

## **EXHIBIT A**

to Declaration of Christopher P. Renz  
in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of  
Class Action Settlement and Notice Plan

## **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release, dated May 2, 2025, is made and entered into by and among the Class Representatives, for themselves individually and on behalf of the Settlement Class, and Defendant, Netgain Technology, LLC (collectively, the “Parties”). This Agreement fully and finally resolves and settles all of Plaintiffs’ Released Claims, upon and subject to the terms and conditions hereof, and subject to the Court’s approval.

### **RECITALS**

WHEREAS, in late 2020, threat actors gained access to Netgain Technology, LLC’s, (“Netgain”) digital environment. Netgain is a service provider who externally manages IT and cloud computing services for companies primarily in the healthcare and accounting industries. Netgain provides a variety of IT-related services to clients, including cloud computing, technical infrastructure, IT management, and service and application management. In a sophisticated criminal cyberattack, criminals illegally accessed information stored by certain customers on Netgain servers (defined below as the “Attacks”).

WHEREAS, as a result of the Attacks, Plaintiffs allege Personal Information (defined below) of individuals who are customers of Netgain’s clients, was exfiltrated by the criminal hackers.

WHEREAS, on September 23, 2021, this Consolidated Action (defined below) was commenced with the filing of a class action complaint against Netgain. Plaintiffs’ Consolidated Class Action Complaint asserts claims for negligence, negligence per se, violations of the California Consumer Privacy Act, violations of the California Unfair Competition Law, violations of the Minnesota Health Records Act, and for declaratory relief, and seeking remedies (including damages and injunctive relief) for the impact and harm they allege was caused by the Attacks.

WHEREAS, after the Court’s ruling denying in part and granting in part Netgain’s motion to dismiss and after commencement of discovery, the Parties agreed to attempt to resolve their dispute through mediation.

WHEREAS, in connection with the scheduled mediation, the Parties exchanged certain documents and information pertinent to assessing the claims and defenses in this matter.

WHEREAS, on November 15, 2022, October 27, 2023, November 14, 2023, November 21, 2023, December 6, 2023 and December 3, 2024, the Parties engaged in arm’s-length mediation sessions before the Honorable Jeffrey J. Keyes (Ret.) of Keyes ADR. The mediations did not result in an agreement but continually narrowed the issues, and the Parties continued to attempt to resolve their disputes through direct negotiations.

WHEREAS, following numerous hours of additional arm’s length negotiations in the months after the last mediation session, the Parties were able to finalize the terms of this Settlement (defined below).

WHEREAS, pursuant to the terms set forth below, this Agreement resolves all actual and potential claims, actions, and proceedings as set forth in the release contained herein, by and on

behalf of members of the Settlement Class defined herein but excludes the claims of all Class Members who opt out from the Settlement Class pursuant to the terms and conditions herein.

WHEREAS, Class Counsel, on behalf of Plaintiffs and the Settlement Class, have thoroughly examined the law and facts relating to the matters at issue in the Action, Plaintiffs' claims, Netgain's potential defenses, and the financial condition of Netgain as a company, including conducting independent investigation and confirmatory discovery, conferring with defense counsel through the settlement negotiation process, as well as conducting an assessment of the merits of expected arguments and defenses throughout the litigation. Based on a thorough analysis of the facts and the law applicable to Plaintiffs' claims in the Action, and taking into account the burden, expense, and delay of continued litigation, including the risks and uncertainties associated with litigating class certification and other defenses Netgain may assert, a protracted trial and appeal(s), and Plaintiffs' ability to collect a large verdict from Netgain, as well as the opportunity for a fair, cost-effective, and assured method of resolving the claims of the Settlement Class, Plaintiffs and Class Counsel believe that resolution is an appropriate and reasonable means of ensuring that the Class is afforded important benefits as expediently as possible. Plaintiffs and Class Counsel have also taken into account the uncertain outcome and the risk of continued litigation, as well as the difficulties and delays inherent in such litigation.

WHEREAS, Plaintiffs and Class Counsel believe that the terms set forth in this Settlement Agreement confer substantial benefits upon the Settlement Class and have determined that they are fair, reasonable, adequate, and in the best interests of the Settlement Class.

WHEREAS, Netgain has similarly concluded that this Agreement is desirable in order to avoid the time, risk, and expense of defending protracted litigation, and to resolve finally and completely the claims as stated herein of Plaintiffs and the Settlement Class.

WHEREAS, this Agreement, whether or not consummated, and any actions or proceedings taken pursuant to this Agreement, are for settlement purposes only, and Netgain specifically denies any and all wrongdoing. The existence of, terms in, and any action taken under or in connection with this Agreement shall not constitute, be construed as, or be admissible in evidence as, any admission by Netgain of (i) the validity of any claim, defense, or fact asserted in the Action or any other pending or future action, or (ii) any wrongdoing, fault, violation of law, or liability of any kind on the part of the Parties.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, the Parties do hereby mutually agree, as follows:

## **1. DEFINITIONS**

- 1.1 "Netgain" or "Netgain Technology, LLC" or "Defendant" or "Defendant Netgain" means Defendant Netgain Technology, LLC, a company incorporated in Delaware, with its principal place of business in St. Cloud, Minnesota, and its current and former Affiliates, Parents, Subsidiaries, and Successors.

- 1.2 “Netgain’s Counsel” or references to counsel for Netgain means attorneys, Paul R. Smith, R. Henry Pfutzenreuter, and other attorneys at the law firm Larkin Hoffman Daly & Lindgren, Ltd, on behalf of Netgain Technology, LLC.
- 1.3 “Consolidated Action” means the consolidated class actions captioned as *In Re: Netgain Technology, LLC, Consumer Data Breach Litigation, Inc.*, Case No. 21-cv-1210 (SRN/LIB), now pending before the Honorable Susan Richard Nelson in the United States District Court for the District of Minnesota.
- 1.4 “Administrative Expenses” means all expenses incurred by the Settlement Administrator in the administration of this Settlement, including, without limitation, all expenses and costs associated with the Notice Plan and providing Notice to the Settlement Class. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.
- 1.5 “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release. The terms of the Settlement Agreement are set forth herein including the exhibits hereto.
- 1.6 “Approved Claim(s)” means a claim as evidenced by a Claim Form submitted by a Settlement Class Member that (a) is timely and submitted in accordance with the directions on the Claim Form and the terms of this Agreement; (b) is physically signed or electronically verified by the Settlement Class Member; (c) satisfies the conditions of eligibility for a Settlement Benefit as set forth herein; and (d) has been approved by the Settlement Administrator.
- 1.7 “Attacks” refers to the cybersecurity attacks on Netgain that occurred in late 2020, that are the subject of the above-captioned lawsuit.
- 1.8 “Business Days” means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed by the federal government.
- 1.9 “Claimant” means a Settlement Class Member who submits a Claim Form for a Settlement Benefit.
- 1.10 “Claim Form” means the form attached hereto as **Exhibit A**, as approved by the Court. The Claim Form must be submitted physically (via U.S. Mail) or electronically (via the Settlement Website by Settlement Class Members who wish to file a claim for Settlement Benefits pursuant to the terms and conditions of this Agreement. The Claim Form shall be available for download from the Settlement Website. The Settlement Administrator shall mail a Claim Form, in hardcopy form, to any Settlement Class Member who so requests.
- 1.11 “Claims Deadline” means the date by which all Claim Forms must be received to be considered timely and shall be set as the date 90 days after the Notice Date. The Claims Deadline shall be clearly set forth in the Long Form Notice, the Claim Form, and the Court’s order granting Preliminary Approval.

- 1.12 “Claims Period” means the period of time during which Settlement Class Members may submit Claim Forms to receive their Settlement Benefits and shall commence on the Notice Date and shall end on the date 90 days thereafter.
- 1.13 “Class Counsel” means attorneys Gayle M. Blatt of Casey Gerry Schenk Francavilla Blatt & Penfield, LLP, Christopher P. Renz of Chestnut Cambronne P.A., and Brian C. Gudmundson of Zimmerman Reed PLLP.
- 1.14 “Class Member” means a member of the Settlement Class.
- 1.15 “Class Representatives” and “Plaintiffs” mean Misty Meier, Susan M. Reichert, Robert Smithburg, Thomas Lindsay, and Robin Guertin and Jane Doe
- 1.16 “Court” means the United States District Court for the District of Minnesota, the Honorable Susan Richard Nelson (or any judge sitting in her stead or to whom the Action may be transferred) presiding.
- 1.17 “Documented Loss” refers to monetary losses incurred by a Settlement Class Member and supported by Reasonable Documentation for attempting to remedy or remedying issues that are more likely than not traceable to the Attacks, and that are not otherwise recoverable through insurance or any class action data breach settlement involving a Netgain Client which arose for the same occurrence.
- 1.18 “Effective Date” means the date upon which the Settlement contemplated by this Agreement shall become effective as set forth in Section 11.1 below.
- 1.19 “Entity” means any person, corporation, partnership, limited liability company, association, trust, agency, or other organization of any type.
- 1.20 “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs awarded by the Court to Class Counsel.
- 1.21 “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement and dismisses the claims against Netgain Technology, LLC with prejudice.
- 1.22 “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Federal Rule of Civil Procedure 23 and whether to issue a Final Approval Order and Judgment.
- 1.23 “Netgain Client” means a business or entity with whom Netgain contracted to provide IT-related services, including but not limited to, cloud computing and hosting, technical infrastructure, IT management and service, and application management and hosting.

- 1.24 “Litigation Costs” means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, settling the Action, and obtaining an order of final judgment.
- 1.25 “Long Form Notice” means the long form notice of settlement, substantially in the form attached hereto as **Exhibit B**.
- 1.26 “Lost Time” means an amount of time that a Class Member attests, in a Claim Form, to having spent on addressing effects, actual or anticipated, to the Class Member more likely than not traceable to the Attacks and were incurred on or after November 24, 2020.
- 1.27 “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) reasonable Administrative Expenses incurred pursuant to this Settlement Agreement, (ii) Service Awards approved by the Court, (iii) any amounts approved by the Court for attorneys’ fees, costs, and reimbursement of expenses, and (iv) taxes, if any.
- 1.28 “Non-Profit Residual Recipient” means Public Justice, P.C., a 26 U.S.C. § 501(c)(3) nonprofit organization.
- 1.29 “Notice” means notice of the proposed class action settlement to be provided to Settlement Class Members pursuant to the Notice Plan approved by the Court in connection with preliminary approval of the Settlement. The Notice shall consist of the Long Form Notice and the Settlement Website.
- 1.30 “Notice Date” means the date upon which Settlement Class Notice is first disseminated to the Settlement Class as set forth in Section 7 herein.
- 1.31 “Notice Plan” means the settlement notice program, as approved by the Court, developed by the Settlement Administrator, and described in this Agreement for disseminating Notice to the Settlement Class members of the terms of this Agreement and the Final Approval Hearing.
- 1.32 “Objection Deadline” means the date by which Settlement Class Members must file and postmark required copies of any written objections, pursuant to the terms and conditions herein, to this Settlement Agreement and to any application and motion for (i) the Fee Award and Costs, and (ii) the Service Awards, which shall be 75 days following the Notice Date.
- 1.33 “Opt-Out Period” means the period in which a Settlement Class Member may submit a Request for Exclusion, pursuant to the terms and conditions herein, which shall expire 75 days following the Notice Date. The deadline for filing a Request for Exclusion will be clearly set forth in the Settlement Class Notice.
- 1.34 “Personal Information” means information that is or could be used, whether on its own or in combination with other information, to identify, locate, or contact a

person, including, without limitation, names, email addresses, phone numbers, home addresses, dates of birth, Social Security numbers (SSN), drivers' license information, tax records, bank account and routing information, and other personally identifying information, as well as information used to process health insurance claims, prescription information, medical records and data, and other personal health information.

- 1.35 "Preliminary Approval Order" means an order by the Court that preliminarily approves the Settlement (including, but not limited to, the forms and procedure for providing Notice to the Settlement Class), permits Notice to the proposed Settlement Class, establishes a procedure for Settlement Class Members to object to or opt out of the Settlement, and sets a date for the Final Approval Hearing.
- 1.36 "Reasonable Documentation" means documentation supporting a claim for Documented Loss including, but not limited to, credit card statements, bank statements, invoices, telephone records, and receipts. Documented Loss costs cannot be documented solely by a personal certification, declaration, or affidavit from the Claimant; a Settlement Class Member must provide supporting documentation.
- 1.37 "Released Claims" means any claim, liability, right, demand, suit, obligation, damage, including consequential damage, loss or cost, punitive damage, attorneys' fees, costs, and expenses, action or cause of action, of every kind or description—whether known or Unknown (as the term "Unknown Claims" is defined herein), suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that was or could have been asserted on behalf of the Settlement Class in the Action related to or arising from the compromise of any Class member's Personal Information arising out of the Attacks. "Released Claims" do not include any claims against any entity other than Released Parties, defined in Section 1.38 below.
- 1.38 "Released Parties" means Defendant Netgain and its respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments and Released Netgain Clients, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the foregoing. Each of the Released Parties may be referred to individually as a "Released Party."
- 1.39 "Released Netgain Clients" means Netgain Clients who provided notice to their clients, customers, or patients that their personal information may have been compromised in the Attacks who are not parties to this Consolidated Action (specifically including Abeo Solutions, Inc. (a/k/a Crystal Practice Management), Apple Valley Medical Clinic, Ltd. (a/k/a Allina Health Apple Valley Clinic), Barrett Business Services, Inc., Caravus, LLC, CareSouth Care Services, Inc., Caring Communities Shared Services, Ltd., CentraCare Health System (d/b/a CentraCare Health), Centro de Salud de la Comunidad de San Ysidro, Inc. (a/k/a

San Ysidro Health), Family HealthServices Minnesota P.A. (d/b/a Entira Family Clinics), Harvard Eye Associates, Council of Community Clinics (d/b/a Health Center Partners of Southern California), Imperial Beach Community Clinic, Jackson Thornton & Co., P.C., Lifelong Medical Care, MedTech Solutions – Associated Eye Care, Minnesota Community Care/ West Side Community Health Services, Inc. (d/b/a Minnesota Community Care), MultiCare Health System, Neighborhood Healthcare, Neighborhood Family Practice, Nevada Orthopedic & Spine Center, LLP, Perkins & Company, P.C. (d/b/a Perkins & Co.), Ramsey County, Minnesota, SafetyCall International LLC, San Diego Family Care, Sandhills Medical Foundation, Inc. (and Sandhills Medical Center, LLC), Social Action Community Health System (“SAC Health System”), The Todd Organization, Wayzata Investment Partners LLC, Woodcreek Provider Services, LLC (a/k/a Woodcreek Healthcare; Woodcreek Pediatrics – Mary Bridge Children’s).

- 1.40 “Request for Exclusion” is a written communication by a Settlement Class Member in which he or she requests to be excluded from the Settlement Class pursuant to the terms of the Agreement.
- 1.41 “Service Awards” means the amount awarded by the Court and paid to the Class Representatives in recognition of their role in this litigation, as set forth in Sections 9.1-9.3 below.
- 1.42 “Settlement” means this settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.
- 1.43 “Settlement Administrator” means the third-party class action settlement administrator to be selected by the Parties with the approval of the Court. Under the supervision of Class Counsel, the Settlement Administrator shall oversee and implement the Notice Plan and receive any requests for exclusion from the Class. Class Counsel and Netgain may, by agreement, substitute a different Settlement Administrator, subject to Court approval.
- 1.44 “Settlement Benefit(s)” means any Settlement Payment, Documented Loss Payment, Prospective Relief set forth in Sections 2 and 4 herein, and any other benefits Settlement Class Members receive pursuant to this Agreement, including non-monetary benefits and relief, the Fee Award and Costs, and Administrative Expenses.
- 1.45 “Settlement Class” and “Class” means all natural persons who are residents of the United States whose Personal Information was stored by Netgain Clients on Netgain servers, which was compromised in the Attacks, including all natural persons who are residents of the United States who were sent notice by a Netgain Client that their Personal Information may have been compromised in the Attacks. Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their families; (2) Netgain, its subsidiaries, parent companies, successors, predecessors, and any entity in which Netgain or its parents, have a

controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

- 1.46 “Settlement Fund” means the sum of One Million Nine Hundred Thousand Dollars and No Cents (\$1,900,000), to be paid by Netgain, as specified in Section 4.1 of this Agreement.
- 1.47 “Settlement Payment” means any payment to be made to any Class Member on Approved Claims pursuant to Section 4.2 herein.
- 1.48 “Settlement Website” means the Internet website, at URL address [www.netgainclassactionsettlement.com](http://www.netgainclassactionsettlement.com), to be created, launched, and maintained by the Settlement Administrator, and which allows for the electronic submission of Claim Forms and Requests for Exclusion, objections, and provides access to relevant case documents including the Settlement Class Notice, information about the submission of Claim Forms, and other relevant documents, including downloadable Claim Forms.
- 1.49 “Taxes” means (i) any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Defendant Netgain or its counsel with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund; (ii) any other taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) relating to the Settlement Fund that the Settlement Administrator determines are or will become due and owing, if any; and (iii) any and all expenses, liabilities and costs incurred in connection with the taxation of the Settlement Fund (including without limitation, expenses of tax attorneys and accountants).
- 1.50 “Unknown Claims” means any and all Released Claims that Netgain or any Class Representative or Settlement Class Member does not know or suspect to exist in his, her, or its favor as of the Effective Date and which, if known by him, her, or it, might have materially affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Netgain, Class Representatives and Settlement Class Members shall have waived any and all provisions, rights, and benefits conferred by any law of any state of the United States, or principle of common law or otherwise, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

**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.**

Class Representatives and Class Counsel acknowledge, and each Settlement Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

## **2. SECURITY COMMITMENTS.**

- 2.1 Netgain agrees to adopt, continue, and/or implement the following data security measures for a period of no less than 3 years from the Effective Date of this Agreement:
  - (a) Upgrade Edge firewalls to protect the environment from external sources and limiting traffic to only allowed ports and services. Enable Geo-blocking for Azure clients. Require external access to hosted environment to go through secure gateways.
  - (b) Ensure the underlying network is configured in a secure, scaleable manner with dedicated subnets, VLANs and VRF’s per client. Deploy core firewall technology in a blocklist methodology blocking undesired traffic. Ensure that DNS filtering and monitoring is deployed across the hosted environment.
  - (c) Deploy SentinelOne or similar platform across Netgain’s entire data environment along with 24/7 monitoring service.
  - (d) Ensure that discrete domains and administrative accounts are across client environments. Confirm that Multi-factor Authentication (MFA) is utilized in all hosting environments and monitoring and notification for all suspicious application activity.
  - (e) Backup services to offer data protection in the event of system corruption with Azure Site Recovery to leverage disaster recovery. Replicate data backups to multiple sites.
- 2.2 For a period of three (3) years, Netgain shall provide Class Counsel with an annual report attesting to Netgain’s compliance with the injunctive relief set forth above. Class Counsel will be permitted to share the unredacted report, on a confidential basis, with a third-party expert of Class Counsel’s choosing (subject to approval by Netgain, which will not be unreasonably withheld), at Class Counsel’s expense, to verify Netgain’s compliance with the terms in this Section 2.

- 2.3 In the event that Class Counsel determines that Netgain is not in compliance with its obligations in Section 2.1, it shall provide Netgain with notice of the same. Netgain will have 60 days from the date of that notice to cure any non-compliance. In the event that Class Counsel determines that Netgain remains not in compliance for more than 60 days following notice under this Section 2, Plaintiffs or Class Counsel shall have the right to bring a motion to enforce the Settlement Agreement in the Action or in a new, separate action and the prevailing party shall be entitled to its attorneys' fees and costs expended in relation to the claimed non-compliance and any enforcement actions.

### **3. CONFIRMATION OF FINANCIAL CONDITION.**

- 3.1 In part, this consolidated action is being settled on the terms set forth herein because Netgain's insurance coverage for the Attacks has been exhausted and its secured financial liabilities greatly exceed its available liquid assets. The Parties will cooperate in presenting evidence of Netgain's financial condition when providing financial information to the Court in relation to moving the Court for approval of this settlement.
- 3.2 Class Counsel shall maintain any information received as a result of this Section 3 on a "Confidential-Attorney's Eyes Only" basis under the Protective Order issued in the Consolidated Action on September 21, 2022 and will not disclose it to any third-parties other than any accounting or financial expert Class Counsel may contract with to review the information and only if the accounting or financial expert executes a confidentiality and non-disclosure agreement prohibiting them from providing or relaying any of the information. Class Counsel may also disclose such information to the Court in connection with seeking approval of this Settlement with Netgain's consent, which shall not be unreasonably withheld, as to the form and substance of the disclosure and with the redaction of confidential information.
- 3.3 In the event that Plaintiffs determine, in the sole discretion of Class Counsel, that they do not believe the information provided by Netgain under this Section 3 aligns with their understanding, Class Counsel will provide notice to Netgain's counsel of that belief, the parties shall meet and confer regarding the information provided by Netgain, and unless Class Counsel confirms that Netgain's information aligns with Plaintiffs' understanding within 14 days after Class Counsel's notice to Netgain's counsel, then either Party may terminate this Settlement Agreement and it will be considered null, void, and without further effect.
- 3.4 The Parties will cooperate regarding the manner in which the financial information is provided to the Court in relation to moving the Court for approval of the settlement.

#### 4. SETTLEMENT FUND / MONETARY PAYMENT / BENEFITS DETAILS

- 4.1 Netgain agrees to make or cause to be made a payment of One Million Nine Hundred Thousand Dollars and No Cents (\$1,900,000) and deposit that payment into the Settlement Fund as follows: 20 days after preliminary approval, Netgain will pay One Hundred Ninety-Five and no/100 Dollars (\$195,000) to the settlement administrator for the cost of the notice program; case setup, media campaign, class member support, and tax reporting; and five Business Days after the Effective Date, Netgain will pay the remaining (\$1,705,000) to settlement administrator. In no circumstances shall this payment be considered a fine or penalty. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendant Netgain's liability shall not exceed One Million Nine Hundred Thousand Dollars and No Cents (\$1,900,000) absent an express written agreement between the Parties to the contrary or pursuant to Section 3.3 of this Settlement Agreement.
- 4.2 Settlement Payments: Each Class Member, in a manner to be set forth in the Motion for Preliminary Approval subject to the Court's approval, will be given the opportunity to claim qualification for and submit a Claim Form. Each Class Member will select to either submit a claim for Documented Loss and Lost Time ("Loss Claimants") or submit a claim for a cash payment ("Alternative Cash Payment Claimants"). Loss Claimants' Lost Time claims will be capped at 3 hours and a \$25.00 per hour rate. Loss Claimants with Valid Claims will recover for Documented Loss and Lost Time up to \$5,000.00. The amount remaining in the Settlement Fund after payments to Loss Claimants (and less amounts for claims administration and expenses, service awards and attorneys' fees, and expenses) will be divided pro rata between, and sent to, all Alternative Cash Payment Claimants with Valid Claims. To the extent any money remains in the Settlement Fund more than 150 days of distribution to the Alternative Cash Payment Claimants, Class Counsel will evaluate whether a supplemental distribution to those claimants would be economically feasible. If not economically feasible, the remaining amount would be paid to the Non-Profit Residual Recipient. In no event would any portion of the Settlement Fund revert to Netgain.
- 4.3 Settlement Payment Methods. Class Members will be provided the option to receive any Settlement Payment due to them pursuant to the terms of this Agreement via various digital methods to the extent accepted and supported by the Settlement Administrator. In the event Class Members do not exercise this option, they will receive their Settlement Payment via a physical check sent by U.S. Mail.
- 4.4 Deadline to File Claims. Claim Forms must be received postmarked or electronically submitted within 90 days after the Notice Date.
- 4.5 Settlement Administrator Authority. The Settlement Administrator shall have the authority to determine whether a Claim Form is an Approved Claim and to what extent a Claim Form electing to receive a Documented Loss Payment contains sufficient documentation for the Claim to be paid. To the extent the Settlement Administrator determines a claim is deficient for a reason other than late

submission, within 10 days of making such a determination, the Settlement Administrator shall notify the Claimant of the deficiencies and that Claimant shall have 20 days to cure the deficiencies and re-submit the claim. Late submissions are invalid as a result of being late and the Settlement Administrator is therefore not required to send a deficiency notice. The Settlement Administrator shall exercise reasonable discretion to determine whether the Claimant has cured the deficient claim. If the Claimant fails to cure the deficiency, the claim shall stand as denied and the Class Member shall be so notified.

- 4.6 Timing of Settlement Benefits. Within 30 days after: (i) the Effective Date; or (ii) all Claim Forms have been processed subject to the terms and conditions of this Agreement, whichever date is later, the Settlement Administrator shall cause funds to be distributed to each Class Member who is entitled to funds based on the distribution of funds to be set forth in the Preliminary Approval Motion and subject to approval by the Court.
- 4.7 Deadline to Deposit or Cash Physical Checks. Settlement Class Members with Approved Claims who receive a payment by physical check shall have 90 days following distribution to deposit or cash their benefit check.
- 4.8 Returned Checks. For any Settlement Payment returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to find a valid address and resend the Settlement Payment within 30 days after the check is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one attempt to resend a Settlement Payment.
- 4.9 Residue of Settlement Fund. No portion of the Settlement Fund shall revert or be repaid to Netgain after the Effective Date. Any residual funds remaining in the Net Settlement Fund, after all payments and distributions are made pursuant to the terms and conditions of this Agreement, shall be distributed to the Non-Profit Residual Recipient, as approved by the Court.
- 4.10 Custody of Settlement Fund. The Settlement Fund shall be deposited in an appropriate trust established by the Settlement Administrator but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or returned to those who paid the Settlement Fund in the event this Settlement Agreement is voided, terminated, or cancelled.
  - (a) In the event this Settlement Agreement is voided, terminated, or cancelled due to lack of approval from the Court or any other reason, any amounts remaining in the Settlement Fund after payment of Administrative Expenses paid or incurred in accordance with the terms and conditions of this Agreement, including all interest earned on the Settlement Fund net of any Taxes or notice or other expenses incurred by the Settlement Administrator,

shall be returned to Defendant Netgain, and no other person or entity shall have any further claim whatsoever to such amounts.

- 4.11 Non-Reversionary. This Settlement is not a reversionary settlement. Upon the Effective Date, all rights of Defendant Netgain in or to the Settlement Fund shall be extinguished.
- 4.12 Use of the Settlement Fund. As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for: (i) all Administrative Expenses; (ii) any Fee Award and Costs; (iii) any service awards; (iv) any Settlement Payments, pursuant to the terms and conditions set forth in the Motion for Preliminary Approval and approved by the Court; and (v) any Taxes.
- 4.13 Financial Account. The Settlement Fund shall be an account established and administered by the Settlement Administrator, at a financial institution recommended by the Settlement Administrator and approved by Class Counsel and Defendant Netgain, and shall be maintained as a qualified settlement fund pursuant to Treasury Regulation § 1.468 B-1, et seq.
- 4.14 Payment / Withdrawal Authorization. No amounts from the Settlement Fund may be withdrawn unless (i) expressly authorized by the Settlement Agreement or (ii) approved by the Court. The Parties, by agreement, may authorize the periodic payment of actual, reasonable Administrative Expenses from the Settlement Fund as such expenses are invoiced without further order of the Court. The Settlement Administrator shall provide Class Counsel and Defendant Netgain with notice of any withdrawal or other payment the Settlement Administrator proposes to make from the Settlement Fund before the Effective Date at least seven (7) Business Days prior to making such withdrawal or payment.
- 4.15 Benefits to Class Members. The Settlement Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer and/or oversee distribution of the Settlement Fund for the benefit of the Class Members pursuant to this Agreement.
- 4.16 Treasury Regulations & Fund Investment. The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation ("FDIC") at a financial institution determined by

the Settlement Administrator and approved by the Parties. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

4.17 Taxes. All Taxes relating to the Settlement Fund incurred following Netgain's contributing the amounts shall be paid out of the Settlement Fund, shall be considered an Administrative Expense, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

4.18 Limitation of Liability.

- (a) Released Parties shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.
- (b) Class Representatives and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

- (c) The Settlement Administrator shall indemnify and hold Class Counsel, the Settlement Class, Class Representatives, and Released Parties harmless for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

## 5. RELEASE

- 5.1 Upon the Effective Date, and in consideration of the Settlement Benefits described herein, the Class Representatives and all Settlement Class Members, on behalf of themselves, their heirs, assigns, executors, administrators, predecessors, and successors, and any other person purporting to present or pursue a claim on their behalf, release and discharge all Released Claims, including Unknown Claims, against each of the Released Parties and agree to refrain from instituting, directing or maintaining any lawsuit, contested matter, adversary proceeding, or miscellaneous proceeding against each of the Released Parties that relates to the Attacks or otherwise arises out of the same facts and circumstances set forth in the Second Amended Class Action Complaint in this Action. This Settlement releases claims against only the Released Parties. This Settlement does not release, and it is not the intention of the Parties to this Settlement to release, any claims against any third party, except the Released Parties.
- 5.2 The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied and referenced herein.

## 6. REQUIRED EVENTS AND COOPERATION BY PARTIES

- 6.1 Preliminary Approval. Class Counsel shall submit this Agreement to the Court and shall move the Court to enter a preliminary approval order.
- 6.2 Cooperation. The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish all requirements of this Agreement on the schedule set by the Court, subject to the terms of this Agreement.
- 6.3 Certification of the Settlement Class. For purposes of this Settlement only, Plaintiffs and Defendant Netgain stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and

Judgment of this Settlement and the occurrence of the Effective Date. Should: (1) the Settlement not receive final approval from the Court, or (2) the Effective Date not occur, the certification of the Settlement Class shall be void. Netgain reserves the right to contest class certification for all other purposes. Plaintiffs and Netgain further stipulate to designate the Class Representatives as the representatives for the Settlement Class.

- 6.4 Final Approval. Class Counsel shall move the Court for an Order granting Final Approval of this Settlement and entering Judgment, to be issued following the Final Approval Hearing, within a reasonable time after the Objection Deadline and Opt-Out Period, and after the Claims Deadline. The Settlement Administrator shall provide all required notices pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA Notices”) within the required time period.

## 7. CLASS NOTICE, OPT-OUTS, AND OBJECTIONS

- 7.1 Notice shall be disseminated pursuant to the Notice Plan and Court’s Preliminary Approval Order.
- 7.2 The Settlement Administrator shall oversee and implement the Notice Plan approved by the Court. All costs associated with the Notice Plan shall be paid from the Settlement Fund.
- 7.3 The parties have analyzed the data accessed in the Attacks and have determined it is neither economically nor practically feasible to extract reliable contact information for the Class for purposes of Notice due to the composition of the data extracted.
- 7.4 The parties represent that they have analyzed the body of data allegedly exfiltrated in the Attacks, including through sophisticated expert analysis, and have determined that direct notice by e-mail or U.S. mail is not economically or practically feasible given the complicated nature of the data and financial resources available in the settlement.
- 7.5 Notice via Internet Campaign. Notice shall be sent to Settlement Class members via a targeted Internet advertisement publication notice program, described in the Notice Plan. This internet advertisement publication notice shall commence no later than the Notice Date and shall continue for 45 days, which can be expanded by agreement of Class Counsel and Netgain’s Counsel.
- 7.6 Confidentiality. Any information relating to Class Members provided to the Settlement Administrator pursuant to this Agreement shall be provided solely for the purpose of providing Notice to the Class Members (as set forth herein) and allowing them to recover under this Agreement; shall be kept in strict confidence by the Parties, their counsel, and the Settlement Administrator; shall not be disclosed to any third party; shall be destroyed after all distributions to Settlement Class Members have been made; and shall not be used for any other purpose. Moreover, because the information pertaining to individual Class Members will

be provided to the Settlement Administrator solely for purposes of providing the Class Notice and Settlement Benefits and processing opt-out requests, the Settlement Administrator will execute a confidentiality and non-disclosure agreement with Class Counsel and Netgain's Counsel and will ensure that any information provided to it by Settlement Class Members, Class Counsel, Netgain's Counsel, will be secure and used solely for the purpose of effecting this Settlement.

- 7.7 Fraud Prevention. The Settlement Administrator shall use reasonable and customary fraud-prevention mechanisms to prevent (i) submission of Claim Forms by persons other than potential Settlement Class Members, (ii) submission of more than one Claim Form per person, and (iii) submission of Claim Forms seeking amounts to which the claimant is not entitled. The Settlement Administrator may also employ the use of experts capable of identifying Class Members from the body of data exfiltrated in the Attacks.
- 7.8 Settlement Website. Prior to any dissemination of the Notice and prior to the Notice Date, the Settlement Administrator shall cause the Settlement Website to be launched on the Internet in accordance with this Agreement. The Settlement Administrator shall create the Settlement Website. The Settlement Website shall contain information regarding how to submit Claim Forms (including submitting Claims Forms electronically through the Settlement Website) and relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, this Agreement, the Preliminary Approval Order entered by the Court, the operative complaint in the Action, and any motion for an award of attorneys' fees and expenses and for class representative service awards filed by Class Counsel. The Settlement Website shall also include a toll-free telephone number, e-mail address and mailing address through which Settlement Class Members may contact the Settlement Administrator directly.
- 7.9 Opt-Out/Request for Exclusion. The Notice shall explain the procedure for Class Members to opt out and exclude themselves from the Settlement Class by notifying the Settlement Administrator in writing and postmarked no later than seventy-five (75) calendar days after the Notice Date (the "Opt Out Deadline"). Each written request for exclusion must set forth the name of the individual seeking exclusion and can only request exclusion for that one individual. The Notice shall contain instructions and a deadline for persons within the Settlement Class to request exclusion from the Settlement Class or object to the Settlement.
- 7.10 Objections. The Notice shall explain the procedure for Class Members to object to the Settlement by submitting written objections to the Court no later than seventy-five (75) calendar days after the Notice Date (the "Objection Deadline"). Any Class Member who wishes to object to the Settlement, the Settlement Benefits, Service Awards, and/or the Fee Award and Costs, or to appear at the Fairness Hearing and present an objection for why the Settlement should not be approved as fair, reasonable, and adequate to the Class, why a final judgment should not be entered thereon, why the Settlement Benefits should not be approved, or why the Service Awards and/or the Fee Award and Costs should not be granted, may do

so, but must proceed as set forth in this paragraph. No Class Member or other person will be heard on such matters unless they have filed in this Action the objection, together with any briefs, papers, statements, or other materials the Class Member or other person wishes the Court to consider, within seventy-five (75) calendar days following the Notice Date. All written objections and supporting papers must: (a) clearly identify the case name and number; (b) state the Class Member's full name, current mailing address, and telephone number; (c) contain a signed statement by the Class Member that he or she believes he or she is a member of the Settlement Class; (d) identify the specific grounds for the objection; (e) include all documents or writings that the Class Member desires the Court to consider; (f) contain a statement regarding whether the Class Member (or counsel of his or her choosing) intends to appear at the Fairness Hearing; (g) be submitted to the Court either by mail to the Court Administrator, United States District Court for the District of Minnesota, United States District Court, 316 N. Robert Street, St. Paul, Minnesota 55101, or by filing them in person at any location of the United States District Court for the District of Minnesota; and (h) be filed or postmarked on or before the Objection Deadline, as set forth above. Any Class Member who does not make an objection in the manner and by the date set forth in this paragraph shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

- 7.11 Netgain will serve the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 by the deadline required by the statute. Netgain's counsel will advise Class Counsel of the completion of the notice within 5 days of its service of the notice.

## **8. SETTLEMENT ADMINISTRATION**

### **8.1 Submission of Claims.**

- (a) Submission of Electronic and Hard Copy Claims. Settlement Class Members may submit electronically verified Claim Forms to the Settlement Administrator through the Settlement Website or may download Claim Forms to be filled out, signed, and submitted physically by e-mail or U.S. mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. The Settlement Administrator shall reject any Claim Forms that are incomplete, inaccurate, or not timely received and will provide Claimants notice and the ability to cure defective claims, unless otherwise noted in this Agreement.
- (b) Review of Claim Forms. The Settlement Administrator will review Claim Forms submitted by Settlement Class members to determine whether they are eligible for a Settlement Payment.

### **8.2 Settlement Administrator's Duties.**

- (a) Cost Effective Claims Processing. The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Agreement by processing Claim Forms in a rational, responsive, cost effective and timely manner, and calculate Settlement Payments in accordance with this Agreement.
- (b) Maintenance of Records. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and Netgain's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and Netgain's Counsel with information concerning Notice, administration, and implementation of the Settlement. Without limiting the foregoing, the Settlement Administrator also shall:
  - (i) Receive Requests for Exclusion from Settlement Class Members and provide Class Counsel and Netgain's Counsel a copy thereof no later than five (5) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion or other requests from Class Members after expiration of the Opt-Out Period, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Netgain's Counsel;
  - (ii) Provide regular reports to Class Counsel and Netgain's Counsel that include, without limitation, the number of Claim Forms received, the number of Claim Forms approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected by the Settlement Administrator. The Settlement Administrator shall also, as requested by Class Counsel or Netgain's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
  - (iii) Make available for inspection by Class Counsel and Netgain's Counsel the Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice;
  - (iv) Cooperate with any audit by Class Counsel or Netgain's Counsel, who shall have the right but not the obligation to review, audit, and evaluate all Claim Forms for accuracy, veracity, completeness, and compliance with the terms and conditions of this Agreement.

8.3 Requests For Additional Information: In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request

additional information from the Parties or any Settlement Class member who submits a Claim Form.

## **9. SERVICE AWARDS**

- 9.1 Class Representatives and Class Counsel may seek Service Awards of up to \$1,500 to each of the Class Representatives. Any requests for such an award must be filed at least 35 days before the deadline for filing objections to the Settlement.
- 9.2 The Settlement Administrator shall pay the Service Awards approved by the Court to the Class Representatives. Such Service Awards shall be paid by the Settlement Administrator, in the amount approved by the Court, five (5) Business Days after the Effective Date.
- 9.3 In the event the Court declines to approve, in whole or in part, the payment of the Service Awards in the amounts requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the Service Awards shall constitute grounds for cancellation or termination of this Agreement.

## **10. ATTORNEYS' FEES, COSTS, AND EXPENSES**

- 10.1 Class Counsel may file a motion for an award of reasonable attorneys' fees, costs, and expenses up to 33 1/3% of the Settlement Fund, to be paid from the Settlement Fund. The motion must be filed at least 35 days before the deadline for filing objections to the Settlement. Any attorneys' fees, costs, and expenses awarded by the Court to Class Counsel shall be paid in the amount approved by the Court within Ten (10) Business Days after the Effective Date.
- 10.2 Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs to counsel for any plaintiffs in the Consolidated Action.
- 10.3 The Settlement is not conditioned upon the Court's approval of an award of Class Counsel's attorneys' fees, costs, or expenses.

## **11. EFFECTIVE DATE, MODIFICATION, AND TERMINATION**

- 11.1 The Effective Date of the Settlement shall be the first Business Day after all of the following conditions have occurred:
  - (a) Netgain Counsel and Class Counsel execute this Agreement;
  - (b) The Court enters the Preliminary Approval Order;
  - (c) Notice is provided to the Settlement Class consistent with the Preliminary Approval Order;

- (d) The Court enters the Final Approval Order and Judgment; and
  - (e) The Final Approval Order and Judgment has become final because: (i) the time for appeal, petition, rehearing or other review has expired; or (ii) if any appeal, petition, request for rehearing or other review has been filed, the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing or other review is pending, and the time for further appeals, petitions, requests for rehearing or other review has expired.
- 11.2 In the event the Court declines to enter the Preliminary Approval Order, declines to enter the Final Approval Order and Judgment, or the Final Approval Order and Judgment does not become final, either party may, at its sole discretion, terminate this Agreement on ten (10) Business Days written notice from counsel for the terminating party to counsel for the other party. For avoidance of doubt, no party may terminate this Agreement while an appeal from an order granting final approval is pending.
- 11.3 In the event the terms or conditions of this Settlement Agreement are materially modified by any court, any Party in its sole discretion, to be exercised within 14 days after such modification, may declare this Settlement Agreement null and void. In the event of a material modification by any court, and in the event the Parties do not exercise their unilateral options to withdraw from this Settlement Agreement pursuant to this Paragraph, the Parties shall meet and confer within seven (7) days of such ruling to attempt to reach an agreement as to how best to effectuate the court-ordered modification.
- 11.4 Except as otherwise provided herein, in the event the Settlement is terminated, the Parties to this Agreement, including Settlement Class Members, shall be deemed to have reverted to their respective status in the Action immediately prior to the first mediation of the Consolidated Action, and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered. In addition, the Parties agree that in the event the Settlement is terminated, any orders entered pursuant to the Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses.
- 11.5 In the event this Agreement is terminated pursuant to any provision herein, then the Settlement proposed herein shall become null and void (with the exception of Section 11.6 herein) and shall have no legal effect and may never be mentioned at trial or in dispositive or class certification motions or motion papers (except as necessary to explain the timing of the procedural history of the Action), and the Parties will return to their respective positions existing immediately before the first mediation of the Consolidated Action.
- 11.6 Notwithstanding any provision of this Agreement, in the event this Agreement is not approved by any court, or terminated for any reason, or the Settlement set forth

in this Agreement is declared null and void, or in the event that the Effective Date does not occur, Settlement Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any of the Administrative Expenses, or any expenses, including costs of notice and administration associated with this Settlement or this Agreement, except that each Party shall bear its own attorneys' fees and costs.

## **12. NO ADMISSION OF WRONGDOING OR LIABILITY**

12.1 This Agreement, whether or not consummated, any communications and negotiations relating to this Agreement or the Settlement, and any proceedings taken pursuant to the Agreement:

- (a) shall not be offered or received against Netgain as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by Netgain with respect to the truth of any fact alleged by any Plaintiffs or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of Netgain;
- (b) shall not be offered or received against Netgain as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Netgain;
- (c) shall not be offered or received against Netgain as evidence of a presumption, concession or admission with respect to any liability, negligence, fault, breach of duty, or wrongdoing, or in any way referred to for any other reason as against Netgain, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, the Parties may refer to it to effectuate the liability protection granted them hereunder;
- (d) shall not be construed against Netgain as an admission or concession that the consideration to be given hereunder represents the relief that could be or would have been awarded after trial; and
- (e) shall not be construed as or received in evidence as an admission, concession or presumption against the Class Representatives or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by Netgain have any merit.

## **13. REPRESENTATIONS**

13.1 Each Party represents that: (i) such Party has full legal right, power, and authority to enter into and perform this Agreement, subject to Court approval; (ii) the

execution and delivery of this Agreement by such Party and the consummation by such Party of the transactions contemplated by this Agreement have been duly authorized by such Party; (iii) this Agreement constitutes a valid, binding, and enforceable agreement; and (iv) no unobtained consent or approval of any person or entity is necessary for such Party to enter into this Agreement.

#### 14. NOTICE

- 14.1 All notices to Class Counsel provided for in this Agreement shall be sent by email and First-Class U.S. mail to the following:

Brian C. Gudmundson  
brian.gudmundson@zimmreed.com  
Zimmerman Reed LLP  
1100 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402

Christopher P. Renz  
crenz@chestnutcambronne.com  
Chestnut Cambronne P.A.  
100 Washington Avenue South  
Suite 1700  
Minneapolis, Minnesota 55401

Gayle M. Blatt  
gmb@cglaw.com  
Casey Gerry Schenk Francavilla Blatt &  
Penfield, LLP  
110 Laurel Avenue  
San Diego, California 92101-1486

- 14.2 All notices to Netgain or Netgain Counsel shall be sent by email and First-Class U.S. mail to the following:

Paul R. Smith  
psmith@larkinhoffman.com  
Larkin Hoffman Daly & Lindgren, Ltd  
8300 Norman Center Drive  
Suite 1000  
Minneapolis, Minnesota 55437

R. Henry Pfutzenreuter  
hpfutzenreuter@larkinhoffman.com  
Larkin Hoffman Daly & Lindgren, Ltd.  
8300 Norman Center Drive  
Suite 1000  
Minneapolis, Minnesota 55437

- 14.3 All notices to the Settlement Administrator provided for in this Agreement shall be sent by email and First-Class U.S. mail to the following address:

CPT Group  
500 Corporate Park  
Irvine, CA 92606

- 14.4 The parties may change the notice recipients and addresses designated in this Section by written notice to all parties.

## 15. MISCELLANEOUS PROVISIONS

- 15.1 Representation by Counsel. The Class Representatives and Netgain represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.
- 15.2 Best Efforts. The Parties agree that they will make all reasonable efforts needed to reach the Effective Date and fulfill their obligations under this Agreement, subject to the provisions herein.
- 15.3 Contractual Agreement. The Parties understand and agree that all terms of this Agreement, including the Exhibits thereto, are contractual and are not a mere recital, and each signatory warrants that he, she, or it is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that they or it represents.
- 15.4 Integration. This Agreement constitutes the entire agreement among the Parties and no representations, warranties, or inducements have been made to any Party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.
- 15.5 No Additional Persons with Financial Interest. Netgain shall not be liable for any additional attorneys' fees and expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member, other than what is expressly provided for in this Agreement.

- 15.6 Drafting. The Parties agree that no single Party shall be deemed to have drafted this Agreement, or any portion thereof, for purpose of the invocation of the doctrine of *contra proferentum*. This Settlement Agreement is a collaborative effort of the Parties and their attorneys, which was negotiated on an arm's-length basis between parties of equal bargaining power. Accordingly, this Agreement shall be neutral, and no ambiguity shall be construed in favor of or against any of the Parties. The Parties expressly waive the presumption that uncertainties in a contract are interpreted against the party who caused the uncertainty to exist.
- 15.7 Modification or Amendment. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the persons who executed this Agreement or their successors-in-interest.
- 15.8 Waiver. The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.
- 15.9 Severability. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder.
- 15.10 Successors. This Settlement Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties thereto.
- 15.11 Survival. The Parties agree that the terms set forth in this Agreement shall survive the signing of this Agreement.
- 15.12 Governing Law. All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of the State of Minnesota, without reference to its conflict of law provisions, except to the extent the federal law of the United States requires that federal law governs.
- 15.13 Interpretation.
- (a) Definitions apply to the singular and plural forms of each term defined.
  - (b) Definitions apply to the masculine, feminine, and neutral genders of each term defined.
  - (c) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

- 15.14 No Precedential Value. The Parties agree and acknowledge that this Agreement carries no precedential value.
- 15.15 Fair and Reasonable. The Parties and their counsel believe this Agreement is a fair and reasonable compromise of the disputed claims, in the best interest of the Parties, and have arrived at this Agreement as a result of arm's-length negotiations.
- 15.16 Retention of Jurisdiction. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction over the Settlement and the Parties for the purpose of enforcing the terms of this Agreement.
- 15.17 Headings. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.
- 15.18 Exhibits. The exhibits to this Agreement are an integral and material part of the Settlement. The exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.
- 15.19 Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.
- 15.20 Facsimile and Electronic Mail. Transmission of a signed Agreement by facsimile or electronic mail shall constitute receipt of an original signed Agreement by mail.
- 15.21 No Assignment. Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title or interest in or to any of the Released Claims.
- 15.22 Deadlines. If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next Business Day. All reference to "days" in this Agreement shall refer to calendar days, unless otherwise specified. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.
- 15.23 Dollar Amounts. All dollar amounts are in United States dollars, unless otherwise expressly stated.

ACCEPTED BY:

**PLAINTIFFS**

Dated: 05/05/2025



\_\_\_\_\_  
Misty Meier

Dated: \_\_\_\_\_

\_\_\_\_\_  
Susan M. Reichert

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mark Kalling

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robert Smithburg

Dated: \_\_\_\_\_

\_\_\_\_\_  
Thomas Lindsay

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robin Guertin

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jane Doe

**DEFENDANT**

NETGAIN TECHNOLOGY, LLC

Dated: \_\_\_\_\_

\_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

ACCEPTED BY:

**PLAINTIFFS**

Dated: \_\_\_\_\_

Dated: 05/05/2025 \_\_\_\_\_

Dated: \_\_\_\_\_

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Misty Meier

  
Susan M. Reichert

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Mark Kalling

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Robert Smithburg

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Thomas Lindsay

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Robin Guertin

\_\_\_\_\_  
Jane Doe

**DEFENDANT**

NETGAIN TECHNOLOGY, LLC

Dated: \_\_\_\_\_

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By \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

ACCEPTED BY:

**PLAINTIFFS**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Misty Meier

Dated: \_\_\_\_\_

\_\_\_\_\_  
Susan M. Reichert

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mark Kalling

Dated: 05/06/2025 \_\_\_\_\_

*Robert Smithburg*

\_\_\_\_\_  
Robert Smithburg

Dated: \_\_\_\_\_

\_\_\_\_\_  
Thomas Lindsay

Dated: \_\_\_\_\_

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Robin Guertin

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jane Doe

**DEFENDANT**

NETGAIN TECHNOLOGY, LLC

Dated: \_\_\_\_\_

\_\_\_\_\_  
By \_\_\_\_\_  
Its \_\_\_\_\_

ACCEPTED BY:

**PLAINTIFFS**

Dated: _____	_____
	Misty Meier
Dated: _____	_____
	Susan M. Reichert
Dated: _____	_____
	Mark Kalling
Dated: _____	_____
	Robert Smithburg
Dated: <sup>05/08/2025</sup> _____	
	Thomas Lindsay
Dated: _____	_____
	Robin Guertin
Dated: _____	_____
	Jane Doe

**DEFENDANT**

	NETGAIN TECHNOLOGY, LLC
Dated: _____	_____
	By _____
	Its _____

ACCEPTED BY:

**PLAINTIFFS**

Dated: _____	_____
	Misty Meier
Dated: _____	_____
	Susan M. Reichert
Dated: _____	_____
	Mark Kalling
Dated: _____	_____
	Robert Smithburg
Dated: _____	_____
	Thomas Lindsay
Dated: <u>05/08/2025</u>	<u>Rob. M. Guertin</u>
	Robin Guertin
Dated: _____	_____
	Jane Doe

**DEFENDANT**

NETGAIN TECHNOLOGY, LLC

Dated: _____	_____
	By _____
	Its _____

ACCEPTED BY:

**PLAINTIFFS**

Dated: _____	_____
	Misty Meier
Dated: _____	_____
	Susan M. Reichert
Dated: _____	_____
	Mark Kalling
Dated: _____	_____
	Robert Smithburg
Dated: _____	_____
	Thomas Lindsay
Dated: _____	_____
	Robin Guertin
Dated: <small>05/05/2025</small> _____	 _____
	Jane Doe

**DEFENDANT**

	NETGAIN TECHNOLOGY, LLC
Dated: _____	_____
	By _____
	Its _____

ACCEPTED BY:

**PLAINTIFFS**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Misty Meier

Dated: \_\_\_\_\_

\_\_\_\_\_  
Susan M. Reicher

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mark Kalling

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robert Smithburg

Dated: \_\_\_\_\_

\_\_\_\_\_  
Thomas Lindsay

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robin Guertin

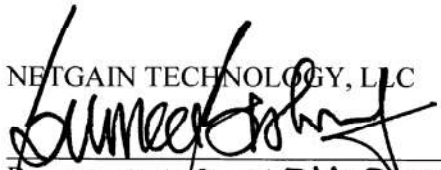
Dated: \_\_\_\_\_

\_\_\_\_\_  
Jane Doe

**DEFENDANT**

Dated: 5/2/2025

NETGAIN TECHNOLOGY, LLC

  
By SUMET SABHARNAL  
its CEO

APPROVED AS TO CONTENT AND FORM:



---

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Justin Walker (*pro hac vice* anticipated)  
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***Plaintiffs' Interim Executive Committee***

## **EXHIBIT A**

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<p><b>YOUR CLAIM FORM MUST BE SUBMITTED ON OR BEFORE &lt;&lt;DATE&gt;&gt;</b></p>	<p>In re Netgain Technology, LLC, Consumer Data Breach Litigation [Address]</p>	<p>FOR OFFICE USE ONLY</p>
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***In re Netgain Technology, LLC, Consumer Data Breach Litigation***

United States District Court for the District of Minnesota (Case No. 21-CV-1210 (SRN/LIB))

**CLAIM FORM**

**SAVE TIME BY SUBMITTING YOUR CLAIM ONLINE AT  
WWW.NETGAINCLASSACTIONSETTLEMENT.COM**

**GENERAL CLAIM FORM INFORMATION**

You may complete and submit this Claim Form online or by mail if you are a Settlement Class Member. The Settlement Class consists of all individuals who reside in the United States and who potentially had their personal or health-related information disclosed to an unauthorized third party between September 2020 and November 2020 in the course of a data breach on Netgain Technology, LLC (“Netgain”), which group shall be identified as (the “Settlement Class”).

If you are a Settlement Class Member and wish to submit a Claim for a settlement cash payment, please provide the information requested below. You must submit your Claim via the Settlement Website by the Claims Deadline of <<date>>, or complete and mail this Claim Form to the Settlement Administrator, postmarked by <<date>>.

Settlement Class Members who submit a timely and valid Claim Form will be eligible to receive 1) Documented Ordinary Losses; and 2) Attested Time Spent **OR** an Alternative Cash Payment:

- **Documented Ordinary Losses and Attested Time Spent** – Up to \$5,000 for documented out-of-pocket expenses fairly traceable to the Data Incident and reimbursement for time spent remediating issues related to the Data Incident. Recovery for Attested Time Spent will be capped at 3 hours at \$25.00 per hour.
- **Alternative Cash Payment** – A *pro rata* (a legal term meaning an equal share) payment from the net Settlement Fund, which is \$1,900,000 minus payment of costs of the Settlement including costs of the Notice Program and Claims Administration, Attorneys’ Fees and Expenses up to 33 1/3% of the Settlement Fund, Service Awards of up to \$1,500 each to the Representative Plaintiffs, and payments for claims for Ordinary Losses and Attested Time Spent. Note that if the costs of the settlement, fees, awards, and claims exceed the Settlement Fund, individuals selecting this option may not receive any payment.

Please Note: Claims for Documented Ordinary Losses and Attested Time Spent will be limited to \$5,000 combined. All cash payments may be adjusted *pro rata* depending on the number of Class Members that participate in the Settlement.

The Notice includes only a summary of your legal rights and options. Please visit the official Settlement Website, [www.netgainclassactionsettlement.com](http://www.netgainclassactionsettlement.com), or call (xxx) xxx-xxxx for more information.

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**TO SUBMIT A CLAIM FOR PAYMENT BY MAIL:**

1. Complete Settlement Class Member Information and section(s) relevant to relief requested of this Claim Form.
2. Sign the Claim Form.
3. Submit the completed Claim Form to the Settlement Administrator so that it is postmarked by <<date>>.

This Claim Form should only be used if a Claim is being mailed and is not being filed online. You may go to [www.netgainclassactionsettlement.com](http://www.netgainclassactionsettlement.com) to submit your Claim online, or you may submit this Claim Form by mail to the address at the top of this form.

**Payment will be mailed in the form of a check to the address you provide below. If you would like to receive a payment electronically (e.g., via Venmo, PayPal, or ACH), you must submit a Claim Form online at [www.netgainclassactionsettlement.com](http://www.netgainclassactionsettlement.com).**

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\*Page 1 of 2\*

Page 1 of 2

**1. Settlement Class Member Information**

\*First Name

MI

\*Last Name

\*Mailing Address: Street Address/P.O. Box (include Apartment/Suite/Floor Number)

\*City

\*State

\*Zip Code

Zip4 (Optional)

@

\*Current Email Address

( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

Current Phone Number (Optional)

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**2. Documented Ordinary Out-of-Pocket Expenses**

You can receive reimbursement for up to \$5,000.00 for documented unreimbursed out-of-pocket expenses fairly traceable to the Data Incident. You must attach documents to your Claim Form that show what happened and how much you lost or spent so that you can be repaid. This may include receipts or other documentation. "Self-prepared" documentation such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support to other submitted documentation.

<b>Expense Types and Examples of Documents</b>	<b>Approximate Amount of Expense and Date of Expense</b>	<b>Description of Expense or Money Spent and Supporting Documents (Identify what you are attaching and why it's related to the Data Incident)</b>
<b>Unreimbursed Bank Fees</b> <i>Examples: Bank statements with fees, such as card reissuance, unreimbursed overdraft and late fees</i>	\$ _____ . ____  ____ - ____ - ____ MM DD YYYY	_____ _____ _____
<b>Long Distance Phone Charges</b> <i>Example: Phone bill with charges</i>	\$ _____ . ____  ____ - ____ - ____ MM DD YYYY	_____ _____ _____
<b>Unreimbursed Credit Card Fees</b> <i>Example: Credit Card Statement</i>	\$ _____ . ____  ____ - ____ - ____ MM DD YYYY	_____ _____ _____
<b>Unreimbursed Credit Monitoring</b> <i>Examples: Costs of credit report(s), credit monitoring, and/or other identity theft insurance products purchased</i>	\$ _____ . ____  ____ - ____ - ____ MM DD YYYY	_____ _____ _____
<b>Other Losses or Costs Resulting from Identity Theft or Fraud</b> <i>Examples: Include but are not limited to, the cost of postage, gas for local travel, or interest on payday loans due to card cancelation(s)</i>	\$ _____ . ____  ____ - ____ - ____ MM DD YYYY	_____ _____ _____

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**3. Cash Payment: Lost Time**

If you spent time monitoring accounts, reversing fraudulent charges, or otherwise dealing with the aftermath/cleanup of the Data Incident, you may be reimbursed for your time. The total amount you may receive for Documented Ordinary Losses and Attested Time Spent will be limited to \$5,000 combined. The maximum you may receive for Attested Time Spent is 3 hours at \$25.00 per hour.

Hours lost as a result of the Data Incident	Description of the activities performed during the time claimed and their connection to the Data Incident
<div style="text-align: center;"> <div style="border-bottom: 1px solid black; width: 100px; display: inline-block;"></div> Hours </div>	<div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; height: 20px;"></div>

**4. Alternative Cash Payment**

If you do not want to claim reimbursement for Ordinary Losses or Time Spent, you may instead claim a pro rata (a legal term meaning equal share) payment from the Net Settlement Fund after all costs associated with the Settlement have been paid. If all costs and payments exceed the Settlement Fund amount, this option could result in no payment.

☐ I would like to claim a pro rata Alternative Cash Payment.

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\*Page 2 of 2\*

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**5. Certification**

I declare under penalty of perjury under the laws of the United States and the state where this Claim Form is signed that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

I understand that all information provided on this Claim Form is subject to verification and that I may be asked to provide supplemental information by the Settlement Administrator before my claim will be considered complete and valid.

\_\_\_\_\_

Signature

\_\_\_\_/\_\_\_\_/\_\_\_\_

Date (mm/dd/yyyy)

\_\_\_\_\_  
Print Name

**Please keep a copy of your completed Claim Form for your records.**

Mail your completed Claim Form to the Settlement Administrator:

In re Netgain Technology, LLC, Consumer Data Breach Litigation

**[Settlement Administrator Address]**

or submit your Claim online at

**[www.netgainclassactionsettlement.com](http://www.netgainclassactionsettlement.com)**

It is your responsibility to notify the Settlement Administrator of any changes to your contact information after you submit your Claim. You can update your contact information on the Contact page at

**[www.netgainclassactionsettlement.com](http://www.netgainclassactionsettlement.com).**

## **EXHIBIT B**

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
FOR PERSONS WHOSE PERSONAL OR HEALTH-RELATED INFORMATION MAY  
HAVE BEEN DISCLOSED TO AN UNAUTHORIZED THIRD PARTY THROUGH  
NETGAIN TECHNOLOGY, LLC'S ("NETGAIN") DATA BREACH BETWEEN  
SEPTEMBER 2020 AND NOVEMBER 2020.**

*In re Netgain Technology, LLC Consumer Data Breach Litigation, No. 21-cv-1210 (SRN/LIB)  
(D. Minn.)*

*A United States District Court authorized this Notice. This is not a solicitation from a lawyer.*

**THIS IS A NOTICE OF A PROPOSED SETTLEMENT OF A CLASS ACTION LAWSUIT.  
YOUR LEGAL RIGHTS ARE AFFECTED EVEN IF YOU DO NOTHING.**

**PLEASE READ THIS NOTICE CAREFULLY.**

**YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION  
SETTLEMENT BECAUSE YOUR PERSONAL AND HEALTH-RELATED  
INFORMATION MAY HAVE BEEN SHARED WITH THIRD PARTIES AS A RESULT  
OF A DATA BREACH THAT OCCURRED BETWEEN SEPTEMBER 2020 AND  
NOVEMBER 2020.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM BY &lt;&lt;date&gt;&gt;</b>	You must timely submit a Claim Form either via U.S. mail or online to receive Settlement benefits.
<b>DO NOTHING</b>	You will not receive Settlement benefits, but you will still be bound by the Settlement.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT BY &lt;&lt;date&gt;&gt;</b>	You will receive no Settlement benefits, but you will retain any legal claims you may have against Netgain.
<b>OBJECT BY &lt;&lt;date&gt;&gt;</b>	File with the Court a written objection to the Settlement, at the address below, about why you do not like the Settlement. You must remain in the Settlement Class to object to the Settlement and will still be bound by the Settlement if the Court approves it.
<b>GO TO THE FINAL APPROVAL HEARING ON &lt;&lt;date&gt;&gt; AT &lt;&lt;time&gt;&gt;</b>	Ask to speak in Court about the fairness of the Settlement. You do not need to attend the hearing to object to the Settlement, or to receive Settlement benefits. If you have filed a timely and valid written objection, the Court will consider it.
<b>1. What is this Notice?</b>	

This is a court-authorized Long-Form Notice of a proposed Settlement (the “Settlement”) of a class action lawsuit (the “Litigation”), *In re Netgain Technology, LLC, Consumer Data Breach Litigation* Case No. 21-CV-1210 (SRN/LIB), pending in the United States District for the District of Minnesota (the “Court”). The Settlement would resolve the Litigation that arose on September 23, 2021, after a class action complaint was filed indicating that Netgain Technology, LLC’s (“Netgain” or “Defendant”) data environment was accessed by an unauthorized third party resulting in certain personal or health-related information being disclosed to that third party (the “Data Incident”). The Court granted Preliminary Approval of the Settlement Agreement and conditionally certified the Settlement Class for purposes of Settlement only. This Long-Form Notice explains the nature of the Litigation, the terms of the Settlement Agreement, and the legal rights and obligations of members of the Settlement Class. Please read the instructions and explanations below carefully so that you can better understand your legal rights. The Settlement Administrator in this case is CPT Group, Inc.

## **2. What is this Notice about?**

You may have received a previous notification regarding the Data Incident from either Netgain or a different third party referencing the Data Incident. This Notice is to provide those persons whose personal or health-related information may have been shared with a third party because of Netgain’s Data Incident between September 2020 and November 2020 notice of their rights and benefits relating to this Settlement.

## **3. What is this lawsuit about?**

Netgain is a service provider who externally manages IT and cloud computing services for companies primarily in the healthcare and accounting industries. In the course of its business, Netgain received and stored personally identifiable information and private health information of the Plaintiffs and Settlement Class Members.

Plaintiffs and the Settlement Class Members allege that the data incident occurred between September 2020 and November 2020 when an unauthorized individual accessed Netgain’s computer systems and accessed certain personal or health-related information.

## **4. Why is this a class action?**

A class action is a lawsuit in which an individual called a “Class Representative” brings a single lawsuit on behalf of other people who have similar claims. In a class action settlement, all of these people together are a “Settlement Class” or “Settlement Class Members.” When a class action is settled, the Settlement, which must be approved by the Court, resolves the claims for all Settlement Class Members, except for those who exclude themselves from the Settlement.

## **5. Why is there a settlement?**

To resolve this matter without the further expense, delay, and uncertainties of protracted litigation, the Parties reached a Settlement that, if approved by the Court, would resolve all claims brought on behalf of the Settlement Class related to the Data Incident. If approved by the Court, the Settlement Agreement requires Netgain to provide cash compensation to Settlement Class Members who submit valid and timely Claim Forms. The Settlement is not an admission of wrongdoing by Netgain and does not imply that there has been, or would be, any finding that Netgain violated the law. The Court overseeing the Litigation has not determined that Netgain did anything wrong.

The Court already has preliminarily approved the Settlement Agreement. Nevertheless, because the settlement of a class action determines the rights of all members of the Settlement Class, the Court overseeing this Litigation must give final approval to the Settlement Agreement before it can be effective. The Court has conditionally certified the Settlement Class for settlement purposes only, so that members of the Settlement Class may be given notice and the opportunity to exclude themselves from the Settlement Class or to voice their support or opposition to final approval of the Settlement Agreement. If the Court does not grant final approval to the Settlement Agreement, or if it is terminated by the Parties, then the Settlement Agreement will be void, and the Litigation will proceed as if there had been no settlement and no certification of the Settlement Class.

## **6. How do I know if I am a part of the Settlement?**

You are a member of the Settlement Class if you reside in the United States and you are among the individuals who Netgain or another third party identified as potentially having their personal or health-related information disclosed to a third party between September 2020 and November 2020 (“Settlement Class”).

Excluded from the Class are: (i) the officers and directors of Defendant and its affiliates, parents, and subsidiaries; (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; (iii) any individual who timely and validly excludes themselves from the Settlement, and (iv) the successors or assigns of any such excluded persons. This exclusion does not apply, and should not be read to apply, to those employees of Defendant who receive notification from the Settlement Administrator regarding this Settlement Agreement.

## **YOUR BENEFITS UNDER THE SETTLEMENT**

### **7. What can I get from the Settlement?**

Settlement Class Members who file a valid and timely Claim Form may be eligible for the following Settlement benefits:

**Documented Ordinary Losses and Attested Time Spent** – Up to \$5,000 for documented out-of-pocket unreimbursed expenses fairly traceable to the Data Incident and reimbursement for time spent

remediating issues related to the Data Incident. Examples of Documented Ordinary Losses may include:

- Unreimbursed losses relating to fraud or identity theft;
- Out-of-pocket credit monitoring costs that were incurred on or after the Data Incident through the date of claim submission; or
- Unreimbursed bank fees, long distance phone charges, postage, or gasoline for local travel.

This list of reimbursable documented out-of-pocket expenses is not meant to be exhaustive. Settlement Class Members may make claims for any documented unreimbursed out-of-pocket losses reasonably related to the Data Incident or for dealing with the effects of the Data Incident. The Claims Administrator shall have discretion to determine whether any claimed loss is reasonably related to the Data Incident. Settlement Class Members with Ordinary Losses must submit documentation supporting their claims. This may include receipts or other documentation not “self-prepared” by the claimant that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support to other submitted documentation.

Examples of Time spent may include:

- Changing passwords on potentially impacted accounts;
- Monitoring for or investigating suspicious activity on potentially impacted medical, financial, or other accounts;
- Contacting a financial institution or other provider to discuss suspicious activity;
- Signing up for identity theft or fraud monitoring; or
- Researching information about the Data Incident, its impact, or how to protect from harm due to the Data Incident.

Please Note: Claims for Attested Time Spent will be capped at 3 hours and \$25.00 per hour. Claims for Documented Ordinary Losses and Attested Time Spent will be limited to \$5,000 combined. All cash payments may be adjusted *pro rata* depending on the number of Class Members that participate in the Settlement.

**Alternative Cash Payment:** As an alternative to filing a Claim for reimbursement of Ordinary Losses and Attested Time Spent, you may submit a Claim to receive a *pro rata* (a legal term meaning equal share) payment from the net settlement fund, which is \$1,900,000 minus payment of costs of the Settlement including costs of the Notice Program and Claims Administration, Attorneys’ Fees and Expenses up to 33 1/3% of the Settlement Fund, Service Awards of up to \$1,500 each to the Representative Plaintiffs, and payments for claims for Ordinary Losses and Attested Time Spent. *Note that if the costs of the settlement, fees, awards, and claims exceed the Settlement Fund, individuals selecting this option may not receive any payment.*

\*\*\*To receive Settlement benefits, you must submit a Claim Form by [REDACTED]\*\*\*

#### **8. When will I receive the benefits?**

If you timely submit a valid Claim for a cash payment, you will receive payment in the amount approved by the Settlement Administrator once the Settlement is Final and has become effective.

#### **9. I want to be a part of the Settlement. What do I do?**

All Settlement Class Members are part of the Settlement unless they request to be excluded from it. To submit a claim for cash compensation, you must timely submit the Claim Form on the Settlement Website at [www.netgainclassactionsettlement.com](http://www.netgainclassactionsettlement.com), or by mail to the Settlement Administrator [insert address]

You must submit any claims by <<date>>. There can be only one (1) valid and timely Claim per Settlement Class Member.

#### **10. What am I giving up if I remain in the Settlement?**

By staying in the Settlement Class, you will give Netgain a “release,” and all the Court’s orders will apply to you and legally bind you. A release means you cannot sue or be part of any other lawsuit or other legal action against Netgain about or arising from the claims or issues in this Litigation that are released by this Settlement.

The precise terms of the release are in the Settlement Agreement, which is available on the Settlement Website. Unless you formally exclude yourself from this Settlement, you will release your claims. If you have any questions, you can talk for free to Settlement Class Counsel identified below who have been appointed by the Court to represent the Settlement Class, or you are welcome to talk to any other lawyer of your choosing at your own expense.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want to remain in the Settlement, and instead want to keep any legal claims you may have against Netgain, then you must take steps to exclude yourself from this Settlement.

#### **11. How do I get out of the Settlement?**

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to be excluded from *In re Netgain Technology, LLC, Consumer Data Breach Litigation*, Case No. 21-CV-1210 (SRN/LIB) (D. Minn.) to the Settlement Administrator. Such notice must include: (1) the case name and number of the Litigation (*In re Netgain Technology, LLC, Consumer Data Breach*

*Litigation*, Case No. 21-CV-1210 (SRN/LIB)); (2) your full name, address, and telephone number; (3) your personal and original signature; and (4) a written statement that you wish to be excluded from the Settlement. You may only request exclusion for yourself, and no one else can request exclusion for you. You must mail your exclusion request so that it is postmarked **no later than** <<date>>, to:

In re Netgain Technology, LLC Consumer Data Breach Litigation  
c/o CPT Group  
[insert address]

**12. If I exclude myself, do I still receive benefits from this Settlement?**

No, if you submit an exclusion request, you will not receive anything from the Settlement, but you may sue Netgain over the claims raised in the Litigation.

**THE LAWYERS REPRESENTING THE SETTLEMENT CLASS**

**13. Do I have a lawyer in this case?**

The Court has appointed the following attorneys to be the lead attorneys representing the Settlement Class as Settlement Class Counsel:

Zimmerman Reed, LLP  
c/o Brian C. Gudmundson and Michael J. Laird and  
Rachel K. Tack  
1100 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
(612) 341-0400

Chestnut Cambronne PA  
c/o Bryan L. Bleichner and Christopher P. Renz  
100 Washington Ave., Ste. 1700  
Minneapolis, MN 55401-2138  
(612) 339-7300

Casey Gerry Schenk Francavilla Blatt & Penfield, LLP  
c/o Gayle M. Blatt  
110 Laurel Street  
San Diego, CA 92101  
(612) 238-1811

If you want to be represented by your own lawyer, you may hire one at your own expense.

**QUESTIONS? VISIT [WWW.NETGAINCLASSACTIONSETTLEMENT.COM](http://WWW.NETGAINCLASSACTIONSETTLEMENT.COM)**

**14. How will the lawyers for the Settlement Class be paid?**

Settlement Class Counsel will be paid from the Settlement Fund. Settlement Class Counsel will seek Court approval to be paid reasonable attorneys' fees up to 33 1/3% of the Settlement Fund. Settlement Class Counsel will also ask the Court to approve Service Awards of up to \$1,500 from the Settlement Fund for each of the Representative Plaintiffs for participating in this lawsuit and for their efforts in achieving the Settlement. The Court may award less than the amounts requested by Settlement Class Counsel.

Settlement Class Counsel's application for reasonable attorneys' fees and expenses, and the Service Award will be made available on the Settlement Website at [www.netgainclassactionsettlement.com](http://www.netgainclassactionsettlement.com) before the deadline for you to comment or object to the Settlement.

**OBJECTING TO THE SETTLEMENT****15. How do I tell the Court that I do not like the Settlement?**

If you are a Settlement Class Member, you can object to the Settlement, or some part of it, and the Court will consider your views. In order to object to the Settlement, you must submit a written objection (such as a letter or legal brief) to the Court stating that you object and the reasons why you think the Court should not approve some or all of the Settlement. The objection must be submitted by XXXXXXXX. Your objection must include: (1) the case name and number of the Litigation (*In re Netgain Technology, LLC, Consumer Data Breach Litigation*, Case No. 21-CV-1210 (SRN/LIB) (D. Minn.)); (2) your full name, telephone number, and current mailing address (3) a statement indicating the basis for your belief that you are a member of the Settlement Class; (4) a statement about whether the objection applies only to you, to a specific subset of the Settlement Class, or to the entire Settlement Class; (5) specific grounds for the objection, with any factual and legal support for the stated objection, including any supporting materials; (6) a statement of whether you intend to appear at the Final Approval Hearing, and if so, whether personally or through your attorney; and (7) your personal and original signature.

If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your attorney. If you are objecting and represented by counsel, and such counsel intends to speak at the Final Approval Hearing, your written objection must also include (1) the identity of witnesses whom you intend to call to testify at the Final Approval Hearing; (2) a description of any documents or evidence that you intend to offer at the Final Approval Hearing, and (3) a list, including case name, court, and docket number, of all other cases in which you or your attorney have filed an objection to any proposed class action settlement in the past three (3) years.

If you file an objection, you may still receive benefits under the Settlement so long as you timely file a valid claim. To be timely, written notice of an objection in the appropriate form described above must be filed with the Court no later than the Objection Deadline, as noted below:

United States District Court for the District of Minnesota  
St. Paul Division  
316 N. Robert Street  
St. Paul, Minnesota 55101

## THE FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to grant final approval of the Settlement. You may attend if you wish, but you are not required to do so.

### 16. Where and when is the Final Approval Hearing?

The Court has already given Preliminary Approval to the Settlement Agreement.

The Court will hold a hearing on <<date>>, at <<time>> CT in the courtroom of the United States District Judge Susan Richard Nelson, Courtroom 7B, which is located at 316 N. Robert Street, St. Paul, Minnesota 55101. The purpose of the Final Approval hearing will be for the Court to determine whether the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class and to determine the appropriate amount of compensation for Settlement Class Counsel and rule on the request for a Service Award for the Class Representatives. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed Settlement. The Court will then decide whether to approve the Settlement.

YOU ARE **NOT** REQUIRED TO ATTEND THE FINAL APPROVAL HEARING TO RECIEVE BENEFITS FROM THIS SETTLEMENT. Please be aware that the hearing may be postponed to a later date without notice.

## GETTING MORE INFORMATION – CONTACT:

This notice only provides a summary of the proposed Settlement. Complete details about the Settlement can be found in the Settlement Agreement available on the Settlement Website.

**[www.netgainclassactionsettlement.com](http://www.netgainclassactionsettlement.com)**

If you have any questions, you can contact the Settlement Administrator or Settlement Class Counsel at the phone numbers listed above. In addition to the documents available on the Settlement Website, all pleadings and documents filed in this Litigation may be reviewed or copied at the Clerk of Court's office.

**DO NOT CALL OR SEND ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT, THE JUDGE, OR NETGAIN OR ITS COUNSEL. ALL QUESTIONS ABOUT THE SETTLEMENT SHOULD BE REFERRED TO THE SETTLEMENT ADMINISTRATOR OR SETTLEMENT CLASS COUNSEL**

***QUESTIONS? VISIT [WWW.NETGAINCLASSACTIONSETTLEMENT.COM](http://WWW.NETGAINCLASSACTIONSETTLEMENT.COM)***