

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEYER WILSON CO., LPA
Matthew R. Wilson (SBN 290473)
mwilson@meyerwilson.com
Michael J. Boyle, Jr. (SBN 258560)
mboyle@meyerwilson.com
305 W. Nationwide Blvd
Columbus, OH 43215
Telephone: (614) 224-6000
Facsimile: (614) 224-6066

TURKE & STRAUSS LLP
Samuel J. Strauss (*pro hac vice*)
sam@turkestrauss.com
Raina Borrelli (*pro hac vice*)
raina@turkestrauss.com
613 Williamson St., #201
Madison, WI 53703
P: (608) 237-1775

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROBERT GROGAN and HELENA CRUZ,
on behalf of themselves and all others
similarly situated,

Plaintiff,

v.

MCGRATH RENTCORP,

Defendant.

Case No. 3:22-cv-00490

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AS MODIFIED**

1 This matter having come before the Court on Plaintiffs’ renewed motion for preliminary
2 approval of the proposed class action settlement of the above-captioned case (the “Action”)
3 between Plaintiffs Robert Grogan and Helena Cruz, individually and on behalf of the Settlement
4 Class (“Plaintiffs”), and Defendant McGrath Rentcorp (“McGrath”) (collectively, the “Parties”)
5 as set forth in the Parties’ Settlement Agreement and Release (the “Agreement,” which
6 memorializes the “Settlement”). Having duly considered the motion and all supporting papers,
7 including the Settlement (Dkt. 40-2) and the amended proposed notices (Dkt. 57-1), and good
8 cause having been shown, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS.

9 1. The Court has jurisdiction over the subject matter of the Action, the Parties, and all
10 Settlement Class Members.

11 2. Unless defined herein, all defined terms in this Order shall have the meanings
12 ascribed to them in the Agreement.

13 3. The Court has conducted a preliminary evaluation of the Settlement as set forth in
14 the Agreement for fairness, adequacy, and reasonableness. Based on that evaluation, the Court
15 finds that: (i) the Agreement appears on this record to be is fair, reasonable, and adequate, and
16 within the range of possible approval; (ii) the Agreement has been negotiated in good faith at
17 arms’-length between experienced attorneys familiar with the legal and factual issues of this
18 case; and (iii) with respect to the forms of notice of the material terms of the Agreement to
19 Settlement Class Members for their consideration and reaction, that notice is appropriate and
20 warranted. Therefore, the Court finds preliminarily that it is likely to be able to approve the
21 proposed Settlement pursuant Rule 23(e)(2) of the Federal Rules of Civil Procedure and grants
22 preliminary approval of the Settlement.

23 4. The Court, pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil
24 Procedure, preliminarily certifies, for purposes of this Settlement only, the following Settlement
25 Class:

26 All persons whose personal information, which may include health information, was
27 potentially exposed to unauthorized access as a result of a[n] Incident affecting
28 Defendant’s computer network that occurred in 2021.

1 Excluded from the Settlement Class are persons who validly opt out of the Settlement Class.

2 5. The Court appoints Turke & Strauss, LLP, Paronich Law, LLP, and Meyer Wilson
3 Co., LPA, as Class Counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure for
4 purposes of this Settlement only.

5 6. The Court hereby appoints Robert Grogan and Helena Cruz as Class
6 Representatives of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil
7 Procedure.

8 7. The Court approves the proposed plan for giving notice to the Settlement Class (i)
9 directly (via U.S. mail, or where a mailing address is not available, by email to the last known
10 personal email address, if known); and (ii) via Website Notice by establishing a Settlement
11 Website (collectively, the “Class Notice”), as more fully described in the Agreement. The Class
12 Notice, in form, method, and content, complies with the requirements of Rule 23 and due process,
13 and constitutes the best notice practicable under the circumstances. The amended Notices
14 (Dkt. 57-1) and Notice Plans are reasonably calculated to apprise Settlement Class Members of the
15 nature of this litigation, the scope of the Settlement Class, the terms of the Settlement Agreement,
16 the right of the Settlement Class Members to object to the Settlement Agreement or exclude
17 themselves from the Settlement Class and the process for doing so, and of the Final Approval
18 Hearing. The Court hereby directs the Parties and the Settlement Administrator to complete all
19 aspects of the Class Notice no later than **September 22, 2023**, in accordance with the terms of the
20 Agreement.

21 8. On **February 2, 2024, at 10:00 a.m.** in Courtroom A, 15th Floor of the Phillip
22 Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco,
23 California, or at such other date, time and place (including by videoconference) later set by Court
24 Order, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness
25 of the Agreement and to determine whether: (i) final approval of the Settlement embodied by the
26 Agreement should be granted; (ii) the Settlement Class should be finally certified; (iii) a final
27 judgment should be entered; and (iv) Class Counsel’s ~~and (ii) Plaintiff’s~~ application for attorneys’
28 fees and expenses, and incentive awards to the Class Representatives, should be granted, and in

1 what amount. No later than **October 2, 2023**, Class Counsel must file papers in support of their
2 application for attorneys' fees and expenses, and the incentive awards to the Class Representatives.
3 No later than **January 12, 2024**, which is ~~fourteen~~(14) twenty-one Days before the Final
4 Approval Hearing, Plaintiffs must file papers in support of final approval of the Settlement and
5 respond to any written objections. Defendant may (but is not required to) file papers in support of
6 final approval of the Settlement, so long as it does so by no later than **January 19, 2024**. The
7 Court may continue the Final Approval hearing from time-to-time without further notice to the
8 Settlement Class Members.

9 9. Pursuant to the Settlement Agreement, McGrath shall provide notice pursuant to the
10 Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b). Not later than **January 12, 2024**,
11 which is ~~fourteen~~ twenty-one days before the Final Approval Hearing, Defendant shall file a
12 declaration with the Court stating that it has provided the notice required under CAFA.

13 10. Settlement Class Members who wish to either object to the Settlement or request to
14 be excluded from it must do so by the Objection Deadline and Opt-Out Deadline of **November 6,**
15 **2023**, which are both forty-five (45) Days after the Notice Deadline. Settlement Class Members
16 may not both object and opt out. If a Settlement Class Member submits both a Request for
17 Exclusion and an objection, the Request for Exclusion will be controlling.

18 11. To submit a Request for Exclusion (or opt-out), Settlement Class Members must
19 follow the directions in the Class Notice and send a compliant request to the Settlement
20 Administrator at the address designated in the Class Notice by the Opt-Out Deadline. In the
21 Request for Exclusion, the Settlement Class Member must clearly manifest the intent to be
22 excluded from the Settlement Class and the Request for Exclusion must be signed by the
23 Settlement Class Member. No Settlement Class Member, or any person acting on behalf of or in
24 concert or participation with that Settlement Class Member, may exclude any other Settlement
25 Class Member from the Settlement Class.

26 12. If a timely and valid Request for Exclusion is made by a member of the Settlement
27 Class, then that person will not be a Settlement Class Member, and the Agreement and any
28 determinations and judgments concerning it will not bind the excluded person.

1 13. All Settlement Class Members who do not opt out in accordance with the terms set
2 forth in the Agreement will be bound by all determinations and judgments concerning the
3 Settlement.

4 14. To object to the Settlement, Settlement Class Members must follow the directions
5 in the Class Notice and file a written Objection with the Court ~~and mail to Class Counsel and~~
6 ~~Defense Counsel as set forth in the Agreement~~ by the Objection Deadline. In the written
7 Objection, the Settlement Class Member must state (1) the name of the Action; (2) the objector's
8 full name, address, telephone number; (3) a statement of the basis on which the objector claims to
9 be a Settlement Class Member; (4) a written statement of all grounds for the objection,
10 accompanied by any legal support for the objection, and any evidence the objecting Settlement
11 Class Member wishes to introduce in support of the objection; (5) the identity of all counsel, if
12 any, representing the objector, including any former or current counsel who may claim
13 entitlement to compensation for any reason related to the objection to the Settlement or the Fee
14 Application; (6) a statement confirming whether the objector intends to personally appear and/or
15 testify at the Final Approval Hearing and the identification of any counsel representing the
16 objector who intends to appear at the Final Approval Hearing; (7) a list of any persons who will
17 be called to testify at the Final Approval Hearing in support of the objection; (8) a list, by case
18 name, court, and docket number, of all other cases in which the objector (directly or through
19 counsel) has filed an objection to any proposed class action settlement within the last 3 years; (9)
20 a list by case name, court, and docket number, of all other cases in which the objector's counsel
21 (on behalf of any Person or entity) has filed an objection to any proposed class action settlement
22 within the last 3 years; (10) a list by case name, court, and docket number, of all other cases in
23 which the objector has been named a plaintiff in any class action or served as a lead plaintiff or
24 class representative; and (11) the objector's signature signed under oath and penalty of perjury or,
25 ~~if and~~ the signature of the objector's duly authorized attorney or other duly authorized
26 representative (along with documentation setting forth such representation). The Court will
27 require only substantial compliance with the requirements for submitting an objection in this
28 Order and the Class Notice. The requirement that a Settlement Class Member must first submit a

1 written objection as a prerequisite to appearing before the Court to object to the Settlement may
 2 be excused upon a showing of good cause. ~~No Objection will be valid unless all of the~~
 3 ~~information described above is included. The Parties will have the right to depose any objector as~~
 4 ~~to the basis and circumstances of his or her objection, and to assess the objector's standing.~~

5 15. Any Settlement Class Member who fails to ~~timely object to the Settlement in the~~
 6 ~~manner described in the Class Notice and~~ object in accordance with this Order, ~~shall not be~~
 7 ~~permitted to object to the Settlement at the Final Approval Hearing,~~ shall be foreclosed from
 8 seeking any review of the Settlement or Agreement by appeal or other means, shall be deemed to
 9 have waived his or her objections, and shall be forever barred from making any such objections in
 10 the Action.

11 16. Any Settlement Class Member who has timely filed ~~and served~~ an Objection may
 12 appear at the Final Approval Hearing, either in person (or virtually, if the hearing is not conducted
 13 in person) or through an attorney hired at the Settlement Class Member's own expense, to object
 14 to the fairness, reasonableness, or adequacy of this Agreement or the Settlement.

15 17. All members of the Settlement Class, except those members of the Settlement
 16 Class who submit timely Requests for Exclusion, will be bound by all determinations and
 17 judgments in the Settlement, whether favorable or unfavorable to the Settlement Class.

18 18. Accordingly, the following are the deadlines by which certain events must occur:

<u>Date</u>	<u>Event</u>
<p>September 22, 2023 [no later than 21 Days after the date of this order]</p>	<p>Notice Deadline (Settlement Administrator shall send Mail Notice by this date and shall establish the Settlement Website by no later than the posting of the Mail Notice).</p>
<p>October 2, 2023 [no later than 14 Days before the Objection Deadline]</p>	<p>Deadline for Class Counsel to file Motion for Attorneys' Fees and Incentive Awards.</p>
<p>November 6, 2023 [no later than 45 Days after the Notice Deadline]</p>	<p>Deadline for Settlement Class Members to file Objections or submit Requests for Exclusion; Deadline for Settlement Class Members to submit Claims</p>

1 2 3	November 13, 2023 [7 Days after Claims Deadline]	Deadline for Settlement Administrator to provide Class Counsel with a declaration that Class Notice has been disseminated, identifying the number of Requests for Exclusion, and the number of Claims received to date.
4 5 6	January 12, 2024 [no later than 14 Days Before the Final Approval Hearing]	Deadline for Defendant to file a Declaration with the Court affirming that it has provided notice pursuant to CAFA.
7 8 9	January 12, 2024 [no later than 14 Days Before the Final Approval Hearing]	Deadline to file Motion and Memorandum in Support of Final Approval, including responses to any Objections.
10 11 12	February 2, 2024, at 10 a.m. [Not earlier than 100 Days after Notice Deadline]	Final Approval Hearing

13 19. The Agreement and any and all negotiations, documents, and discussions
14 associated with it, will not be deemed or construed to be an admission or evidence of any
15 violation of any statute, law, rule, regulation, or principle of common law or equity, or of any
16 liability or wrongdoing, by McGrath, or the truth of any of the claims, and evidence relating to the
17 Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the
18 Action or in any other action or proceeding, except for purposes of demonstrating, describing,
19 implementing, or enforcing the terms and conditions of the Agreement, this Order, and the
20 Judgment.

21 20. If the Settlement is not approved or consummated for any reason whatsoever, the
22 Settlement and all proceedings in connection with the Settlement will be without prejudice to the
23 right of McGrath or the Settlement Class Representative to assert any right or position that could
24 have been asserted if the Agreement had never been reached or proposed to the Court. In such an
25 event, (i) the Parties will return to the status quo ante in the Action and the certification of the
26 Settlement Class will be deemed vacated, and (ii) the Settlement Agreement and this Order shall
27 become void and shall have no further force or effect. The certification of the Settlement Class
28

1 for settlement purposes, or any briefing or materials submitted seeking certification of the
2 Settlement Class, will not be considered in connection with any subsequent class certification
3 decision.

4 21. Pending the final determination of whether the Settlement should be approved,
5 each Settlement Class Member is hereby enjoined from filing any class action, individual action,
6 or attempting to amend an existing action to assert any claims which would be released pursuant
7 to the Settlement Agreement. If the Settlement is terminated or final approval does not for any
8 reason occur, the injunction will be immediately terminated.

9 22. Pursuant to the Agreement, the Parties have requested Kroll be designated as the
10 Notice and Claims Administrator (“Settlement Administrator”). The Court approves the
11 designation. The Settlement Administrator shall perform all the duties of the Settlement
12 Administrator as set forth in the Agreement and this Order.

13 23. Counsel are hereby authorized to use all reasonable procedures in connection with
14 approval and administration of the Settlement that are not materially inconsistent with this Order
15 or the Agreement, including making, without further approval of the Court, minor changes to the
16 form or content of the Class Notice and Claim Form, and other exhibits that they jointly agree are
17 reasonable and necessary. The Court reserves the right to approve the Agreement with such
18 modifications, if any, as may be agreed to by the Parties without further notice to the Settlement
19 Class Members.

20 **IT IS SO ORDERED.**

21 Dated: September 1, 2023

22

23


24

25

26

27

28


ALEX G. TSE
United States Magistrate Judge