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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

**Daniel Davila**, individually and on behalf  
of all similarly situated persons,

Plaintiff,

v.

**New Enchantment Group, LLC**,

Defendant.

No. CV-23-01098-PHX-SRB

**ORDER GRANTING PLAINTIFF’S  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Before the Court is Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement (Doc. 32) (the “Motion”), the Settlement Agreement between Plaintiff Daniel Davila and Defendant New Enchantment Group, LLC (“NEG” or “Defendant”) (including its exhibits), and the Declaration of Counsel in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement<sup>1</sup>

Having fully considered the issue; the Court hereby **GRANTS** the Motion and

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

1 **ORDERS** as follows:

2 1. **Class Certification for Settlement Purposes Only**. The Settlement  
3 Agreement provides for a Settlement Class defined as follows:  
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5 the 5,568 individuals identified by Defendant as having personally identifiable  
6 information compromised by the Data Breach and to whom Defendant provided  
7 written or substitute notice of the Data Breach on either February 28, 2023, or June  
8 6, 2023.

9 The Settlement Class shall not include Defendant or its parents, subsidiaries, divisions, or  
10 affiliates, or their respective successors or predecessors, or any entity in which Defendant  
11 or its parents has a controlling interest, or any of their current or former officers and  
12 directors; any judge providing over the Lawsuit and members of their families; persons  
13 who properly execute and file a timely request for exclusion from the Settlement Class;  
14 persons whose claims in this matter have been finally adjudicated on the merits or  
15 otherwise released; Plaintiff’s counsel, Class Counsel, and Defendant’s Counsel; and the  
16 legal representatives, successors, and assigns of any such excluded persons.  
17

18 Pursuant to Federal Rules of Civil Procedure 23(e)(1), the Court finds that giving  
19 notice is justified. The Court finds that it will likely be able to approve the proposed  
20 Settlement as fair, reasonable, and adequate. The Court also finds that it will likely be able  
21 to certify the Settlement Class for purposes of judgment on the Settlement because it meets  
22 all the requirements of Rule 23(a) and the requirements of Rule 23(b)(3). Specifically, the  
23 Court finds for settlement purposes that: (a) the Settlement Class is so numerous that  
24 joinder of all Settlement Class Members would be impracticable; (b) there are issues of  
25 law and fact that are common to the Settlement Class; (c) the claims of the Class  
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1 Representative are typical of and arise from the same operative facts and the Class  
2 Representative seeks similar relief as the claims of the Settlement Class Members; (d) the  
3 Class Representative will fairly and adequately protect the interests of the Settlement Class  
4 as the Class Representative has no interests antagonistic to or in conflict with the  
5 Settlement Class and has retained experienced and competent counsel to prosecute this  
6 Litigation on behalf of the Settlement Class; (e) questions of law or fact common to  
7 Settlement Class Members predominate over any questions affecting only individual  
8 members; and (f) a class action and class settlement is superior to other methods available  
9 for a fair and efficient resolution of this Litigation.  
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13 2. **Settlement Class Representative and Settlement Class Counsel.** The  
14 Court finds that Plaintiff will likely satisfy the requirements of Rule 23(e)(2)(A) and should  
15 be appointed as the Class Representative. Additionally, the Court finds that William B.  
16 Federman and Kennedy M. Brian of Federman & Sherwood will likely satisfy the  
17 requirements of Rule 23(e)(2)(A) and should be appointed as Class Counsel pursuant to  
18 Rule 23(g)(1).  
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21 3. **Preliminary Settlement Approval.** Upon preliminary review, the Court  
22 finds the Settlement is fair, reasonable, and adequate to warrant providing notice of the  
23 Settlement to the Settlement Class and accordingly is preliminarily approved. In making  
24 this determination, the Court has considered the monetary and non-monetary benefits  
25 provided to the Settlement Class through the Settlement, the specific risks faced by the  
26 Settlement Class in prevailing on their claims, the good faith, arms' length negotiations  
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1 between the Parties and absence of any collusion in the Settlement, the effectiveness of the  
2 proposed method for distributing relief to the Settlement Class, the proposed manner of  
3 allocating benefits to Settlement Class Members, the Settlement treats the Settlement Class  
4 Members equitably, and all of the other factors required by Rule 23 and relevant case law.  
5

6 4. **Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C.  
7 § 1332(d)(2) and personal jurisdiction over the parties before it. Additionally, venue is  
8 proper in this District pursuant to 28 U.S.C. § 1391(b).  
9

10 5. **Final Approval Hearing.** A Final Approval Hearing shall be held on **March**  
11 **13, 2025 at 11:00 a.m.**, Courtroom 502, 401 W. Washington St., Phoenix, AZ 85003,  
12 where the Court will determine, among other things, whether: (a) this Action should be  
13 finally certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a)  
14 and (b)(3); (b) the Settlement should be approved as fair, reasonable, and adequate, and  
15 finally approved pursuant to Fed. R. Civ. P. 23(e); (c) this Action should be dismissed with  
16 prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class  
17 Members (who have not timely and validly excluded themselves from the Settlement)  
18 should be bound by the releases set forth in the Settlement Agreement; (e) the application  
19 of Class Counsel for an award of Attorneys' Fees, Costs, and Expenses should be approved  
20 pursuant to Fed. R. Civ. P. 23(h); and (f) the application of the Class Representative for a  
21 Service Award should be approved.  
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26 6. **Settlement Administrator.** The Court appoints A.B. Data as the Settlement  
27 Administrator, with responsibility for class notice and settlement administration. The  
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1 Settlement Administrator is directed to perform all tasks the Settlement Agreement  
2 requires. The Settlement Administrator’s fees will be paid pursuant to the terms of the  
3 Settlement Agreement.  
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5 7. **Notice**. The proposed notice program set forth in the Settlement Agreement  
6 and the Notices and Claim Form attached to the Settlement Agreement as **Exhibits 1, 2, 3,**  
7 **and 4** are hereby approved. Non-material modifications to these Exhibits may be made by  
8 the Settlement Administrator in consultation and agreement with the Parties, but without  
9 further order of the Court.  
10

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

2 The Settlement Administrator is directed to carry out the Notice program in  
3 conformance with the Settlement Agreement.  
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5 9. **Class Action Fairness Act Notice.** Within ten (10) days after the filing of  
6 this Settlement Agreement with the Court, the Settlement Administrator acting on behalf  
7 of Defendant shall have served or caused to be served a notice of the proposed Settlement  
8 on appropriate officials in accordance with the requirements under the Class Action  
9 Fairness Act (“CAFA”), 28 U.S.C. § 1715(b).  
10

11 10. **Exclusion from Class.** Any Settlement Class Member who wishes to be  
12 excluded from the Settlement Class must individually sign and timely submit written notice  
13 of such intent to the designated Post Office box established by the Settlement Administrator  
14 in the manner provided in the Notice. The written notice must clearly manifest a Person’s  
15 intent to be excluded from the Settlement Class. To be effective, such requests for  
16 exclusion must be postmarked no later than the Opt-Out Date, which is no later than forty-  
17 five (45) days after the Notice Deadline, as stated in the Notice.  
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20 The Settlement Administrator shall promptly furnish to Class Counsel and to  
21 Defendant’s counsel a complete list of all timely and valid requests for exclusion (the “Opt-  
22 Out List”).  
23

24 If a Final Order and Judgment is entered, all Persons falling within the definition of  
25 the Settlement Class who do not request to be excluded from the Settlement Class shall be  
26 bound by the terms of this Settlement Agreement and the Final Order and Judgment. All  
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1 Persons who submit valid and timely notices of their intent to be excluded from the  
2 Settlement Class shall not receive any cash benefits of and/or be bound by the terms of the  
3 Settlement Agreement.  
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5 11. **Objections and Appearances.** A Settlement Class Member (who does not  
6 submit a timely written request for exclusion) desiring to object to the Settlement  
7 Agreement may submit a timely written notice of his or her objection by the Objection  
8 Date and as stated in the Notice. The Notice shall instruct Settlement Class Members who  
9 wish to object to the Settlement Agreement to send their written objections to the  
10 Settlement Administrator at the address indicated in the Postcard Notice and Long Notice.  
11 The Notice shall advise Settlement Class Members of the deadline for submission of any  
12 objections—the “Objection Date.” Any such notices of an intent to object to the Settlement  
13 Agreement must be written and must include all of the following: (i) the name of the  
14 proceedings; (ii) the Settlement Class Member’s full name, current mailing address, and  
15 telephone number; (iii) a statement of the specific grounds for the objection, as well as any  
16 documents supporting the objection; (iv) a statement as to whether the objection applies  
17 only to the objector, to a specific subset of the class, or to the entire class; (v) the identity  
18 of any attorneys representing the objector; (vi) a statement regarding whether the  
19 Settlement Class Member (or his/her attorney) intends to appear at the Final Approval  
20 Hearing; and (vii) the signature of the Settlement Class Member or the Settlement Class  
21 Member’s attorney.  
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27 Notwithstanding the foregoing, any Settlement Class Member who timely submits  
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1 a written notice of objection and attends the Final Approval Hearing may so state their  
2 objection at that time, subject to the Court’s approval.

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

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15 12. **Claims Process.** Settlement Class Counsel and Defendant have created a  
16 process for Settlement Class Members to claim benefits under the Settlement. The Court  
17 preliminarily approves this process and directs the Settlement Administrator to make the  
18 Claim Form or its substantial equivalent available to Settlement Class Members in the  
19 manner specified in the Notice.  
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22 The Settlement Administrator will be responsible for effectuating the claims  
23 process. Settlement Class Members who qualify for and wish to submit a Claim Form shall  
24 do so in accordance with the requirement and procedures specified in the Notice and the  
25 Claim Form. If the Final Order and Judgment is entered, all Settlement Class Members  
26 who qualify for any benefit under the Settlement but fail to submit a claim in accordance  
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1 with the requirements and procedures specified in the Notice and the Claim Form shall be  
2 forever barred from receiving any such benefit, but will in all other respects be subject to  
3 and bound by the provisions in the Final Order and Judgment, including the releases  
4 contained therein.  
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6 13. **Termination of Settlement.** This Preliminary Approval Order shall become  
7 null and void and shall be without prejudice to the rights of the Parties, all of whom shall  
8 be restored to their respective positions existing before the Court entered this Preliminary  
9 Approval Order and before they entered the Settlement Agreement, if (1) the Court does  
10 not issue the Preliminary Approval Order or Final Approval Order and Judgment; or (2)  
11 the Effective Date does not occur, the certification of the Settlement Class shall be void.  
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14 14. **Use of Order.** This Preliminary Approval Order shall be of no force or effect  
15 if the Final Order and Judgment is not entered or there is no Effective Date and shall not  
16 be construed or used as an admission, concession, or declaration by or against Defendant  
17 of any fault, wrongdoing, breach, or liability. Nor shall this Preliminary Approval Order  
18 be construed or used as an admission, concession, or declaration by or against the Class  
19 Representatives or any other Settlement Class Member that his or her claims lack merit or  
20 that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party  
21 of any defense or claims they may have in this Litigation or in any other lawsuit.  
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24 15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue  
25 the Final Fairness Hearing and related deadlines without further written notice to the  
26 Settlement Class. If the Court alters any of those dates or times, the revised dates and times  
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1 shall be posted on the Settlement Website maintained by the Settlement Administrator. The  
 2 Court may approve the Settlement, with such modifications as may be agreed upon by the  
 3 Parties, if appropriate, without further notice to the Settlement Class.  
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5 16. **Stay of Litigation.** All proceedings in the Action, other than those related to  
 6 approval of the Settlement Agreement, are hereby stayed. Further, any actions brought by  
 7 Settlement Class Members concerning the Released Claims are hereby enjoined and stayed  
 8 pending Final Approval of the Settlement Agreement.  
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10 17. **Schedule and Deadlines.** The Court orders the following schedule of dates  
 11 for the specified actions/further proceedings:  
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13 **SETTLEMENT TIMELINE**

Event	Deadline
NEG provides list of Settlement Class Members to the Settlement Administrator	30 days after entry of the Preliminary Approval Order
Settlement Administrator to Provide CAFA Notice Required by 28 U.S.C. § 1715(b)	Within 10 days of filing of the Preliminary Approval Motion
Notice Date	45 days after the entry of the Preliminary Approval Order
Notice on Defendant's Website	No later than the Notice Deadline for a period of 60 days.


1 2 3 4 5 6	Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	14 days before the Objection and Opt-Out Deadlines
7	Objection Deadline	45 days after the Notice Deadline
8 9	Opt-Out Deadline	45 days after the Notice Deadline
10	Claims Deadline	60 days after the Notice Deadline
11 12 13 14	Final Approval Hearing	March 13, 2025 at 11:00 a.m. (at least 120 days after entry of the Preliminary Approval Order)
15 16	Motion for Final Approval	14 days before the Final Approval Hearing
17 18 19 20 21 22 23 24 25 26 27	Effective Date	one (1) business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order and Judgment or one (1) business day following entry of the Final Approval Order and Judgment if no parties have standing to appeal and no objections have been filed to the Agreement; or (ii) if any appeal, petition, request for rehearing, or other review has been filed, one (1) business day after the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other

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	appeal, petition, rehearing, or other review is pending, and the time for further appeals, petitions, requests for rehearing, or other review has expired.
Payment of Attorneys' Fees and Expenses Class Representative Service Award	21 days after the Effective Date

Dated this 29th day of October, 2024.

  
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Susan R. Bolton  
United States District Judge