

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

IN RE: SNOWFLAKE, INC., DATA
SECURITY BREACH LITIGATION

This Document Relates only to
Defendant: THE NEIMAN MARCUS
GROUP LLC

CASE No.: 2:24-MD-3126-BMM

**JOINT DECLARATION OF CLASS COUNSEL JOHN HEENAN, RAPH
GRAYBILL, JASON RATHOD, AND DEVLAN GEDDES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTIONS SETTLEMENT**

We, John Heenan, Raph Graybill, Jason Rathod, and Devlan Geddes, declare
as follows:

1. We are Class Counsel¹ for the Settlement Class in the above-captioned case. This Declaration supports Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.
2. We have personal knowledge of the facts in this declaration and could testify to them if called on to do so.
3. Defendant The Neiman Marcus Group LLC ("Defendant" or "NMG") owns and operates luxury retail clothing and accessory stores across the country. In

¹ The capitalized terms used herein shall have the same meanings as those defined in the Settlement Agreement, attached as Exhibit A to the Motion for Preliminary Approval.

the course of its business, Defendant collects and maintains a limited amount of personally identifiable information pertaining to its customers and employees.

4. In or about May 2024, Defendant discovered that unauthorized individuals may have accessed Snowflake, Inc.'s network and downloaded data pertaining to Defendant's customers and employees. According to Defendant, the data of over 10 million customers and employees was acquired, including some combination of their names, email addresses, telephone numbers, gift card information, dates of birth, and the last four digits of Social Security numbers.

5. Thereafter, pursuant to certain states' laws, Defendant began sending out notice letters to some affected persons, informing them their Personal Information had been compromised in the Data Incident.

6. Following the Data Incident and commencing in August 2024, Defendant was named in the first of four class action lawsuits. The Related Actions, filed in the Southern District of Florida, District of Delaware, and the District of Montana, were materially and substantively identical, had overlapping claims, sought to represent the same putative class members, and arose from the Data Incident.

7. Following the filing of the initial complaint against Defendant, Plaintiffs' counsel 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 or elsewhere. Plaintiffs' counsel prepared written discovery, including interrogatories and requests for production, drafted a comprehensive Rule 30(b)(6) notice of deposition topics, and began preparing an ESI protocol and a protective order. *Id.* In late August 2024, Plaintiffs and Defendant began discussing settlement, in conjunction with which she propounded informal discovery requests on Defendant to learn as much as possible about liability, the types of data at issue, the size of the breach, damages, and other settlement-related issues

8. Thereafter, Plaintiffs filed a Consolidated Complaint against Defendant seeking damages and injunctive relief related to the Data Incident.

9. As a result of the Joint Panel for Multidistrict Litigation's October 4, 2024, transfer order, the Related Actions were centralized in MDL-3126 as involving the Snowflake data breach.

10. To avoid the risks and expenses of litigation, the Parties agreed to a resolve Plaintiffs' class claims.

11. Following transfer to this Court, the Parties continued to negotiate the terms of a settlement agreeing to the material terms on February 1, 2025.

12. On February 3, 2025, the Parties filed a Notice of Settlement and Joint Motion to Stay All Deadlines Pending Final Approval of the Settlement, notifying the Court that all Parties were able to resolve the cases against Defendant NMG.

13. Plaintiffs have received assurances that Defendant has undertaken reasonable steps to further secure its systems and environments. Those technological enhancements have been paid for by the Defendant and are not coming out of the Settlement Fund.

14. The Released Claims are narrowly tailored to only claims arising out of or relating to the Data Incident.

15. Like all Settlement Class members, Plaintiffs have claims against Defendant arising from the Data Incident and were similarly injured by Defendant's allegedly wrongful acts. Proof of Plaintiffs' claims would necessarily involve adjudicating the same issues of law and fact as the claims of the Settlement Class as a whole. Thus, Plaintiffs and the Settlement Class have the same interests in recovering damages. Further, Plaintiffs have also diligently and adequately prosecuted the Action through Class Counsel by, among other things, reviewing filings, promptly providing documents and information to Class Counsel, acting in the best interest of the Settlement Class, and accepting the Classwide Settlement.

16. At the request of the mediator, the scheduled mediation was temporarily postponed, but in an effort to prepare judicial and financial resources, the Parties' counsel engaged in good-faith pre-mediation negotiations. These efforts were ultimately successful, resulting in an agreement in principle on February 12, 2025.

17. Over several weeks, the Parties diligently drafted, negotiated, and finalized the Settlement Agreement, Notices, and Claim Form, and agreed to a settlement administrator. The Parties filed a Notice of Settlement with the Court on February 21, 2025.

18. The Settlement Agreement was signed on May 1, 2025.

19. 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.

20. Although Class Counsel 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.

21. 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.

22. Despite the risks involved with further litigation, the Settlement provides outstanding benefits, including Cash Payments and Credit Monitoring.

23. The Settlement calls for the creation of a non-reversionary all cash \$3,500,000.00 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.

24. All Settlement Class Members may select two years of Credit Monitoring valued at \$108.00 per individual, per year, to protect financial assets and provide identity protection. Plaintiffs secured a fixed bid for provision of this benefit at \$471,000. Additionally, they may Claim a Cash Payment of up to \$2,500.00 for documented losses, subject to *pro rata* increase or decrease, depending on the value of all Valid Claims.

25. These Settlement Class Member Benefits are consistent with other approved settlements.

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

27. Also, the Claim Form submission process and distribution of Settlement Class Member Benefits is fair, convenient, and effective.

28. Settlement Class Members will promptly receive Cash Payments by electronic means or paper check issued by the Settlement Administrator and Credit Monitoring, if elected.

29. Epiq Class Action & Claims Solutions, Inc. is highly qualified to manage the entire process and is a well-respected third-party administrator that has

significant experience with data breach settlements. Epiq has estimated that its services will cost \$208,239.00 and agreed to a hard cap of \$365,000.

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.

31. This Action has been thoroughly investigated by counsel experienced in data breach litigation.

32. Moreover, Class Counsel's informal exchange of discovery and mediation has ensured a fair, reasonable, and adequate Settlement.

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

34. The proposed Notice Program is designed to satisfy Rule 23(c)(2)(B) and the *Manual for Complex Litigation*. There will be direct and individual notice via email to Settlement Class members. There will also be Publication Notice to generate greater Settlement Class member awareness.

35. The Long Form Notice will also be available to Settlement Class members on the Settlement Website, along with all relevant filings.

36. The Settlement Administrator will maintain a toll-free telephone number by which Settlement Class members can seek answers to frequently asked

questions or request a Long Form Notice or Claim Form be mailed.

37. A post office box will be maintained to receive Claim Forms, opt-out requests, and objections from Settlement Class members.

38. The Claims process is structured to ensure all Settlement Class members have adequate time to review the Settlement terms, compile documents supporting their Claim if a Cash Payment is elected, submit Claims, and decide whether to opt-out or object.

39. Claim Forms (mail or online) are due to the Settlement Administrator by the Claim Form Deadline (15 days before the initial scheduled Final Approval Hearing date). The Claim Form is in plain language for easy completion.

40. The Settlement calls for reasonable Service Awards for the Class Representatives of up to \$3,000.00. The Service Awards are intended to compensate them for their efforts on the Settlement Class' behalf, including serving as named Plaintiffs, assisting in the Action's investigation, maintaining contact with Class Counsel, reviewing case documents, being prepared to assist with discovery, and answering Class Counsel's many questions.

41. 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 intends to seek an attorneys' fees award not to exceed one-third of the Settlement Fund and reimbursement of litigation costs. The Notices

advise the Settlement Class of these intended requests and further information of how to object.

42. Class Counsel are leaders in the class action field and have extensive experience prosecuting and resolving complex class actions. The Court is familiar with Class Counsel having appointed them as Lead Counsel in the Snowflake MDL [ECF No. 255]. Class Counsel's biographies were filed with the Court in support of their applications for appointment to leadership.

43. Class Counsel have litigated the Action, including, *inter alia*, evaluating the claims, preparing pleadings, pursuing informal discovery, consulting with data security experts, and complying with Court orders and requirements.

44. Class Counsel are experienced in complex class action litigation, including similar data breach actions, and they devoted substantial time and resources to vigorous litigation.

45. Because the amounts in dispute for each Settlement Class member are so small, the technical issues so complex, and the expert testimony and document review extremely so costly, individual claim prosecution would be prohibitively expensive, needlessly delay resolution, and may lead to inconsistent rulings. Accordingly, a class action is superior.

46. Class Counsel have devoted substantial time and resources to prosecuting this Action and will continue to do so.

47. Before commencing litigation, Class Counsel investigated the potential claims against Defendant, interviewed potential plaintiffs, and gathered information regarding the Data Incident.

48. Given the significant risks involved with further litigation, the Settlement provides meaningful Settlement Class Member Benefits, including Cash Payments and Credit Monitoring. In addition, the Claim Form submission process and distribution of Settlement Class Member Benefits is fair, convenient, and effective. The Settlement Administrator is highly qualified to manage the entire process.

49. Moreover, the Plaintiffs seek appointment as Class Representatives. Class Representatives have ably represented the Settlement Class, maintaining contact with Class Counsel, reviewing and approving pleadings, assisting in the investigation of the Action, remaining available for consultation throughout mediation, reviewing the Settlement documents, and answering Class Counsel's questions. Plaintiffs are committed to continuing to assist Class Counsel through Final Approval.

50. Both Class Counsel and the Class Representative have adequately represented the Settlement Class. Class Counsel investigated and litigated the facts and legal claims.

51. Class Counsel's efforts to use informal discovery to learn what occurred

to cause the Data Incident and the Personal Information impacted allowed for arm's-length and good-faith negotiations, without collusion. Class Counsel used their experience in complex class action litigation, including similar data breach actions, and devoted time and resources to the case.

52. The Class Representatives also have demonstrated their adequacy by (i) having a genuine personal interest in the outcome of the case; (ii) selecting well-qualified Class Counsel; (iii) producing information and documents to Class Counsel to permit the initial investigation and development of the complaints; (iv) being available as needed; and (v) reviewing the terms of the Agreement.

53. Plaintiffs' respective interests are coextensive and do not conflict with the interests of the Settlement Class. Plaintiffs have the same interest in the Settlement relief, and the absent members have no diverging interests.

54. Plaintiffs have been integral to Class Counsel throughout litigation and settlement, assisting with the preparation of the Complaint, providing necessary factual information, communicating with Class Counsel when needed, and reviewing the Settlement documents.

55. Further, the attorneys' fees do not impact the other Settlement terms, as Class Counsel and Defendant negotiated and reached agreement regarding attorneys' fees and costs only after reaching agreement on all other material Settlement terms.

56. Settlement Class members are all potentially affected by the same Data

Incident as the Class Representatives, and thus the Class Representatives have common interests with the Settlement Class.

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

58. Finally, there are no separate agreements to disclose under Rule 23(e)(3) because all of the Parties' agreements are in the Agreement.

I declare under penalty of perjury that the foregoing is true of my own personal knowledge. Executed on May 1, 2025, in Billings, Montana.

/s/ John Heenan
John Heenan

I declare under penalty of perjury that the foregoing is true of my own personal knowledge. Executed on May 1, 2025, in Great Falls, Montana.

/s/ Raph Graybill
Raph Graybill

I declare under penalty of perjury that the foregoing is true of my own personal knowledge. Executed on May 1, 2025, in Washington, DC.

/s/ Jason Rathod
Jason Rathod

I declare under penalty of perjury that the foregoing is true of my own personal knowledge. Executed on May 1, 2025, in Bozeman, Montana.

/s/ Devlan Geddes
Devlan Geddes