these consolidated actions, Cole & Van Note was appointed by the court to a co-lead class counsel position.

Witriol v. LexisNexis

United States District Court (S.D. Cal.), Case No. 3:06-CV-02360

Our firm filed an action against this company for its unlawful disclosure of private credit, financial and/or other personal information. This litigation, resolved by Cole & Van Note, provided a settlement fund of \$2.8 million.

CVN also serves in more informal (e.g., Executive Committee or Plaintiffs' Steering Committee) leadership positions in numerous other data breach cases and in sole counsel roles in many dozens more—actions currently pending across the majority of U.S. states.

APPELLATE EXPERIENCE

CVN has substantial appellate experience, merely highlighted by some examples below. For other appellate and/or unreported opinions and/or a list of matters currently on appeal, please contact our firm.

Augustus v. ABM Security Services, Inc. (2016) 2 Cal.5th 257 (Case No. S224853).

Baddie v. Berkeley Farms, Inc. (9th Cir. 1995) 64 F.3d 487 (Case No. 93-17187).

Dunbar v. Albertson's, Inc. (2006) 141 Cal.App.4th 1422 (First Dist., Division 1, Case No. A111153).

In re Certified Tire and Service Centers Wage and Hour Cases (2018)
28 Cal.App.5th 1 (Cal. Ct. of Appeals, Fourth Dist., Division 1, Case No. A086407).

Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116 (Case No. A119697).

Montano v. The Wet Seal Retail, Inc. (2015) 232 Cal.App.4th 1214 (Cal. Ct. App. 2015)

O'Hara v. Factory 2-U Stores, Inc., 2003 WL 22451991 (Cal. Ct. of Appeals, First District, Division 4, Case No. A101452)

Taylor v. Park Place Asset Management (1999) (Cal. Ct. of Appeals, First Dist., Division 5, Case No. A086407).

Whiteway v. Fedex Kinko's Office and Print Services (9th Cir. 2009) 319 Fed.Appx. 688 (Case No. 07-16696).

Current appeals not listed.



COLE & VAN NOTE
ATTORNEYS AT LAW

555 12th Street, Suite 2100
Oakland, CA 94607
Tel: 510-891-9800

www.colevannote.com

EXHIBIT C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

J.W., a Minor, by and through her guardian
Angela Johnson, CRYSTAL SCHULTZ,
MICHELE EUSEBE, JUSTIN MEDINA,
ARTHUR PODROYKIN, and
KATHERINE CHAUDHRY, individually
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

LIVANOVA USA, INC.,

Defendant.

CIVIL ACTION NO. 4:24-CV-02250

**DECLARATION OF SETTLEMENT ADMINISTRATOR REGARDING THE
IMPLEMENTATION AND ADEQUACY OF THE NOTICE PROGRAM**

I, Ana Espinoza, do declare as follows:

1. I am a case manager with Verita Global, LLC formerly known as KCC Class Action Services, LLC (“KCC”), located at 222 N Pacific Coast Hwy, El Segundo, CA 90245. Pursuant to the Preliminary Approval Order dated December 6, 2024 (ECF No. 31), the Court appointed Verita as the Settlement Administrator in connection with the proposed Settlement of the above-captioned Action. I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.

2. This declaration describes the successful implementation of the Settlement Notice Program and Notices in the above-referenced case. The Notice Program as designed and implemented was the best notice practicable under the circumstances to provide notice to the Settlement Class members. The Notice Program consists of Email Notice, Postcard Notice, and Long Form Notice. As discussed below, Verita was also directed to do a form of digital publication notice.

CLASS LIST

3. On December 16, 2024, Verita received from Defendant’s Counsel a list of 134,694 persons identified as the Class List (which we understand to include approximately 129,301 U.S. patients and 5,393 U.S. employees). The Class List included names, addresses, and email addresses. Verita formatted the list for mailing purposes, removed 225 duplicate records, performed email cleansing to identify invalid emails, and processed the names and addresses through the National Change of Address Database (“NCOA”) to update any addresses on file with the United States Postal Service (“USPS”). A total of 8,094 addresses were found and updated via NCOA. A total of 26,323 incomplete addresses were identified. Verita then conducted a skip trace search on 223 records previously labeled as Bad Addresses, and 35 new addresses were found and updated. Verita updated its proprietary database with the Class List.

NOTICE TO SETTLEMENT CLASS

4. On January 21, 2025, Verita caused the Email Notice to be emailed to 31,378 Settlement Class members and caused the Postcard Notice to be printed and mailed to 76,768 Settlement Class members identified in the Class List. A true and correct copy of the Email Notice and Postcard Notice is attached hereto as *Exhibit 1* and *Exhibit 2*, respectively.

5. Since emailing the Email Notices to the Settlement Class members, 3,153 bounced or were returned undeliverable. Consistent with the Notice Program, Verita caused 2,843 Postcard Notices to be sent to those Settlement Class members with mailing addresses.

6. Since mailing the Postcard Notices to the Settlement Class members, Verita has received 219 Postcard Notices returned by the USPS with forwarding addresses. Verita immediately caused those Postcard Notices to be re-mailed to the forwarding addresses supplied by the USPS.

7. Since mailing the Postcard Notices to the Settlement Class members, Verita has received 8,911 Postcard Notices returned by the USPS with undeliverable addresses. Through credit bureau and/or other public source databases, Verita performed address searches for these undeliverable Postcard Notices and was able to find updated addresses for 1,567 Settlement Class

Members. Verita promptly re-mailed Postcard Notices to the found new addresses.

8. As of February 11, 2025, a combined 100,711 Email Notices and Postcard Notices were sent and have not bounced or been returned undeliverable to unique, identified Settlement Class members. According to Verita's experts, this means that individual, direct notice efforts reached approximately 74.77% of the identified Settlement Class.

9. Additionally, a Long Form Notice and Claim Form ("Claim Package") were mailed to all persons who requested one via the toll-free telephone number or other means. As of February 17, 2025, Verita mailed one Claim Package as a result of such requests. The Long Form Notice is included as *Exhibit 3*. The Claim Form is included as *Exhibit 4*.

PUBLICATION OF THE MEDIA NOTICE

10. Verita purchased approximately 98.5MM digital media impressions to be distributed programmatically via various ad exchanges (e.g., Google Display Network) and on Facebook. The impressions were targeted to adults 18 years of age and older and were distributed across various websites and mobile apps on desktop and mobile devices. Display ad impressions appeared alongside content related to news and/or health as available. Confirmation of the digital notices as they appeared on a variety of websites and on Facebook is attached hereto as *Exhibit 5*.

SETTLEMENT WEBSITE

11. On or about January 21, 2025, Verita established a website www.LNDataSecuritySettlement.com dedicated to this matter to provide information to the Settlement Class and to answer frequently asked questions. The website URL was set forth in the Postcard Notice and Email Notice. Visitors of the Settlement Website can download copies of the Long Form Notice, Claim Form, and other case-related documents. Visitors can also submit Claims online, and, if applicable, upload supporting documentation. As of February 17, 2025, the website has received 30,186 visits.

TELEPHONE HOTLINE

12. Verita established and continues to maintain a toll-free telephone number (888) 726-1386 for potential Class Members to call and obtain answers to frequently asked questions about

the Settlement and/or request a Claim Package. The telephone hotline became operational on January 20, 2025, and is accessible 24 hours a day, 7 days a week. As of February 17, 2025, Verita has received a total of 635 calls to the telephone hotline for a total of 2,333 minutes.

CLAIM FORMS

13. The postmark deadline for Class Members to file claims in this matter is March 20, 2025. As of February 17, 2025, Verita has received 1,663 timely-submitted Claim Forms. Verita expects additional timely-submitted Claim Forms to arrive over the next few weeks. As standard practice, Verita is in the process of conducting and complete review and audit of all Claim Form received and will do so for other Claims Forms when received. There is a likelihood that after detailed review the total number of Claim Forms received will change due to duplicate and denied Claim Forms.

REPORT ON OPT-OUT REQUESTS RECEIVED TO DATE

14. The Notices inform Settlement Class members that requests to opt-out from the from the Settlement must be postmarked no later than March 5, 2025. As of the date of this declaration, Verita has received no requests for exclusion.

OBJECTIONS TO THE SETTLEMENT

15. The deadline for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards is March 5, 2025. As of the date of this declaration, Verita is not aware of any objections.

CONCLUSION

16. The Notice Program included individual notice via email or USPS first-class mail to identified Settlement Class members. As noted above, according to Verita's experts, the Notice Program individual notice efforts reached approximately 74.77% of the identified Settlement Class. The reach was further enhanced by the Settlement Website and digital notices. In 2010, the Federal Judicial Center issued a Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide, which is relied upon for federal cases, and is illustrative for state courts. This guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice

effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.¹ Here, the Notice Program was developed and implemented to readily meet this range.

17. The Notice Program provided the best notice practicable under the circumstances of this case, conformed to all aspects of Federal Rules of Civil Procedure, Rule 23 regarding notice, comported with the Manual for Complex Litigation 4th Ed., and FJC guidance, and exceeded the requirements of due process.

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

Executed on February 18, 2025 at El Segundo, CA.

Ana Espinoza

ANA ESPINOZA

¹ FED. JUDICIAL CTR, JUDGES’ CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at <https://www.fjc.gov/content/judges-class-actionnotice-and-claims-process-checklist-and-plain-language-guide-0>.

Exhibit 1

LEGAL NOTICE

J.W., a Minor, et al. v. LivaNova

USA, Inc.

Settlement Administrator

P.O. Box 301132

Los Angeles, CA 90030-1132

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE
PAID
COMMUNICATION
SERVICES

If your private information was compromised in a data security incident experienced by LivaNova USA, Inc. on or around October 26, 2023, you may be entitled to benefits from this class action settlement.

A federal district court authorized this Notice.

1-888-726-1386

www.LNDataSecuritySettlement.com



VISIT THE
SETTLEMENT
WEBSITE BY
SCANNING THE
PROVIDED QR CODE

«3of9 barcode»

«BARCODE»

Postal Service: Please do not mark barcode

LVJ: ClaimID: «Claim Number»

PIN: «PIN»

«FIRST1» «LAST1»

«ADDRESS LINE 2»

«ADDRESS LINE 1»

«CITY», «STATE»«PROVINCE» «POSTALCODE»

«COUNTRY»

LVJ

A \$1,200,000 Settlement has been reached with Defendant LivaNova USA, Inc. in a class action lawsuit, *J.W. Alghon, et al. v. LivaNova USA, Inc.*, Case No. 4:24-cv-02250 (S.D. Tex.), relating to an alleged incident that occurred on or around October 26, 2023, during which unauthorized third parties purportedly gained access to private information from LivaNova's systems.

Who is included? LivaNova's records indicate that you are included in the Settlement Class. More specifically, the Settlement Class includes all persons in the United States whose Private Information was potentially compromised as a result of the Data Security Incident.

What does the Settlement provide? The Settlement provides Settlement Class Members with the right to claim a Cash Payment for either (A) reimbursement of documented losses (maximum payment of up to \$5,000), **or** (B) approx. \$100 flat cash payment (subject to *pro rata* increase or decrease) from the proposed Settlement; **and** up to three years of Credit/Data Monitoring.

All Cash Payments are subject to a *pro rata* increase or decrease depending on the total value of all claims received.

How do I get Settlement Class Member Benefits? You must complete and submit a Claim Form by **March 20, 2025**. You may submit a Claim Form, using the ClaimID and PIN on the reverse side, online at www.LNDataSecuritySettlement.com. Claim Forms may also be printed from the Settlement Website or requested by calling the Settlement Administrator, and submitted by mail and postmarked by **March 20, 2025**.

What are my other options? If you do not want to be legally bound by the Settlement, you must opt out of the Settlement by **March 5, 2025**. Unless you opt out, you will not be able to sue LivaNova or released parties for any claim released by the Settlement or the related actions. If you do not opt out of the Settlement, you may object to the Settlement and notify the Court that you or your lawyer intend to appear at the Court's Final Approval Hearing. Objections are due **March 5, 2025**.

The Court's Final Approval Hearing. The Court will hold a Final Approval Hearing in this case on **April 4, 2025, at 9:00 a.m.**, at the U.S. District Court, Southern District of Texas. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) \$2,500 for Service Awards to each Class Representative; and (3) Class Counsel's request for attorneys' fees of up to 33.33% of the Settlement Fund or \$401,666.67, and reimbursement of litigation costs. You may appear at the hearing, but you do not have to. You also may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

Want more information? For more information, including a copy of the Settlement Agreement and other important documents, and a more detailed description of the Settlement, the benefits available, and the releases, please go to www.LNDataSecuritySettlement.com or call 1-888-726-1386.

Exhibit 2

ClaimID: <<ClaimNumber>>

PIN: <<PIN>>

If your private information was compromised in a data security incident experienced by LivaNova USA, Inc. on or around October 26, 2023, you may be entitled to benefits from this class action Settlement.

A federal district court authorized this Notice.

A \$1,205,000 Settlement has been reached with Defendant LivaNova USA, Inc. in a class action lawsuit, *J.W., a Minor, et al. v. LivaNova USA, Inc.*, Case No. 4:24-cv-02250 (S.D. Tex.), relating to an alleged incident that occurred on or around October 26, 2023, during which unauthorized third parties purportedly gained access to Private Information from LivaNova's systems.

Who is included? LivaNova's records indicate that you are included in the Settlement Class. More specifically, the Settlement Class includes all persons in the United States whose Private Information was potentially compromised as a result of the Data Security Incident.

What does the Settlement provide? The Settlement provides Settlement Class Members with the right to claim a Cash Payment for either (A) reimbursement of documented losses (maximum payment of up to \$5,000) **or** (B) a \$100 flat Cash Payment (subject to *pro rata* increase or decrease) from the proposed Settlement; **and** up to three years of Credit/Data Monitoring.

All Cash Payments are subject to a *pro rata* increase or decrease depending on the total value of all Claims received.

How do I get Settlement Class Member Benefits? You must complete and submit a Claim Form by **March 20, 2025**. You may submit a Claim Form, using the ClaimID and PIN above, online at www.LNDataSecuritySettlement.com. Claim Forms may also be printed from the Settlement Website or requested by calling the Settlement Administrator and submitted by mail and postmarked by **March 20, 2025**.

What are my other options? If you do not want to be legally bound by the Settlement, you must opt out of the Settlement by **March 5, 2025**. Unless you opt out, you will not be able to sue LivaNova or released parties for any claim released by the Settlement or the related actions. If you do not opt out of the Settlement, you may object to the Settlement and notify the Court that you or your lawyer intend to appear at the Court's Final Approval Hearing. Objections are due **March 5, 2025**.

The Court's Final Approval Hearing. The Court will hold a Final Approval Hearing in this case on **April 4, 2025, at 9:00 a.m.**, at the U.S. District Court Southern District of Texas. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) \$2,500 for Service Awards to each Class Representative; and (3) Class Counsel's request for attorneys' fees of up to 33.33% of the Settlement Fund or \$401,666.67, and reimbursement of litigation costs. You may appear at the hearing, but you do not have to. You also may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

Want more information? For more information, including a copy of the Settlement Agreement and other important documents, and a more detailed description of the Settlement, the benefits available, and the releases, please go to www.LNDataSecuritySettlement.com or call 1-888-726-1386.

Exhibit 3

Notice of LivaNova USA Data Security Incident Class Action Settlement

If your private information was compromised in a data security incident experienced by LivaNova USA, Inc. on or around October 26, 2023, you may be entitled to benefits from this class action settlement.

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

Please read this Notice carefully and completely, your legal rights are affected whether you act or don't act.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

- A Settlement has been reached in a class action lawsuit against LivaNova USA, Inc. (“LivaNova” or “Defendant”). The Settlement resolves claims brought by individuals impacted by the Data Security Incident that occurred on or around October 26, 2023, during which unauthorized third parties purportedly gained access to Private Information from LivaNova’s systems (“Data Security Incident”).
- You may be eligible to receive a Cash Payment for either (A) reimbursement for documented losses (maximum payment of up to \$5,000) or (B) a \$100 flat cash payment from the proposed Settlement. All Cash Payments are subject to a *pro rata* increase or decrease depending on the total value of all Claims received.
- In addition to the Cash Payment, you may elect up to three years of Credit/Data Monitoring services.
- To receive a Cash Payment and/or Credit/Data Monitoring services, you must complete and submit a Claim Form.
- Please read this Notice carefully. Your legal rights will be affected, and you have a choice to make now.

Summary of Your Legal Rights and Options		Deadline
SUBMIT A CLAIM FORM	The only way to get a Cash Payment and/or Credit/Data Monitoring. Please note that submitting a Claim Form will <u>not</u> automatically enroll you in Credit/Data Monitoring Services. To enroll, you must follow the instructions that will be sent to you using the email address you provided after the Settlement is approved.	Online or Postmarked by March 20, 2025.
EXCLUDE YOURSELF BY OPTING OUT	Get no Cash Payment and/or Credit/Data Monitoring. Keep your right to file your own lawsuit against the Defendant for the same claims resolved by this Settlement.	Postmarked by March 5, 2025.
OBJECT TO THE SETTLEMENT AND/OR ATTEND THE FINAL APPROVAL HEARING	Tell the Court the reasons why you do not believe the Settlement should be approved. You can also ask to speak to the Court at the Final Approval Hearing on April 4, 2025 about the fairness of the Settlement, with or without your own attorney.	Received by March 5, 2025.
DO NOTHING	Get no Cash Payment and/or Credit/Data Monitoring and be bound by the terms of the Settlement.	

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Cash Payments will be made and Credit/Data Monitoring services will be available if the Court approves the Settlement after any appeals are resolved.

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BASIC INFORMATION

1. Why did I receive Notice?

You received Notice because you have been identified as a person whose Private Information may have been accessed or exposed during the Data Security Incident. Similarly situated individuals brought a proposed class action lawsuit against LivaNova, alleging LivaNova was negligent due to its data security practices. LivaNova denied the allegations and denied that it would be found liable. The Parties have now reached a proposed Settlement of the lawsuit and related actions.

A court authorized this Notice because you have a right to know about your rights under the proposed class action Settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after objections and appeals are resolved, a Settlement Administrator appointed by the Court will distribute the Settlement Class Member Benefits that the Settlement allows, and the pending legal claims against the Defendant will be released and dismissed. Please note that these claims will be released even if you do not file a Claim or receive any Settlement compensation (unless you timely opt out of the Settlement).

This Notice explains the lawsuit, the Settlement, your rights, what Settlement Class Member Benefits are available, who is eligible for them, and how to get them. The case is *J.W., a Minor, et al. v. LivaNova USA, Inc.*, Case No. 4:24-cv-2250, currently pending in the United States District Court for the Southern District of Texas. The Honorable Alfred H. Bennett, United States District Court Judge, is in charge of this case.

2. What is this lawsuit about?

The lawsuit claims that (1) on or about November 19, 2023, LivaNova discovered that an unauthorized third party obtained Private Information from its computer systems (“Data Security Incident”); (2) the Data Security Incident exposed certain Private Information pertaining to LivaNova’s customers and employees; (3) and LivaNova began notifying affected persons about the Data Security Incident on May 31, 2024. The Defendant denies any allegations of wrongdoing and denies that Plaintiffs would prevail or be entitled to any relief should this matter continue to be litigated.

The affected Private Information varied by impacted individual and included data such as name, contact information (e.g., phone number, email and postal addresses), Social Security number, date of birth, medical information (e.g., treatment, condition, diagnosis, prescription, physician, medical record number and device serial number), and health insurance information.

3. What is a class action?

In a class action one or more people called “Class Representatives” sue on behalf of themselves and other people who have similar claims. This group of people is called the “class,” and the people in the class are called “Settlement Class Members” or the “Settlement Class.” One court resolves the issues for all Settlement Class Members, except for people who exclude themselves from the class. The persons who sued here (J.W., a minor, by and through her guardian Angela Johnson, Crystal Schultz, Michele Eusebe, Justin Medina, Arthur Podroykin, and Katherine Chaudhry) are called the Plaintiffs. The company they sued—LivaNova USA, Inc.—is called the Defendant.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Instead, both sides agreed to a Settlement. That way, they avoid the costs and risks of a trial, and Settlement Class Members can get benefits or compensation. The Class Representatives and Class Counsel think the Settlement is in the best interest of the Settlement Class.

WHO IS IN THE SETTLEMENT?

5. Who is in the Settlement?

The Settlement Class is defined as: “all persons in the United States whose Private Information was potentially compromised as a result of the Data Security Incident. Excluded from the Settlement Class are (a) all persons who are governing board members of Defendant; (b) governmental entities; (c) the Court, the Court’s immediate family, and Court staff; and (d) any individual who timely and validly opts-out of the Settlement.”

6. Are there exceptions to being included?

Yes, the following are not included in the Settlement Class: (a) all persons who are governing board members of Defendant; (b) governmental entities; (c) the Court, the Court’s immediate family, and Court staff; and (d) Settlement Class Members who submit a valid request to opt out of the Settlement by the Opt-Out Deadline.

7. What should I do if I am not sure whether I am included?

If you are not sure whether you are included in the Settlement Class, you can ask for free help by calling the Settlement Administrator, at 1-888-726-1386 or you can visit www.LNDataSecuritySettlement.com for more information.

THE SETTLEMENT BENEFITS

8. What does the Settlement provide?

Under the Settlement, the Defendant will establish a non-reversionary all cash Settlement Fund in the amount of \$1,205,000. These funds will be used to pay for all Valid Claims made by Settlement Class Members, Settlement Administration Costs, any Court-awarded Service Awards to the Class Representatives, and any Court-awarded attorneys' fees and costs. Any remaining funds will be sent to an appropriate mutually agreeable *cy pres* recipient to be approved by the Court.

9. What can I get from the Settlement?

Settlement Class Members may file a Claim for one or more of the following Settlement Class Member Benefits.

CASH PAYMENT: Settlement Class Members may submit a Claim for a Cash Payment from the Settlement Fund. You may choose ONE of the following two Cash Payment options.

Cash Payment A – Documented Losses. Settlement Class Members may submit a claim for reimbursement of documented monetary losses fairly traceable to the Data Security Incident up to \$5,000 per individual (“Documented Losses”). Documented Losses may 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 the Data Security Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. You will not be reimbursed for expenses if you have been previously reimbursed for the same expenses by another source. **You must provide proper documentation to make a successful claim for Documented Losses.**

OR

Cash Payment B – Flat Cash Payment. As an alternative to Cash Payment A above, you may elect to receive Cash Payment B, which is a flat cash payment in the amount of approximately \$100.

Claims for Cash Payments are subject to a *pro rata* increase or decrease depending upon the number of Valid Claims filed and approved.

CREDIT/DATA MONITORING SERVICES: In addition to a Cash Payment, Settlement Class Members may submit a Claim for up to three years of Credit/Data Monitoring services.

10. What am I giving up if I stay in the Class?

If you are a Settlement Class Member and you do not opt out of the Settlement, you will give up your right to sue, continue to sue, or be part of any other lawsuit against Defendant or other released parties concerning the claims released by this Settlement. These claims will be released even if you do not file a Claim or receive any Settlement compensation. The Settlement Agreement describes the legal claims that you give up if you remain in the Settlement Class. The entire text of the Settlement Agreement can be viewed at www.LNDataSecuritySettlement.com.

HOW TO GET SETTLEMENT BENEFITS – MAKING A CLAIM

11. How can I get a Cash Payment?

You must complete and submit a Claim Form by March 20, 2025. Claim Forms may be submitted online at www.LNDataSecuritySettlement.com or printed from the website and mailed to the address on the form.

Be sure to read the Claim Form instructions carefully, include all required information, and your signature.

The Settlement Administrator will review your claim to determine the validity and amount of your payment.

This is a closed class. The benefits are available only to Settlement Class Members with a unique Claim ID. All claims submitted by non-Settlement Class Members will be rejected.

12. How can I get Credit/Data Monitoring?

You must complete and submit a Claim Form by March 20, 2025. Claim Forms may be submitted online at www.LNDataSecuritySettlement.com or printed from the website and mailed to the address on the form. Please note that submitting a Claim Form will not automatically enroll you in Credit/Data Monitoring Services. To enroll, you must follow the instructions that will be sent to you using the email address you provided after the Settlement is approved.

13. When will I get my Cash Payment or Credit/Data Monitoring?

The Court will hold a hearing on April 4, 2025, to decide whether to approve the Settlement. Cash Payments and Credit/Data Monitoring services will be made after the Settlement is approved and becomes final (meaning there is no appeal from the order approving the Settlement). Updates regarding the Settlement will be posted on the Settlement Website, www.LNDataSecuritySettlement.com.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

Jeff Ostrow of Kopelowitz Ostrow P.A., Mariya Weekes of Milberg Coleman Bryson Phillips & Grossman PLLC, and Scott Cole of Cole & Van Note have been appointed to represent the Settlement Class. These lawyers are called Class Counsel. You will not be charged for their services.

15. Should I get my own lawyer?

If you want your own lawyer, you may hire one, but you will be responsible for any payment for that lawyer’s services. For example, you can ask your own lawyer to appear in court for you if you want someone other than Class Counsel to speak for you. You may also appear for yourself without a lawyer.

16. How will the lawyers be paid?

The attorneys representing the Settlement Class have not yet received any payment for their legal services or any reimbursement of the costs or out-of-pocket expenses they have incurred. Class Counsel plans to ask the Court to award attorney’s fees from the Settlement Fund. The request for attorneys’ fees, costs, and expenses will be for up to 33.33% of the Settlement Fund or \$401,666.67.

The Settlement Class is represented by the Plaintiffs named above, who have been designated as the “Class Representatives.” Class Representatives may make a Claim for Settlement Class Member Benefits, like all other Settlement Class Members, but will also each request a \$2,500 award for the efforts they have expended on behalf of the Settlement Class.

The Court will determine whether to approve the amount of attorneys’ fees, costs, and expenses requested by Class Counsel, as well as the amount of the Service Awards for the Class Representatives. As part of Plaintiffs’ Motion for Final Approval of the Settlement, Class Counsel will file an Application for Attorneys’ Fees, Costs, and Service Awards no later than February 18, 2025. Once filed, the Motion for Final Approval will be available on the Settlement Website, www.LNDataSecuritySettlement.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

17. How do I get out of the Settlement?

If you are a Settlement Class Member and you do not want the benefits from the Settlement, and you want to keep your right, if any, to sue the Defendant or released parties on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself from—or “opting out” of—the Settlement Class.

You may opt out of the Settlement by March 5, 2025. To opt out, you must send your request to the address below that contains the following information:

- Your full name, address, telephone number, email address (if any) and must be personally signed by you;
- A clear statement indicating your request to opt out of the Settlement Class and the Settlement.

You should also include the following in your letter or postcard: the name of this Litigation, or a decipherable approximation (*J.W. v. LivaNova USA, Inc.*, Case No. 4:24-cv-2250).

You must mail your opt-out request via First-Class postage prepaid U.S. Mail, postmarked no later than March 5, 2025 to:

J.W. v. LivaNova USA
Settlement Administrator
P.O. Box 301132
Los Angeles, CA 90030-1132

If you fail to include the required information, your request will be deemed invalid and you will remain a Settlement Class Member and be bound by the Settlement, including all releases.

18. If I am a Settlement Class Member and don’t opt out, can I sue the Defendant for the same thing later?

No. You must opt out of the Settlement to keep your right to sue Defendant or other released parties for any of the claims resolved by the Settlement.

19. What happens if I opt out?

If you opt out of the Settlement, you will not have any rights as a member of the Settlement Class. You will not receive a Cash Payment and/or Credit/Data Monitoring services as part of the Settlement. You will not be bound by the Settlement, releases, or by any further orders or judgments in this case. You will keep the right, if any, to sue on the claims alleged in the case at your own expense.

In addition, if you opt out of the Settlement you cannot object to this Settlement because the Settlement no longer affects you. If you object to the Settlement and request to opt out, your objection will be voided and you will be deemed to have opted out.

COMMENTING ON OR OBJECTING TO THE SETTLEMENT

20. How do I tell the Court I don't like the Settlement?

If you are a Settlement Class Member and you do not opt-out of the Settlement, you can object to the Settlement if you do not think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve it. You can't ask the Court to change or order a different settlement; the Court can only approve or deny this Settlement. If the Court denies approval, no Settlement Class Member Benefits will be distributed and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to any part of the proposed Settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

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

- a) the name of this Litigation (*J.W. v. LivaNova USA, Inc.*, Case No. 4:24-cv-2250);
- b) your full name, current mailing address, telephone number and email address (if any);
- c) the specific reasons for your objection or objections, accompanied by any legal support for the objection known to you or your counsel;
- d) the number of times you have objected to a class action settlement within the five years preceding the date of your objection along with the caption of each case and a copy of any orders related to or ruling upon your prior objections that were issued by the trial and appellate courts in each listed case;
- e) the identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards;
- f) the number of times your counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date of the filed objection, the caption of each case and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case;
- g) Any and all agreements that relate to the objection or the process of objecting—whether written or oral—between you and your counsel and any other person or entity;
- h) The identity of all counsel (if any) representing you who will appear at the Final Approval Hearing;
- i) A list of everyone who will be called to testify at the Final Approval Hearing in support of your objection (if any);
- j) a statement indicating whether you intend to personally appear at the Final Approval Hearing; and
- k) Your original signature (an attorney's signature is not sufficient).

Completed objections must be submitted via postal mail to the Clerk of the Court and copies must be mailed to Class Counsel, Defense Counsel, and the Settlement Administrator postmarked no later than March 5, 2025.

Court	Class Counsel	Defense Counsel	Settlement Administrator
Clerk of the Court United States District Court for the Southern District of Texas 515 Rusk Street Houston, TX 77002	Jeff Ostrow Kopelowitz Ostrow P.A. 1 West Las Olas Boulevard, Ste. 500 Fort Lauderdale, FL 33301 Mariya Weekes Milberg Coleman Bryson Phillips & Grossman PLLC 201 S. Sevilla Avenue, Ste. 200 Coral Gables, FL 33134 Scott Cole Cole & Van Note, P.A. 555 12 th Street, Ste. 2100 Oakland, CA 94607	Neil Gilman Hunton Andrews Kurth LLP 200 Park Avenue New York, NY 10166	<i>J.W. v. LivaNova USA</i> Settlement Administrator P.O. Box 301132 Los Angeles, CA 90030- 1132

21. What's the difference between objecting and opting out?

Objecting is telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you are a Settlement Class Member and do not opt out of the Settlement. Opting out of the Settlement is telling the Court that you don't want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because it does not affect you.

THE COURT'S FINAL APPROVAL HEARING

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

The Court will hold a Final Approval Hearing at April 4, 2025, at 9:00 a.m., at United States District Court for the Southern District of Texas, 515 Rusk Street, Houston, TX 77002, before Judge Alfred H. Bennett. The hearing may be held virtually, and if it is, instructions on how to attend will be posted on the Settlement Website. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and Class Counsel's Application for Attorney's fees, Costs Service Awards. If there are objections, the Court will consider them. The Court may choose to hear from people who have asked to speak at the hearing. At or after the hearing, the Court will decide whether to approve the Settlement. There is no deadline by which the Court must make its decision.

The Court may reschedule the Final Approval Hearing or change any of the deadlines described in this Notice. The date of the Final Approval Hearing may change without further notice to the Settlement Class Members. Be sure to check the website, www.LNDataSecuritySettlement.com for updates.

23. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you send an objection, you do not have to come to the hearing to talk about it. As long as you mailed or filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

24. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you should include a statement in your written objection (*see* Question 20) that you intend to appear at the hearing. Be sure to include your name, address, and signature as well. It is the judge's discretion to let you speak at the Final Approval Hearing. You cannot speak at the hearing if you opt out.

IF I DO NOTHING

25. What happens if I do nothing at all?

If you are a Settlement Class Member and do nothing, you will not get a Cash Payment and/or Credit/Data Monitoring from this Settlement, and you will not be able to sue the Defendant or other released parties for the claims released by the Settlement Agreement.

GETTING MORE INFORMATION

26. Are more details about the Settlement available?

This Notice summarizes the proposed Settlement—more details are available in the Settlement Agreement and other case documents available at www.LNDataSecuritySettlement.com; by reviewing the case docket and filings online at www.txs.uscourts.gov; or by visiting the office of the Clerk of the Court for the United States District Court for the Southern District of Texas, 515 Rusk Street, Houston, TX 77002, between 8:00 a.m. and 4:45 p.m., Monday through Friday, excluding Court holidays.

27. How do I get more information?

Visit the website, www.LNDataSecuritySettlement.com, where you will find more information, including the Claim Form, a copy of the Settlement Agreement, and answers to questions about the Settlement and other information to help you determine whether you are eligible for a payment.

Contact the Settlement Administrator:

J.W. v. LivaNova USA
Settlement Administrator
P.O. Box 301132
Los Angeles, CA 90030-1132

1- 888-726-1386
admin@LNDataSecuritySettlement.com

PLEASE DO NOT CONTACT THE COURT, THE COURT CLERK'S OFFICE, OR DEFENDANT TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

Exhibit 4



LVJ

«3of9 barcode»
«BARCODE»
Postal Service: Please do not mark barcode
LVJ: ClaimID: «Claim Number»
PIN: «PIN»
«FIRST1» «LAST1»
«ADDRESS LINE 2»
«ADDRESS LINE 1»
«CITY», «STATE»«PROVINCE» «POSTALCODE» «COUNTRY»

VISIT THE SETTLEMENT WEBSITE BY
SCANNING THE PROVIDED QR CODE

J. W., A MINOR, ET AL. V. LIVANOVA USA, INC.
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS

Case No. 4:24-CV-02250

**Must Be Postmarked
No Later Than
March 20, 2025**

Claim ID: <<Claim8>>
PIN: <<PIN>>

Claim Form

The DEADLINE to submit or mail this Claim Form is: March 20, 2025.

GENERAL INSTRUCTIONS

If your Private Information was compromised or potentially compromised in the Data Security Incident experienced by LivaNova USA, Inc. on or around October 26, 2023, you are a "Settlement Class Member." If you received a Notice about this class action Settlement addressed to you, then the Settlement Administrator has already determined that you are a Settlement Class Member.

As a Settlement Class Member, you are eligible to Claim a Cash Payment of either (A) reimbursement of documented monetary losses (up to \$5,000, subject to pro rata adjustment based on total Valid Claims), or (B) a Flat Cash Payment of approx. \$100 (subject to pro rata adjustment based on total Valid Claims); and up to three years of Credit/Data Monitoring services.

CLAIMANT INFORMATION

The Settlement Administrator will use this information for all communications regarding this Claim Form and the Settlement. If this information changes before the Settlement Class Member Benefits are issued, you must notify the Settlement Administrator.

<input type="text"/>				<input type="text"/>	<input type="text"/>				
First Name				M.I.	Last Name				
<input type="text"/>				<input type="text"/>	<input type="text"/>				
Alternative Name								<input type="text"/>	
<input type="text"/>								<input type="text"/>	
Primary Address									
<input type="text"/>									
Primary Address Continued									
<input type="text"/>									
City						State		ZIP Code	
<input type="text"/>						<input type="text"/>		<input type="text"/>	
Email Address (Required for Credit Monitoring Services)									
<input type="text"/>						<input type="text"/>			
Date of Birth (mm/dd/yyyy)						Class Member ID on front of mailed Class Notice (if known)			
<input type="text"/>						<input type="text"/>			
Area Code		Telephone Number (Home)				Area Code		Telephone Number (Work)	
<input type="text"/>		<input type="text"/>				<input type="text"/>		<input type="text"/>	

BENEFIT SELECTION

You may select a Cash Payment of either (A) reimbursement of documented monetary losses (up to \$5,000), or (B) a Flat Cash Payment of approx. \$100; and up to three years of Credit/Data Monitoring services. All Cash Payments are subject to pro rata adjustment based on total Valid Claim submission.

Questions? Go to www.LNDataSecuritySettlement.com or call 1-888-726-1386.



FOR CLAIMS PROCESSING ONLY	OB <input type="text"/>	CB <input type="text"/>	<input type="radio"/> DOC <input type="radio"/> LC <input type="radio"/> REV	<input type="radio"/> RED <input type="radio"/> A <input type="radio"/> B
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1. CASH PAYMENT: You may choose from one of the following Cash Payment Options:

A. Reimbursement of Documented Monetary Losses. All members of the Settlement Class who provide valid documentation of monetary losses as set out below, are eligible for reimbursement of such **documented** monetary losses that are fairly traceable to the Data Security Incident, not to exceed \$5,000 per member of the Settlement Class.

I would like to receive Reimbursement of Documented Monetary Losses, which I have described below:

Cost Type (Fill all that apply)	Approximate Date of Loss (mm/dd/yyyy)	Amount of Loss
<input type="radio"/> Out-of-pocket expenses incurred as a result of the Data Incident, such as notary, fax, postage, copying, mileage and long-distance phone charges.	<input type="text"/> / <input type="text"/> / <input type="text"/>	\$ <input type="text"/>
	<input type="text"/> / <input type="text"/> / <input type="text"/>	\$ <input type="text"/>
	<input type="text"/> / <input type="text"/> / <input type="text"/>	\$ <input type="text"/>

Examples of Supporting Third-Party Documentation: Telephone bills and receipts for notary, fax, postage, and mileage reflecting out-of-pocket expenses. Please note that these examples of reimbursable documented out-of-pocket losses are not meant to be exhaustive, but exemplary. You may make claims for any documented out-of-pocket losses that you believe are reasonably related to the Data Security Incident or to mitigating the effects of the Data Security Incident.

Cost Type (Fill all that apply)	Approximate Date of Loss (mm/dd/yyyy)	Amount of Loss
<input type="radio"/> Fees for credit reports, credit monitoring, or other identity theft insurance products purchased on or after the Data Security Incident through the date of claim submission.	<input type="text"/> / <input type="text"/> / <input type="text"/>	\$ <input type="text"/>
	<input type="text"/> / <input type="text"/> / <input type="text"/>	\$ <input type="text"/>
	<input type="text"/> / <input type="text"/> / <input type="text"/>	\$ <input type="text"/>

Examples of Supporting Documentation: Receipts or account statements reflecting purchases made for Credit Monitoring or identity theft insurance services.

Cost Type (Fill all that apply)	Approximate Date of Loss (mm/dd/yyyy)	Amount of Loss
<input type="radio"/> Compensation for proven monetary loss, professional fees including attorneys' fees, accountants' fees, and fees for credit repair services, fees associated with freezing or unfreezing credit with any credit reporting agency incurred as a result of the Data Security Incident.	<input type="text"/> / <input type="text"/> / <input type="text"/>	\$ <input type="text"/>
	<input type="text"/> / <input type="text"/> / <input type="text"/>	\$ <input type="text"/>
	<input type="text"/> / <input type="text"/> / <input type="text"/>	\$ <input type="text"/>

Examples of Supporting Documentation: Invoices or statements reflecting payments made for professional fees/services.

Questions? Go to www.LNDataSecuritySettlement.com or call 1-888-726-1386.



Cost Type (Fill all that apply)	Approximate Date of Loss (mm/dd/yyyy)	Amount of Loss
<input type="radio"/> Other documented monetary losses.	<input type="text"/> / <input type="text"/> / <input type="text"/>	\$ <input type="text"/>

Examples of Supporting Documentation: *Invoices or statements reflecting payments for other monetary losses fairly traceable to the Data Security Incident.*

NOTE: You must include documentation supporting your Claim for a documented loss Cash Payment. This can include receipts or other documentation not “self-prepared.” “Self-prepared” documents such as handwritten receipts are, by themselves, **not** sufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation.

-OR-

B. Flat Cash Payment: As an alternative to Option A above, you may elect to receive a Flat Cash Payment. If you wish to receive a Flat Cash Payment of approximately \$100 (subject to pro rata increase or decrease), fill in the circle below.

I would like to receive a Flat Cash Payment.

2. CREDIT/DATA MONITORING SERVICES: If you wish to receive Credit/Data Monitoring Services, fill in the circle below, provide your email address in the space provided above, sign, and return this Claim Form. Submitting this Claim Form will not automatically enroll you in Credit/Data Monitoring Services. To enroll, you must follow the instructions that will be sent to you using the email address you provided above after the Settlement is approved and becomes Final (the “Effective Date”).

I would like to receive Credit/Data Monitoring Services. I have provided my email address above.

PAYMENT: If you use this Paper Claim Form, a check will be mailed to the address above. If you want to receive an electronic payment, please submit your Claim online.

All Cash Payments are subject to a pro rata increase or decrease depending upon the total value of all Valid Claims.

SIGNATURE: I swear and affirm that the foregoing is true and correct.

Signature: _____

Dated (mm/dd/yyyy): _____

Print Name: _____

Questions? Go to www.LNDataSecuritySettlement.com or call 1-888-726-1386.



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Exhibit 5



DIGITAL MEDIA MESSAGING & DESIGN SAMPLES

J.W. v. LivaNova USA, Inc.

January 16, 2025

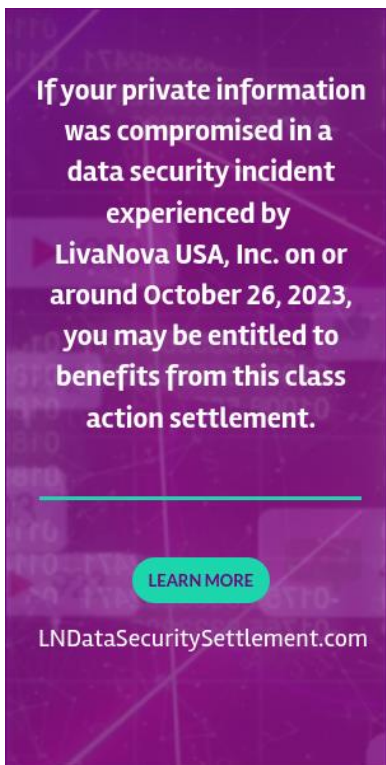
Verita Global, LLC

NOTE: All creatives displayed herein are for representative purposes only and may not be to scale. Some ads are built on responsive platforms and may not display all text in view based on placement, screen size, etc.

J.W. v. LivaNova USA, Inc.

DISPLAY

Digital media impressions will be served on desktop and mobile devices via various websites and apps (e.g., via the Google Display Network).



300x600



300x250



728x90

Display Text:

If your private information was compromised in a data security incident experienced by LivaNova USA, Inc. on or around October 26, 2023, you may be entitled to benefits from this class action settlement.

Learn More

LNDDataSecuritySettlement.com

Click-through URL: <http://lndatasecuritysettlement.com/>

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SOCIAL MEDIA

Digital media impressions will also be served on Facebook.

Facebook Page

The screenshot shows a Facebook page for the 'LivaNova Data Security Settlement'. The page features a purple header with the following text: 'If your private information was compromised in a data security incident experienced by LivaNova USA, Inc. on or around October 26, 2023, you may be entitled to benefits from this class action settlement.' Below this text is a teal 'LEARN MORE' button and the website 'LNDataSecuritySettlement.com'. The page profile picture is a circular graphic with data points. The page name is 'LivaNova Data Security Settlement' with '0 likes • 0 followers'. Navigation tabs include 'Posts', 'About', 'Mentions', 'Followers', 'Photos', 'Videos', and 'More'. The 'Posts' section shows 'No posts available' with a 'Filters' button. The 'Intro' section contains the same text as the header and lists 'Page · Legal service' and the website 'LNDataSecuritySettlement.com'.

J.W. v. LivaNova USA, Inc.



Facebook Desktop Feed Ad



Facebook Mobile Feed Ad



Facebook Stories Ad

J.W. v. LivaNova USA, Inc.

Headline: LivaNova Data Security Settlement

Description:

If your private information was compromised in a data security incident experienced by LivaNova USA, Inc. on or around October 26, 2023, you may be entitled to benefits from this class action settlement.

Call to Action: Learn more

Website URL: <http://lndatasecuritysettlement.com/>

URL as displayed: lndatasecuritysettlement.com

Image text: LivaNova Data Security Settlement

LNDatasecuritySettlement.com

EXHIBIT D

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

J.W., a Minor, by and through her guardian
Angela Johnson, CRYSTAL SCHULTZ,
MICHELE EUSEBE, JUSTIN MEDINA,
ARTHUR PODROYKIN, and KATHERINE
CHAUDHRY, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

LIVANOVA USA, INC.,

Defendant.

CIVIL ACTION NO. 4:24-CV-02250

**[PROPOSED] FINAL APPROVAL ORDER GRANTING PLAINTIFFS' UNOPPOSED
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND
APPLICATION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

WHEREAS, Plaintiffs submitted to the Court their Unopposed Motion for Final Approval of Class Settlement Action Settlement and Application for Attorneys' Fees, Costs, and Service Awards (ECF No. ____);

WHEREAS, on December 6, 2024, the Court entered its Preliminary Approval Order, which, *inter alia*: (1) preliminarily approved the Settlement; (2) determined that, for purposes of the Settlement only, the Action should proceed as a class action and certified the Settlement Class; (3) appointed Plaintiffs Crystal Schultz, Michele Eusebe, Justin Medina, Arthur Podroykin, and Katherine Chaudhry as Class Representatives; (4) appointed Jeff Ostrow of Kopelowitz Ostrow P.A., Mariya Weekes of Milberg Coleman Bryson Phillips Grossman PLLC, and Scott E. Cole of Cole & Van Note as Class Counsel; (5) appointed Verita Global, LLC as the Settlement Administrator; (6) approved the form and manner of Notice and the Notice Program; (7) approved the Claim process and Claim Form; and (8) set the Final Approval Hearing date (ECF No. 31);

WHEREAS, thereafter, Notice was provided to the Settlement Class in accordance with the Court's Preliminary Approval Order by direct Email Notice or Postcard Notice, and the Long Form Notice was available to Settlement Class members on the Settlement Website or on request to the Settlement Administrator;

WHEREAS, on April 4, 2025, the Court held a Final Approval Hearing to determine whether the Settlement was fair, reasonable, and adequate, and to consider settlement Class Counsel's Application for Attorneys' Fees, Costs, and Service Awards;

WHEREAS, based on the foregoing, having considered the papers filed and proceedings held in connection with the Settlement, having considered all of the other files, records, and proceedings in the Action, and being otherwise fully advised,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. This Order incorporates the definitions in the Settlement Agreement and all capitalized terms used in this order have the same meanings as those set forth in Section II of that Agreement, unless otherwise defined herein.

2. The Notice provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances and constituted due and sufficient notice of the proceedings and matters set forth therein to all persons entitled to notice. The Notice and Notice Program fully satisfied the requirements of due process, Federal Rule of Civil Procedure 23 and all other applicable law and rules. The Claims process is also fair, and the Claim Form is easily understandable.

3. Defendant has fully complied with the provisions of the Class Action Fairness Act, 28 U.S.C. § 1715(b). *See* ECF No. 32.

4. The terms of the Settlement are fair, adequate, and reasonable. In so finding, the

Court has considered the Fed. R. Civ. P. 23(e)(2) factors and the Fifth Circuit's traditional factors from *Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983).

5. A list of the individuals who have opted-out of the Settlement is attached hereto as *Exhibit A*. Those individuals will not be bound by the Agreement or the Releases contained therein.

6. Based on the information presented to the Court, the Claims process has proceeded consistent with the Agreement and Preliminary Approval Order. All Settlement Class Members who submitted Valid Claims shall receive their Settlement Class Member Benefits pursuant to the Settlement's terms. All Settlement Class Members who did not submit a Claim, or for whom the Claim is determined to be invalid, shall still be bound by the terms of the Settlement and Releases therein.

7. The distribution plan for Settlement Class Member Benefits proposed by the Parties in the Agreement is fair, reasonable, and adequate.

8. The Class Representatives and Class Counsel have fairly and adequately represented and will continue to adequately represent and protect the interests of Settlement Class Members in connection with the Settlement.

9. Because the Court grants Final Approval of the Settlement set forth in the Agreement as fair, reasonable, and adequate, the Court authorizes and directs implementation of all terms and provisions of the Settlement.

10. All Parties to this Action, including all Settlement Class Members, are bound by the Settlement as set forth in the Agreement and this Order.

11. The appointment of Plaintiffs, Crystal Schultz, Michele Eusebe, Justin Medina, Arthur Podroykin, and Katherine Chaudhry, as the Class Representatives is affirmed.

12. The appointment of Jeff Ostrow of Kopelowitz Ostrow P.A., Mariya Weekes of

Milberg Coleman Bryson Phillips Grossman PLLC, and Scott E. Cole of Cole & Van Note as Class Counsel is affirmed.

13. The Court reaffirms Verita Global, LLC as the Settlement Administrator.

14. The Court affirms its findings that the Settlement Class meets the relevant requirements of Fed. R. Civ. P. 23(a) and (b)(3) for only the purposes of the Settlement in that: (1) the number of members of the Settlement Class is so numerous that joinder is impracticable; (2) there are questions of law and fact common to the members of the Settlement Class; (3) the claims of the Plaintiffs are typical of the claims of the members of the Settlement Class; (4) the Plaintiffs are adequate representatives for the Settlement Class, and have retained experienced and adequate Class Counsel; (5) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting any individual members of the Settlement Class; and (6) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. In finding the Settlement fair, reasonable, and adequate, the Court has also considered that there were no objections to the Settlement, and only __ opt-outs, indicating an overwhelming positive reaction from the Settlement Class, and the opinion of competent counsel concerning such matters.

15. Therefore, the Court finally certifies the following Settlement Class:

All persons in the United States whose Private Information was potentially compromised as a result of the Data Security Incident.

Excluded from the Settlement Class are (a) all persons who are governing board members of Defendant; (b) governmental entities; (c) the Court, the Court's immediate family, and Court staff; and (d) any individual who timely and validly opts-out of the Settlement.

16. Judgment shall be entered dismissing the Action with prejudice, on the merits.

17. As of the Effective Date, and in exchange for the relief described in the Agreement,

the Releasing Parties shall automatically be deemed to have fully, finally, and irrevocably released and forever discharged the Released Parties of, and shall be forever barred from instituting, maintaining, or prosecuting, any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, asserted or unasserted, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, whether on behalf of themselves or others, that result from, arise out of, are based upon, or relate to (a) the Data Security Incident; or (b) any of the alleged violations of laws or regulations cited in the Complaint, the Action, or the Related Actions.

18. With respect to the Released Claims, Plaintiffs and Settlement Class Members, expressly understand and acknowledge it is possible that unknown economic losses or claims exist or that present losses may have been underestimated in amount or severity. Plaintiffs and Settlement Class Members explicitly took that into account in entering into the Agreement, and a portion of the consideration and the mutual covenants contained therein, having been bargained for between Plaintiffs and Defendant with the knowledge of the possibility of such unknown claims for economic loss, were given in exchange for a full accord, satisfaction, and discharge of all such claims. Consequently, Plaintiffs and the Settlement Class Members shall be deemed to have, and by operation of the Settlement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code (to the extent it is applicable, or any other similar provision under federal, state or local law to the extent any such provision is applicable), which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER

SETTLEMENT WITH THE DEBTOR.

19. In the event there are funds remaining from uncashed checks in the Settlement Fund 20 days following the 180-day check negotiation period, a subsequent payment will be evenly made to all Settlement Class Members with approved claims for Cash Payments who cashed or deposited the initial payment they received, provided the average check amount is equal to or greater than \$3.00. The distribution of this remaining Net Settlement Fund shall continue up to a maximum of \$500 for any Settlement Class Member until the average check or digital payment in a distribution is less than \$3.00, whereupon all remaining funds shall be distributed to Texas Bar Foundation (<https://txbf.org/>) as the *cy pres* recipient approved by the Court.

20. Class Counsel is awarded \$_____ for attorneys' fees and \$_____ for costs. These payments shall be made out of the Settlement Fund in accordance with the Agreement. The Court evaluated Class Counsel's attorneys' fee request using the percentage of the fund method blended with the following 12 factors from *Johnson v. Ga. Highway Exp., Inc.*, 488 F.2d 714, 718 (5th Cir. 1974), and concludes that amount is fair and within the range of reason:

- (1) The time and labor required;
- (2) The novelty and difficulty of the questions;
- (3) The skill requisite to perform the legal service properly;
- (4) The preclusion of other employment by the attorney due to acceptance of the case;
- (5) The customary fee [for similar work in the community];
- (6) Whether the fee is fixed or contingent;
- (7) Time limitations imposed by the client or the circumstances;
- (8) The amount involved and the results obtained;
- (9) The experience, reputation, and ability of the attorneys;
- (10) The "undesirability" of the case;
- (11) The nature and length of the professional relationship with the client; and
- (12) Awards in similar cases.

Johnson, 488 F.2d at 717-19. The Court need not consider each factor in making its determination. See *Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 331 (5th Cir. 1995). Each of the *Johnson* Factors will vary, depending on the case, and rather than imposing a rigid application, the Fifth Circuit entrusts lower courts to apply those factors in view of the case's particular circumstances. *Brantley v. Surles*, 804 F.2d 321, 325-26 (5th Cir. 1986). On the whole, these

factors are satisfied.

21. The Class Representatives shall be awarded Service Awards in the amount of \$_____ each. The Service Awards shall be payable out of the Settlement Fund in accordance with the Agreement.

22. Plaintiff and all Settlement Class Members and Releasing Parties, and persons purporting to act on their behalf, are permanently enjoined from commencing or prosecuting (either directly, representatively, or in any other capacity) any of the Released Claims against any of the Released Parties in any action or proceeding in any court, arbitration forum, or tribunal.

23. The Court hereby retains and reserves jurisdiction over: (1) implementation of this Settlement and any distributions to the Settlement Class Members; (2) the Action, until the Effective Date, and until each and every act agreed to be performed by the Parties shall have been performed pursuant to the terms of the Agreement, including the exhibits appended thereto; and (3) all Parties, for the purpose of enforcing and administering the Settlement.

24. In the event the Effective Date of the Settlement does not occur, the Settlement shall be rendered null and void to the extent provided by and in accordance with the Agreement, and this Order and any other order entered by this Court in accordance with the terms of the Agreement shall be vacated, *nunc pro tunc*. In such event, all orders entered and releases delivered in connection with the Settlement shall be null and void and have no further force and effect, shall not be used or referred to for any purpose whatsoever, and shall not be admissible or discoverable in any proceeding. The Action shall return to its status immediately prior to execution of the Agreement.

25. With the exception of those listed on *Exhibit A*, all Settlement Class Members shall be bound by this Order.

26. The Settlement's terms shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims (and other prohibitions set forth in this Final Approval Order) that are brought, initiated, or maintained by, or on behalf of, any Settlement Class Member who has not opted out or any other person subject to the provisions of this Final Approval Order.

27. This Final Approval Order, the Settlement, and all acts, statements, documents, and proceedings relating to the Settlement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendant of any claim, any fact alleged in the Action, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of Defendant or of the validity or certifiability as a class for litigation of any claims that have been, or could have been, asserted in the Action.

28. There being no just reason for delay, the Clerk of Court is hereby directed to enter final judgment forthwith pursuant to Fed. R. Civ. P. 58.

SO ORDERED on _____, 2025.

HONORABLE ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

EXHIBIT A

Opt-Out List

(To Be Completed Before Final Approval Hearing)

- 1.
- 2.
- 3.