

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FERNANDO MENDOZA, SOPHIA
MENDOZA, and HUEY NGUYEN,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

CRYSTAL BAY CASINO, LLC.,

Defendant.

Case No. 3:23-cv-00092-MMD-CLB

[PROPOSED] PRELIMINARY APPROVAL ORDER

Before the Court is Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (**Doc. No. __**) (the “Motion”), the terms of which are set forth in a Settlement Agreement between Plaintiffs and Defendant Crystal Bay Casino, LLC (“Crystal Bay” or “Defendant”) (together with Plaintiffs, the “Parties”), with accompanying exhibits attached as **Exhibit A** to Plaintiffs’ Memorandum of Law in Support of their Motion (the “Settlement Agreement”).¹

Having fully considered the issue, the Court hereby **GRANTS** the Motion and **ORDERS** as follows:

1. **Class Certification for Settlement Purposes Only.** The Settlement Agreement provides for a Settlement Class defined as follows:

All individuals that received notice from Crystal Bay in or around February 2023, of a data security incident involving their Personal Information

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 Specifically excluded from the Settlement Class are any judge presiding over this matter and any
2 members of their first-degree relatives, judicial staff, Crystal Bay's officers, directors, and
3 members, and persons who timely and validly request exclusion from the Settlement Class.

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

20 2. **Settlement Class Representatives and Settlement Class Counsel.** The Court
21 finds that Plaintiffs will likely satisfy the requirements of Rule 23(e)(2)(A) and should be
22 appointed as the Class Representatives. Additionally, the Court finds that Thiago M. Coelho of
23 Wilshire Law Firm and David Lietz of Milberg Coleman Bryson Phillips Grossman PLLC will
24 likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed as Class Counsel
25 pursuant to Rule 23(g)(1).

26 3. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds the
27 Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the
28 Settlement Class and accordingly is preliminarily approved. In making this determination, the

1 Court has considered the monetary and non-monetary benefits provided to the Settlement Class
2 through the Settlement, the specific risks faced by the Settlement Class in prevailing on their
3 claims, the good faith, arms' length negotiations between the Parties and absence of any collusion
4 in the Settlement, the effectiveness of the proposed method for distributing relief to the Settlement
5 Class, the proposed manner of allocating benefits to Settlement Class Members, the Settlement
6 treats the Settlement Class Members equitably, and all of the other factors required by Rule 23
7 and relevant case law.

8 4. **Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C.
9 § 1332(d)(2) and personal jurisdiction over the parties before it. Additionally, venue is proper in
10 this District pursuant to 28 U.S.C. § 1391(b).

11 5. **Final Approval Hearing.** A Final Approval Hearing shall be held on
12 August 5, 2024, at Bruce R. Thompson Federal Courthouse, 400
13 South Virginia Street, Reno, Nevada 89501, courtroom 5. where the Court will determine,
14 among other things, whether:

15 (a) this Litigation should be finally certified as a class action for settlement purposes pursuant to
16 Fed. R. Civ. P. 23(a) and (b)(3); (b) the Settlement should be approved as fair, reasonable, and
17 adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) this Litigation should be
18 dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class
19 Members (who have not timely and validly excluded themselves from the Settlement) should be
20 bound by the releases set forth in the Settlement Agreement; (e) the application of Class Counsel
21 for an award of Attorneys' Fees, Costs, and Expenses should be approved pursuant to Fed. R.
22 Civ. P. 23(h); and (f) the application of the Class Representatives for a Service Award should be
23 approved.

24 6. **Claims Administrator.** The Court appoints Kroll Settlement Administration LLC
25 as the Claims Administrator, with responsibility for class notice and settlement administration.
26 The Claims Administrator is directed to perform all tasks the Settlement Agreement requires. The
27 Claims Administrator's fees will be paid pursuant to the terms of the Settlement Agreement.
28

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

6 8. **Findings Concerning Notice.** The Court finds that the proposed form, content,
7 and method of giving Notice to the Settlement Class as described in the Notice program and the
8 Settlement Agreement and its exhibits: (a) will constitute the best practicable notice to the
9 Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement
10 Class Members of the pendency of the Litigation, the terms of the proposed Settlement, and their
11 rights under the proposed Settlement, including, but not limited to, their rights to object to or
12 exclude themselves from the proposed Settlement and other rights under the terms of the
13 Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to
14 all Settlement Class Members and other persons entitled to receive notice; (d) meet all applicable
15 requirements of law, including Federal Rule of Civil Procedure 23(c); and (e) and meet the
16 requirements of the Due Process Clause(s) of the United States and Oklahoma Constitutions. The
17 Court further finds that the Notice provided for in the Settlement Agreement is written in plain
18 language, uses simple terminology, and is designed to be readily understandable by Settlement
19 Class Members.

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

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

27 10. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded
28 from the Settlement Class must individually sign and timely submit written notice of such intent

1 to the designated Post Office box established by the Claims Administrator in the manner provided
2 in the Notice. The written notice must clearly manifest a Person's intent to be excluded from the
3 Settlement Class. To be effective, such requests for exclusion must be postmarked no later than
4 the Opt-Out Date, which is no later than sixty (60) days from the date on which the notice program
5 commences, and as stated in the Notice.

6 If Defendant voids the Settlement Agreement according to its terms, Defendant will be
7 obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs,
8 and expenses of Class Counsel and the Service Award to the Class Representative and shall not,
9 at any time, seek recovery of same from any other party to the Litigation or from counsel to any
10 other party to the Litigation.

11 The Claims Administrator shall promptly furnish to Class Counsel and to Defendant's
12 counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

13 If a Final Order and Judgment is entered, all Persons falling within the definition of the
14 Settlement Class who do not request to be excluded from the Settlement Class shall be bound by
15 the terms of this Settlement Agreement and the Final Order and Judgment. All Persons who
16 submit valid and timely notices of their intent to be excluded from the Settlement Class shall not
17 receive any cash benefits of and/or be bound by the terms of the Settlement Agreement.

18 11. **Objections and Appearances.** A Settlement Class Member (who does not submit
19 a timely written request for exclusion) desiring to object to the Settlement Agreement may submit
20 a timely written notice of his or her objection by the Objection Date and as stated in the Notice.
21 The Long Notice and the Settlement Website shall instruct Settlement Class Members who wish
22 to object to the Settlement Agreement to send their written objections to the Claims Administrator
23 at the address indicated in the Long Notice. The Notice shall advise Settlement Class Members
24 of the deadline for submission of any objections—the "Objection Date." Any such notices of an
25 intent to object to the Settlement Agreement must be written and must include all of the following:
26 a) the objector's full name, address, telephone number, and email address (if any); b) a clear and
27 detailed written statement that identifies the basis of the specific objection that the Settlement
28 Class Member asserts; c) the identity of any counsel representing the objector; d) a statement

1 whether the objector intends to appear at the Final Approval Hearing, either in person or through
2 counsel, and, if through counsel, identifying that counsel, e)a statement whether the Settlement
3 Class Member has received any payment in exchange for his or her making the objections; and;
4 f) the objector's signature and the signature of the objector's duly authorized attorney or other
5 duly authorized representative (if any).

6 Notwithstanding the foregoing, any Settlement Class Member who timely submits a
7 written notice of objection and attends the Final Approval Hearing may so state their objection at
8 that time, subject to the Court's approval.

9 Any Settlement Class Member who fails to comply with the requirements for objecting
10 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object
11 to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement
12 and by all proceedings, orders, and judgments in the Litigation. The provisions stated in Paragraph
13 6.2 of the Settlement Agreement be the exclusive means for any challenge to the Settlement
14 Agreement. Any challenge to the Settlement Agreement, the final order approving this Settlement
15 Agreement, or the Final Order and Judgment to be entered upon final approval shall be pursuant
16 to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

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

22 The Claims Administrator will be responsible for effectuating the claims process.
23 Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in
24 accordance with the requirement and procedures specified in the Notice and the Claim Form. If
25 the Final Order and Judgment is entered, all Settlement Class Members who qualify for any
26 benefit under the Settlement but fail to submit a claim in accordance with the requirements and
27 procedures specified in the Notice and the Claim Form shall be forever barred from receiving any
28 such benefit, but will in all other respects be subject to and bound by the provisions in the Final

1 Order and Judgment, including the releases contained therein.

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

15 14. **Use of Order.** This Preliminary Approval Order shall be of no force or effect if
16 the Final Order and Judgment is not entered or there is no Effective Date and shall not be
17 construed or used as an admission, concession, or declaration by or against Defendant of any
18 fault, wrongdoing, breach, or liability. Nor shall this Preliminary Approval Order be construed or
19 used as an admission, concession, or declaration by or against the Class Representatives or any
20 other Settlement Class Member that his or her claims lack merit or that the relief requested is
21 inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims they
22 may have in this Litigation or in any other lawsuit.

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

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

5 17. **Schedule and Deadlines.** The Court orders the following schedule of dates for the
 6 specified actions/further proceedings:

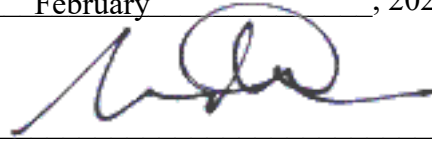
7 **SETTLEMENT TIMELINE**

<u>Grant of Preliminary Approval</u>	
Settlement Administrator provides W-9 to Crystal Bay	5 days after Preliminary Approval Order
Crystal Bay provides list of Settlement Class Members to the Settlement Administrator	10 days after Preliminary Approval
Settlement Administrator to Provide CAFA Notice Required by 28 U.S.C. § 1715(b)	Within 10 days of filing of the Preliminary Approval Motion
Long Form and Short Form Notices Posted on the Settlement Website	No later than 30 days after Preliminary Approval, or prior to the Settlement Website going live
Notice Date	30 days after Preliminary Approval.
Reminder Notice	60 days after Notice Date (if needed)
Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	14 days before Objection and Opt-Out Deadlines
Objection Deadline	60 days after Notice Date
Opt-Out Deadline	60 days after Notice Date
Claims Deadline	90 days after Notice Date
Settlement Administrator Provide List of Objections/Opt-Outs to Counsel for the Parties	70 days after Notice Date

1	Initially Approved Claims List	35 days after Claims Deadline
2	Initially Rejected Claims List	35 days after Claims Deadline
3	Parties' Challenge to Any Claims	35 days from Initially Approved Claims List
4	<u>Final Approval Hearing</u>	120 days after Preliminary Approval Order (at minimum)
5	Motion for Final Approval	14 days before Final Approval Hearing Date
6	Settlement Administrator Provide Notice of Opt-Outs and/or Objections	14 days before Final Approval Hearing Date
7	<u>Final Approval</u>	
8	Effective Date	35 days after Final Approval Order
9	Payment of Attorneys' Fees and Expenses Class Representative Service Award	7 days after Effective Date
10	Settlement Website Deactivation	180 days after Effective Date

11 SO ORDERED THIS 5th DAY OF February, 2024.

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Hon. Miranda M. Du
United States District Court Judge