

1
2
3
4
5
6
7
8
9
10
11
12

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SARA SANGUINETTI, RAYMOND D.
SPEIGHT, DAVID DIETZEL, PATRICIA
SAAVEDRA, AND NINA S. KUHLMANN,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

NEVADA RESTAURANT SERVICES, INC.,

Defendant.

Case No. 2:21-cv-01768-RFB-DJA

Consolidated with: 2:21-cv-01780-RFB-EJY

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Before the Court is Plaintiffs Sara Sanguinetti, Raymond D. Speight, David Dietzel, and Nina S. Kuhlmann’s Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 104), the terms of which are set forth in a Settlement Agreement between Plaintiff and Defendant Nevada Restaurant Services, Inc., with accompanying exhibits attached (ECF No. 103).¹

Having fully considered the issue, the Court granted the Motion at the May 9, 2024 motion hearing and now ORDERS as follows:

1. **Class Certification for Settlement Purposes Only.**

The Settlement Agreement provides for a Settlement Class defined as follows:

all persons who were mailed notice by NRS that their personal and/or financial information was impacted in a data incident occurring on or before January 16, 2021.

Specifically excluded from the Settlement Class are:

(i) NRS, any Related Entities, and their officers and directors; (ii) all Settlement Class

¹ All defined terms in this Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) have the same meaning as set forth in the Settlement Agreement, unless otherwise indicated.

1 Members who timely and validly request exclusion from the Settlement Class; (iii) any
2 judges assigned to this case and their staff and family; and (iv) any other Person found by a
3 court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding
4 or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo*
5 *contendere* to any such charge.

6 Pursuant to Federal Rules of Civil Procedure 23(e)(1), the Court finds that giving notice is
7 justified. The Court finds that it will likely be able to approve the proposed Settlement as fair,
8 reasonable, and adequate. The Court also finds that it will likely be able to certify the Settlement
9 Class for purposes of dismissal on the Settlement because it meets all of the requirements of Rule
10 23(a) and the requirements of Rule 23(b)(3). Specifically, the Court finds for settlement purposes
11 that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would
12 be impracticable; (b) there are issues of law and fact that are common to the Settlement Class; (c)
13 the claims of the Class Representatives are typical of and arise from the same operative facts and
14 the Class Representatives seeks similar relief as the claims of the Settlement Class Members; (d)
15 the Class Representatives will fairly and adequately protect the interests of the Settlement Class as
16 the Class Representatives have no interests antagonistic to or in conflict with the Settlement Class
17 and have retained experienced and competent counsel to prosecute this Litigation on behalf of the
18 Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate
19 over any questions affecting only individual members; and (f) a class action and class settlement is
20 superior to other methods available for a fair and efficient resolution of this Litigation.
21

22 **2. Settlement Class Representatives and Settlement Class Counsel**

23 The Court finds that Plaintiffs Sara Sanguinetti, Raymond D. Speight, David Dietzel, and
24 Nina S. Kuhlmann will likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed
25 as the Class Representatives. Additionally, the Court finds that David Lietz and Gary Klinger of
26 Milberg Coleman Bryson Phillips Grossman PLLC; M. Anderson Berry and Gregory Haroutunian
27
28

1 of Clayeo C. Arnold, A Professional Corp.; Jean Martin of Morgan & Morgan; Geroge Haines and
2 Gerardo Avalos of Freedom Law Firm, Michael Kind of Kind Law, and David Wise and Joseph
3 Langone of Wise Law Firm, PLC will likely satisfy the requirements of Rule 23(e)(2)(A) and
4 should be appointed as Class Counsel pursuant to Rule 23(g)(1).

5
6 3. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds the
7 Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the
8 Settlement Class and accordingly is preliminarily approved. In making this determination, the Court
9 has considered the monetary and non-monetary benefits provided to the Settlement Class through
10 the Settlement, the specific risks faced by the Settlement Class in prevailing on their claims, the
11 good faith, arms' length negotiations between the Parties and absence of any collusion in the
12 Settlement, the effectiveness of the proposed method for distributing relief to the Settlement Class,
13 the proposed manner of allocating benefits to Settlement Class Members, the Settlement treats the
14 Settlement Class Members equitably, and all of the other factors required by Rule 23 and relevant
15 case law.
16

17
18 4. **Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C.
19 § 1332(d)(2) and personal jurisdiction over the parties before it. Additionally, venue is proper in
20 this District pursuant to 28 U.S.C. § 1391(b).
21

22 5. **Final Approval Hearing.** A Final Approval Hearing shall be held on November 7,
23 2024, at the United States District Court, District of Nevada, 333 Las Vegas Blvd South, Las Vegas,
24 Nevada, 89101, where the Court will determine, among other things, whether: (a) this Litigation
25 should be finally certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a)
26 and (b)(3); (b) the Settlement should be approved as fair, reasonable, and adequate, and finally
27 approved pursuant to Fed. R. Civ. P. 23(e); (c) this Litigation should be dismissed with prejudice
28

1 pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members (who have not
2 timely and validly excluded themselves from the Settlement) should be bound by the releases set
3 forth in the Settlement Agreement; (e) the application of Class Counsel for an award of Attorney's
4 Fees, Costs, and Expenses should be approved pursuant to Fed. R. Civ. P. 23(h); and (f) the
5 application of the Class Representatives for a Service Award should be approved.
6

7 6. **Claims Administrator.** The Court appoints Kroll Settlement Administration LLC
8 as the Claims Administrator, with responsibility for class notice and settlement administration. The
9 Claims Administrator is directed to perform all tasks the Settlement Agreement requires. The
10 Claims Administrator's fees will be paid pursuant to the terms of the Settlement Agreement.
11

12 7. **Notice.** The proposed notice program set forth in the Settlement Agreement and the
13 Notices and Claim Form attached to the Settlement Agreement as **Exhibits A, B, and C** are hereby
14 approved. Non-material modifications to these Exhibits may be made by the Claims Administrator
15 in consultation and agreement with the Parties, but without further order of the Court.
16

17 8. **Findings Concerning Notice.** The Court finds that the proposed form, content, and
18 method of giving Notice to the Settlement Class as described in the Notice program and the
19 Settlement Agreement and its exhibits: (a) will constitute the best practicable notice to the
20 Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement
21 Class Members of the pendency of the Litigation, the terms of the proposed Settlement, and their
22 rights under the proposed Settlement, including, but not limited to, their rights to object to or
23 exclude themselves from the proposed Settlement and other rights under the terms of the Settlement
24 Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement
25 Class Members and other persons entitled to receive notice; (d) meet all applicable requirements of
26 law, including Federal Rule of Civil Procedure 23(c); and (e) and meet the requirements of the Due
27
28

1 Process Clause(s) of the United States and California Constitutions. The Court further finds that the
2 Notice provided for in the Settlement Agreement is written in plain language, uses simple
3 terminology, and is designed to be readily understandable by Settlement Class Members.

4 The Claims Administrator is directed to carry out the Notice program in conformance with
5 the Settlement Agreement.

7 9. **Class Action Fairness Act Notice.** Within ten (10) days after the filing of this
8 Settlement Agreement with the Court, the Claims Administrator acting on behalf of NRS shall have
9 served or caused to be served a notice of the proposed Settlement on appropriate officials in
10 accordance with the requirements under the Class Action Fairness Act (“CAFA”), 28 U.S.C. §
11 1715(b).
12

13 10. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded
14 from the Settlement Class must individually sign and timely submit written notice of such intent to
15 the designated Post Office box established by the Claims Administrator in the manner provided in
16 the Notice. The written notice must clearly manifest a Person’s intent to be excluded from the
17 Settlement Class. To be effective, such requests for exclusion must be postmarked no later than the
18 Opt-Out Date, which is no later than sixty (60) days from the date on which the notice program
19 commences pursuant to ¶ 3.2(d) in the Settlement Agreement, and as stated in the Notice.
20
21

22 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall furnish to
23 Class Counsel and to NRS’s counsel a complete list of all timely and valid requests for exclusion
24 (the “Opt-Out List”).
25

26 If a Final Order and Order of Dismissal is entered, all Persons falling within the definition
27 of the Settlement Class who do not request to be excluded from the Settlement Class shall be bound
28

1 by the terms of this Settlement Agreement and the Final Order and Order of Dismissal. All Persons
2 who submit valid and timely notices of their intent to be excluded from the Settlement Class shall
3 not receive any cash benefits of and/or be bound by the terms of the Settlement Agreement.

4 11. **Objections and Appearances.** A Settlement Class Member (who does not submit
5 a timely written request for exclusion) desiring to object to the Settlement Agreement may submit
6 a timely written notice of his or her objection by the Objection Date and as stated in the Notice. The
7 Long Notice shall instruct Settlement Class Members who wish to object to the Settlement
8 Agreement to file their objections with the Court and to mail copies to the address established by
9 the Claims Administrator. The Notice shall advise Settlement Class Members of the deadline for
10 submission of any objections—the “Objection Date.” Any such notices of an intent to object to the
11 Settlement Agreement must be written and must include all of the following: (i) the objector’s full
12 name, address, telephone number, and e-mail address (if any); (ii) information identifying the
13 objector as a Settlement Class Member, including proof that the objector is a member of the
14 Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident); (iii) a written
15 statement of all grounds for the objection, accompanied by any legal support for the objection the
16 objector believes applicable; (iv) the identity of any and all counsel representing the objector in
17 connection with the objection; (v) a statement as to whether the objector and/or his or her counsel
18 will appear at the Final Fairness Hearing, and; (vi) the objector’s signature and the signature of the
19 objector’s duly authorized attorney or other duly authorized representative (along with
20 documentation setting forth such representation).
21
22
23
24

25 All written objections and supporting papers (a) must be submitted to the designated Post
26 Office box established by the Claims Administrator (who shall promptly forward any objections to
27 counsel for the Parties); (b) must also be submitted to the Court either by filing electronically or in
28

1 person at any location of the United States District Court for the District of Nevada or by mailing
2 them to the Class Action Clerk, United States District Court for the District of Nevada at 333 Las
3 Vegas Blvd South, Las Vegas, Nevada, 89101; (c) must clearly identify the case name and number
4 (Sanguinetti et al. v. Nevada Restaurant Services, Inc., Case No. 2:21-cv-01768-RFB-DJA), and;
5 (d) be filed with the Court and postmarked on or before sixty (60) days after the Notice
6 Commencement Date. All objections will be scanned into the electronic case docket, and the parties
7 will receive electronic notices of all filings.
8

9 Any Settlement Class Member who fails to comply with the requirements for objecting shall
10 waive and forfeit any and all rights he or she may have to appear separately and/or to object to the
11 Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all
12 proceedings, orders, and judgments in the Litigation. The provisions stated in ¶ 5.1 and ¶ 5.2 of the
13 Settlement Agreement shall be the exclusive means for any challenge to the Settlement Agreement.
14 Any challenge to the Settlement Agreement, the final order approving this Settlement Agreement,
15 or the Final Order and Order of Dismissal to be entered upon final approval shall be pursuant to
16 appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.
17
18

19 12. **Claims Process.** Settlement Class Counsel and NRS have created a process for
20 Settlement Class Members to claim benefits under the Settlement. The Court preliminarily approves
21 this process and directs the Claims Administrator to make the Claim Form or its substantial
22 equivalent available to Settlement Class Members in the manner specified in the Notice.
23

24 The Claims Administrator will be responsible for effectuating the claims process.
25

26 Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in
27 accordance with the requirement and procedures specified in the Notice and the Claim Form. If the
28 Final Order and Order of Dismissal is entered, all Settlement Class Members who qualify for any

1 benefit under the Settlement but fail to submit a claim in accordance with the requirements and
2 procedures specified in the Notice and the Claim Form shall be forever barred from receiving any
3 such benefit, but will in all other respects be subject to and bound by the provisions in the Final
4 Order and Order of Dismissal, including the releases contained therein.

5
6 13. **Termination of Settlement.** This Preliminary Approval Order shall become null
7 and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to
8 their respective positions existing before the Court entered this Preliminary Approval Order and
9 before they entered the Settlement Agreement, if: (a) the Court does not enter this Preliminary
10 Approval Order; (b) Settlement is not finally approved by the Court or is terminated in accordance
11 with the Settlement Agreement; or (c) there is no Effective Date. In such event, (i) the Parties shall
12 be restored to their respective positions in the Litigation and shall jointly request that all scheduled
13 Litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or
14 Party's counsel; (ii) the terms and provisions of the Settlement Agreement shall have no further
15 force and effect with respect to the Parties and shall not be used in the Litigation or in any other
16 proceeding for any purpose, and (iii) any judgment or order entered by the Court in accordance with
17 the terms of the Settlement Agreement shall be treated as vacated, nunc pro tunc.
18

19
20 14. **Use of Order.** This Preliminary Approval Order shall be of no force or effect if the
21 Final Order of Dismissal with Prejudice is not entered or there is no Effective Date and shall not be
22 construed or used as an admission, concession, or declaration by or against Defendant of any fault,
23 wrongdoing, breach, or liability. Nor shall this Preliminary Approval Order be construed or used as
24 an admission, concession, or declaration by or against the Class Representatives or any other
25 Settlement Class Member that his or her claims lack merit or that the relief requested is
26 inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims they may
27
28

1 have in this Litigation or in any other lawsuit.

2 15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the
3 Final Fairness Hearing and related deadlines without further written notice to the Settlement Class.
4 If the Court alters any of those dates or times, the revised dates and times shall be posted on the
5 Settlement Website maintained by the Claims Administrator. The Court may approve the
6 Settlement, with such modifications as may be agreed upon by the Parties, if appropriate, without
7 further notice to the Settlement Class.
8

9 16. **Stay of Litigation.** All proceedings in the Litigation, other than those related to
10 approval of the Settlement Agreement, are hereby stayed. Further, any actions brought by
11 Settlement Class Members concerning the Released Claims are hereby enjoined and stayed pending
12 Final Approval of the Settlement Agreement.
13

14 17. **Schedule and Deadlines.** The Court orders the following schedule of dates for the
15 specified actions/further proceedings:
16
17
18
19
20
21
22
23
24
25
26
27
28

Event	Deadline
Defendant Will Serve Or Cause To Be Served CAFA Notice, Per 28 U.S.C. § 1715(b)	No Later Than 10 Days After Settlement Agreement Is Filed With Court
Defendant Provides Class Member Information To Claims Administrator	Within 7 Days Of Entry Of Preliminary Approval Order
Deadline For Claims Administrator To Begin Sending Short Form Notice (By First Class USPS Mail)	Within Thirty (30) Days Of Entry Of Preliminary Approval Order (the “Notice Commencement Date”)
Motion for Attorneys’ Fees, Costs, Expenses, and Service Award to Be Filed by Settlement Class Counsel	At Least 14 Days Prior To Opt-Out/Objection Dates
Opt-Out/Objection Date Deadlines	60 Days After Notice Commencement Date
Claims Administrator Provides Parties With List Of Timely, Valid Opt-Outs	7 Days After Opt-Out Dates
Claims Deadline	90 Days After Notice Commencement Date
Motion For Final Approval To Be Filed By Class Counsel	At Least 14 Days Prior To Final Approval Hearing
Final Approval Hearing	November 7, 2024 at 9:30AM No Earlier Than 120 Days After Entry Of Preliminary Approval Order

DONE AND ORDERED on this 28th day of May, 2024.



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE