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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

11 IN RE ZAPPOS SECURITY BREACH
12 LITIGATION

MDL No. 2357

Case No. 3:12-CV-00325-RJC-VPC

13 -----
14 THIS DOCUMENT RELATES TO ALL
15 ACTIONS

16
17 **PLAINTIFFS' MOTION FOR FINAL APPROVAL**
18 **OF CLASS ACTION SETTLEMENT AGREEMENT**
19 **AND INCORPORATED MEMORANDUM OF POINTS AND AUTHORITIES**
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MEMORANDUM OF POINTS AND AUTHORITIES

1
2 Plaintiffs Dahlia Habashy (also known as Dahlia Bonzagni), Emily E. Braxton, Patti
3 Hasner, Stephanie Preira (also known as Stephanie Huppert), Robert Ree, Denise Relethford,
4 Shari Simon, Theresa D. Stevens, and Katharine Vorhoff (collectively, “Plaintiffs”), individually
5 and on behalf of the Settlement Class (as defined in the Settlement Agreement and stated
6 below),¹ by and through Co-Lead Settlement Class Counsel, respectfully submit this
7 memorandum of points and authorities in support of Plaintiffs’ Motion for Final Approval of
8 Class Action Settlement Agreement.

9 The Settlement resolves this more than seven-year-old multidistrict litigation by
10 providing valuable relief to millions of Settlement Class Members in the form of a 10% Discount
11 Code usable on a single order of goods purchased from Zappos.com or the Zappos.com mobile
12 app. The Discount Codes are transferable via gift or sale to others for personal use, stackable
13 with other discounts and sales offered by Zappos, and there are no caps on the number or value
14 of goods that may be included in the order to which the Discount Code is applied.² After
15 briefing and a hearing, the Court granted preliminary approval of the Settlement on September
16 19, 2019. *See* Preliminary Approval Order, D.E. #335.

17 The Court-approved notice program has been highly effective. Direct notice of the
18 Settlement was successfully emailed to more than 12,878,922 email inboxes identified by
19 Zappos and a Settlement website and toll-free number were established. Zappos is scheduled to
20 send a follow-up email to Settlement Class Members between November 15th and November
21 30th, reminding Settlement Class Members of the availability of the Discount Codes, advising
22 them that the Discount Codes are stackable with other discounts, and directing Settlement Class
23

24 ¹ The definitions contained in the Settlement Agreement are incorporated herein by reference.

25 ² Although the Settlement Agreement does not require the Discount Codes to be stackable with
26 other discounts, Zappos has advised Co-Lead Settlement Class Counsel that since the beginning
27 of implementation of the Settlement, Zappos has voluntarily made the Discount Codes stackable
28 with other discounts and that it will continue to do so.

1 Members to the Settlement website for additional information. Zappos has also advised Co-Lead
2 Settlement Class Counsel that it intends to send a second follow-up email in December 2019.

3 Settlement Class Members' reaction to the Settlement has been positive. Discount Codes
4 were emailed to Settlement Class Members between October 15, 2019 and October 21, 2019,
5 and Settlement Class Members have until 11:59 p.m. PT on December 31, 2019, to redeem the
6 codes. As of November 7, 2019, more than 110,000 Discount Codes have been redeemed,
7 resulting in a redemption value of approximately \$1,547,640, and an average redemption value
8 of \$13.94. Additionally, out of the more than 17 million estimated Settlement Class Members,
9 only 92 opt-out requests and 31 objections have been received.³ The Settlement is fair,
10 reasonable, and adequate, and should be granted final approval.

11 **BACKGROUND**

12 The Settlement was reached after more than seven years of contested litigation,
13 significant investigation and analysis, extensive and contested discovery, an appeal to the Ninth
14 Circuit Court of Appeals, and briefing a petition for writ of certiorari to the Supreme Court of the
15 United States.

16 **I. The Litigation**

17 On January 16, 2012, Zappos announced that a criminal or group of criminals had gained
18 unauthorized access to its network and the personal information of millions of its customers,
19 including their names, email addresses, billing and shipping addresses, the last four digits of their
20 credit card numbers, and their cryptographically scrambled passwords (the "Data Breach").

21 _____
22 ³ Opt-out requests and objections to the Settlement must be postmarked no later than November
23 29, 2019. In addition to the 22 objections on file with the Court, Co-Lead Settlement Class
24 Counsel have received 9 objections that are not on file with the Court. It is possible that certain
25 of these objections will be filed with the Court at some point in the future. Plaintiffs will file a
26 reply brief addressing all objections to the Settlement no later than December 16, 2019. *See*
27 Preliminary Approval Order at 7. Although they view such objections to be invalid and in
28 violation of the terms of the Preliminary Approval Order, Plaintiffs will attach all objections
received by Co-Lead Settlement Class Counsel not on file with the Court as a group exhibit to
their reply brief. *See* Preliminary Approval Order at 7 (providing that all objections must be filed
with the Court).

1 Following announcement of the Data Breach, nine class action complaints asserting
2 various claims against Zappos were filed in federal courts located in Florida, Kentucky,
3 Massachusetts, and Nevada.⁴ On June 14, 2012, the Judicial Panel on Multidistrict Litigation
4 entered an order transferring each of the related actions to this Court for coordinated or
5 consolidated pretrial proceedings under 28 U.S.C. §1407. ECF 1. Later that same day, Zappos
6 moved to compel arbitration of all claims and to stay the litigation. ECF 3. After briefing and a
7 hearing on the matter, the Court denied Zappos's motion. ECF 21.

8 In early November 2012, two groups of plaintiffs in the MDL, the Kentucky/California
9 Plaintiffs and the Prieria Plaintiffs, filed Consolidated Class Action Complaints. ECF 58, 59.
10 Zappos responded by moving to dismiss both complaints. ECF 62. On September 9, 2013, the
11 Court entered an order recognizing the plaintiffs' Article III standing to assert their claims and
12 granting in part, and denying in part, Zappos's motion to dismiss for failure to state a claim. ECF
13 114.

14 On October 7, 2013, the Prieria Plaintiffs and the Kentucky/California Plaintiffs filed
15 Second Amended Consolidated Complaints. ECF 118–29. Zappos responded by moving to
16 dismiss the complaints and to strike the plaintiffs' prayers for punitive damages and restitution.
17 ECF 124. On June 18, 2014, the Parties stipulated to stay all proceedings pending the outcome of
18 a July 30, 2014 mediation before the Honorable Edward A. Infante (Ret.) of JAMS. ECF 192.
19 After that session ended, negotiations between the Parties continued for months with the
20 assistance of Judge Infante (Ret.), including additional mediation sessions occurring on
21

22
23 ⁴ *Richards v. Amazon.com, Inc.*, C.A. No. 6:12-00212 (M.D. Fla.), *St. Lawrence v. Zappos.com,*
24 *Inc.*, C.A. No. 0:12-60133 (S.D. Fla.), *Stevens v. Amazon.com, Inc.*, NO. 3:12-CV-00032 (W.D.
25 *Ky.*), *Penson v. Amazon.com, Inc.*, NO. 3:12-CV-00036 (W.D. Ky.), *Elliot v. Amazon.com, Inc.*,
26 NO. 3:12-CV-00037(W.D. Ky.), *Habashy v. Amazon.com, Inc.*, 1:12-CV-10145 (D. Mass.),
27 *Prieria v. Zappos.com, Inc.*, NO. 2:12-C-00182 (D. Nev.), *Simon v. Amazon.com, Inc.*, No. 2:12-
28 CV-00232 (D. Nev.), and *Ree v. Amazon.com, Inc., dba Zappos.com*, No. 3:12-CV-00072 (D.
Nev.). On July 16, 2012, an additional related action, *Nobles v. Zappos.com, Inc.*, initially filed
in the United States District Court for the Northern District of California, was transferred into
this MDL.

1 November 12, 2014, and November 21, 2014. Despite these extensive efforts, the Parties were
2 unable to reach agreement on all terms of a settlement.

3 After settlement negotiations broke down, Zappos re-filed its motion to dismiss the
4 plaintiffs' Second Amended Consolidated Complaints and its motion to strike the plaintiffs' class
5 allegations. ECF 217, 219. On June 1, 2015, the Court held that the plaintiffs lacked Article III
6 standing to pursue their claims and dismissed their claims with leave to amend to allege
7 instances of actual identity theft or fraud. ECF 235.

8 On September 28, 2015, Plaintiffs filed the Third Amended Consolidated Class Action
9 Complaint ("TAC"). ECF 245. The TAC alleged claims against Zappos on behalf of fourteen
10 named plaintiffs, including two individuals alleging having suffered actual identity theft or fraud
11 as a result of the Data Breach. ECF 245. Zappos responded by moving to dismiss the TAC and to
12 strike Plaintiffs' class allegations. ECF 254, 255. On May 6, 2016, the Court dismissed all
13 plaintiffs not alleging identity theft or identity fraud for lack of standing, held that the two
14 plaintiffs alleging identity theft or fraud had standing to bring their claims, granted in part, and
15 denied in part, Zappos's motion to dismiss such plaintiffs' claims for failure to state a claim for
16 relief, and granted Zappos's motion to strike the plaintiffs' class allegations. ECF 280. On
17 August 29, 2019, the Court substantially denied Plaintiffs' motion for reconsideration of the May
18 6, 2016 Order. ECF 289.

19 On September 12, 2016, the Parties stipulated to the voluntary dismissal with prejudice of
20 all remaining claims in the litigation, allowing Plaintiffs to appeal the Court's rulings on Article
21 III Standing to the United States Court of Appeals for the Ninth Circuit. ECF 288. The Court
22 granted the Parties' stipulation the next day. ECF 289.

23 After full briefing and oral argument, the Ninth Circuit Court of Appeals recognized
24 Plaintiffs' Article III Standing to assert their claims against Zappos relating to the Data Breach,
25 reversing the Court's May 6, 2016 Order. ECF 298, 301. On July 6, 2018, the Ninth Circuit
26 Court of Appeals granted Zappos's request to stay issuance of its mandate until final disposition
27 of its petition for writ of certiorari by the Supreme Court of the United States. ECF 308.

1 On August 20, 2018, Zappos filed its petition for writ of certiorari seeking review and
2 reversal of the Ninth Circuit's decision. Plaintiffs' brief in opposition to Zappos's petition was
3 submitted on November 8, 2018, and Zappos's reply brief was filed on November 19, 2018. On
4 March 25, 2019, the Supreme Court denied Zappos's petition for a writ of certiorari.

5 Following entry of the Ninth Circuit's mandate, the Parties renewed their settlement
6 discussions. After months of additional negotiations, the Parties executed the Settlement
7 Agreement on September 11, 2019, and Plaintiffs moved for preliminary approval of the
8 Settlement the next day. ECF 331, 331-1. A preliminary approval hearing was held on
9 September 17, 2019, and the Court entered its Preliminary Approval Order on September 19,
10 2019. ECF 335. Since that time, Co-Lead Settlement Class Counsel have worked closely with
11 Zappos's counsel to effectuate the Settlement and bring as much value as possible to the
12 Settlement Class.

13 Discovery in this action was lengthy, complex, and at times contested. Plaintiffs served
14 and responded to written discovery and reviewed more than 160,000 pages of documents
15 produced by Zappos. After many meet and conferrals, Judge Cooke ordered both parties to retain
16 e-discovery experts to address the complex discovery issues in this litigation. Plaintiffs' counsel
17 also filed three motions to compel Zappos to produce additional materials.

18 **II. Summary of the Settlement**

19 **A. The Settlement Class**

20 In granting preliminary approval of the Settlement, the Court conditionally certified the
21 following Settlement Class for settlement purposes only:

22 All natural persons or legal entities who had a Zappos.com account at any time on
23 or prior to January 15, 2012, and for whom Zappos had an email address for the
account in its records at that time (the "Settlement Class").

24 Preliminary Approval Order ¶ 5; SA ¶ 32. The Settlement Class excludes: (a) individuals who
25 are or were during the Class Period officers or directors of Zappos or any of its subsidiaries or
26 affiliates; (b) any justice, judge, magistrate judge or law clerk of the Court, the United States
27
28

1 Court of Appeals for the Ninth Circuit or the United States Supreme Court; and (c) all
2 governmental entities. *Id.*

3 **B. Settlement Benefits**

4 In summary, the Settlement provides the following benefits:

5 **1. Discount Codes**

6 Settlement Class Members were emailed a Discount Code for 10% off an online purchase
7 of goods (exclusive of shipping costs and taxes) on Zappos.com or the Zappos.com app. SA ¶
8 II.A.1. The Discount Code is usable for a single order that may include multiple items or
9 premium products, subject to no caps on the value of goods purchased or the number of items
10 included in the concerned transaction. SA ¶ III.C.2. For price-reduced or sale goods, the 10%
11 discount will be calculated against the lowest price (*i.e.*, the reduced or sale price) and not the
12 original list price. SA ¶ III.C.2. Discount Codes are stackable with other discounts applied at the
13 time of sale, such as a military or school-teacher discount. A Settlement Class Member may
14 transfer a Discount Code via gift or sale to a Transferee who can use the code for personal use,
15 but the Transferee is prohibited from further transferring the Discount Code and no Transferee
16 may obtain more than five Discount Codes from Settlement Class Members. SA ¶ III.C.6.

17 Settlement Class Members have until 11:59 p.m. PT on December 31, 2019, to redeem
18 the Discount Codes. SA ¶ III.C.5. If, within thirty (30) days of their expiration, a Settlement
19 Class Member with an expired Discount Code presents reasonable proof in writing to the
20 Settlement Administrator that they were not able to use the Discount Code because of
21 hospitalization, serious illness, or military service, a Substitute Code will be provided to the
22 Settlement Class Member. SA ¶ III.C.7. Substitute Codes are not transferable and will only be
23 valid for sixty (60) days following the email transmission of the Substitute Code to the
24 Settlement Class Member. SA ¶ III.C.7.

25 **2. The Costs of Notice and Settlement Administration**

26 Under the Settlement, Zappos is responsible for paying all costs of Notice and Settlement
27 Administration. SA ¶ III.D.

3. Attorneys' Fees, Costs, and Representative Plaintiff Service Awards

Pursuant to the Settlement and subject to Court approval, Zappos agreed not to oppose Co-Lead Settlement Class Counsels' request for attorneys' fees and costs not to exceed \$1,597,500. SA ¶ III.G. Zappos also agreed not to oppose Plaintiffs' application for payment of a service award in the amount of \$2,500 to each Class Representative (\$22,500 total), subject to Court approval. SA ¶ III.G. The Parties did not discuss attorneys' fees, costs, or service awards until after the substantive elements of the Settlement were agreed upon. SA ¶ III.G. Additionally, the amounts of any awards of attorneys' fees, costs, and service awards awarded are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. SA ¶ III.G.

Pursuant to the Preliminary Approval Order and Fed. R. Civ. P. 23(h), Plaintiffs will file their Motion for Award of Attorneys' Fees, Costs, and Representative Plaintiff Service Awards on or before November 14, 2019, as that filing will be posted on the Settlement website as soon thereafter as is practicable.

III. The Court-Approved Notice Plan Was Substantial and Effective

Where a Class has been certified under Fed. R. Civ. P. 23(b)(3), such as the Settlement Class, "the [C]ourt must direct to class members the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2). Notice serves to "afford members of the class due process which, in the context of the Rule 23(b)(3) class action, guarantees them the opportunity to be excluded from the class action and not be bound by any subsequent judgment." *Peters v. Nat'l R.R. Passenger Corp.*, 966 F.2d 1483, 1486 (D.C. Cir. 1992) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173–74 (1974)). "[D]ue process requires reasonable effort to inform affected class members through individual notice, not receipt of individual notice." *Rannis v. Recchia*, 380 F. App'x 646, 650 (9th Cir. 2010).

The Court-approved Notice Program was extremely effective. The Notice Plan was implemented by Kurtzman Carson Consultants LLC ("KCC"), an experienced class action notice provider. As summarized herein and explained in the concurrently filed Perry Declaration,

1 Notice was provided in accordance with the Court-approved Notice Plan. Pursuant to the Notice
2 Plan, Email Notice was successfully delivered to 12,878,922 email addresses and a Settlement
3 website and toll-free number were established. Perry Decl. ¶ 4.

4 Between October 15, 2019 and October 21, 2019, KCC sent 17,641,787 Email Notices to
5 Settlement Class Members. Perry Decl. ¶ 4. Rather than send the Email Notices over a two-day
6 period, as initially contemplated, KCC sent the Email Notices over a six-day period in hourly
7 batches of 300,000, because its email provider raised concerns that sending such a large volume
8 of emails in a short period of time could result in emails being flagged as spam by email servers.
9 Perry Decl. ¶ 3. As of November 8, 2019, 12,878,922 Email Notices had been successfully
10 delivered to the intended recipients' inboxes. Perry Decl. ¶ 4.

11 On October 15, 2019, the Settlement website, www.zapposdatasettlement.com, went live.
12 Perry Decl ¶ 6. The Settlement website allows anyone interested in the Settlement to review the
13 Settlement Agreement, Plaintiffs' Motion for Preliminary Approval of Class Action Settlement,
14 Preliminary Approval Order, Email Notice, and Long-Form Notice. Perry Decl. ¶ 6. Plaintiffs'
15 Motion for Final Approval of Class Action Settlement and Incorporated Memorandum of Points
16 and Authorities, Plaintiffs' Motion for Award of Attorneys' Fees, Costs, and Class
17 Representative Service Awards, and Plaintiffs' Reply Brief in Support of Their Motion for Final
18 Approval will also be posted on the Settlement website after being filed with the Court. The
19 Settlement website also contains answers to frequently asked questions, contact information for
20 the Settlement Administrator, and a list of relevant deadlines. Perry Decl. ¶ 6. As of November 8,
21 2019, the Settlement website had received 38,103 visits. Perry Decl. ¶ 6.

22 On October 15, 2019, the Zappos settlement toll-free number was established. Perry
23 Decl. ¶ 5. By calling the toll-free number, persons interested in the Settlement can listen to
24 information about the case, information about the Settlement, and answers to frequently asked
25 questions in both English and Spanish. Perry Decl. ¶ 5. As of November 8, 2019, there had been
26 515 calls to the toll-free number. Perry Decl. ¶ 5.

1 The Notice Program, as designed and implemented, constitutes the best notice practicable
2 under the circumstances, complies with Fed. R. Civ. P. 23, and satisfies due process
3 requirements.

4 ARGUMENT

5 **I. Final Approval of the Settlement is Warranted**

6 A class action settlement may only be approved after a hearing and a finding that the
7 settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e). The Ninth Circuit Court of
8 Appeals has recognized that there is a “strong judicial policy that favors settlements, particularly
9 where complex class action litigation is concerned.” *In re Hyundai and Kia Fuel Economy Litig.*,
10 926 F.3d 539, 556 (9th Cir. 2019) (en banc) (citation omitted). Courts favor settlement because
11 settlements benefit litigants by saving them the expense and uncertainties of trial, and also
12 benefit the judicial system by minimizing the devotion of public resources to disputes the parties
13 themselves can resolve in a mutually agreeable fashion. *See In re Heritage Bond Litig.*, No. 02-
14 ML-1475 DT, 2005 WL 1594403, at *2 (C.D. Cal. June 10, 2005).

15 Courts in this Circuit balance the following eight factors in determining whether a
16 proposed settlement is fair, reasonable, and adequate: (1) the strength of the plaintiffs’ case; (2)
17 the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining
18 class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of
19 discovery completed and the stage of the proceedings; and (6) the experience and views of
20 counsel; (7) the presence of a governmental participant; and (8) class members’ reaction to the
21 settlement (the “*Hanlon* factors”). *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir.
22 1998), *overruled on other grounds*; *see also In re Wirsbo Non-F1807 YBFS*, No. 2:08-CV-1223,
23 2015 WL 13665077 (D. Nev. Oct. 26, 2015) (quoting *Churchill Village, L.L.C. v. General*
24 *Electric*, 361 F.3d 566, 575–76 (9th Cir. 2004) (applying the *Hanlon* factors). Moreover, Fed. R.
25 Civ. P. 23(e), as amended in December 2018, outlines the following factors for courts to consider
26 when determining whether to approve a settlement:
27
28

1 (A) the class representatives and class counsel have adequately represented the
2 class; (B) the proposal was negotiated at arm's length; (C) the relief provided for
3 the class is adequate, taking into account: (i) the costs, risks, and delay of trial and
4 appeal; (ii) the effectiveness of any proposed method of distributing relief to the
5 class, including the method of processing class-member claims; (iii) the terms of
6 any proposed award of attorney's fees, including timing of payment; and (iv) any
7 agreement required to be identified under Rule 23(e)(3); and (D) the proposal
8 treats class members equitably relative to each other.

9 Fed. R. Civ. P. 23(e)(2). The recently codified Rule 23(e) factors are not intended to displace the
10 *Hanlon* factors, but to “focus the court and the lawyers on the core concerns of procedure and
11 substance that should guide the decision whether to approve the [Settlement].” Fed. R. Civ. P.
12 23(e)(2) advisory committee's note to 2018 amendment.

13 Analysis of the Rule 23(e)(2) and *Hanlon* factors demonstrates that the Settlement is fair,
14 reasonable, and adequate, and should be granted final approval.

15 **A. The Settlement Was Negotiated at Arm's Length and the Settlement Class Is
16 Well Represented**

17 Rule 23(e)(2)(A) and (B) require consideration of whether “the class representatives and
18 class counsel have adequately represented the class” and whether “the proposal was negotiated at
19 arm's length.” Courts considering these factors look to class counsels' performance on behalf of
20 the class,” including whether class counsel had an adequate information base when negotiating
21 the Settlement, whether a neutral or court-affiliated mediator was involved in the settlement
22 negotiation process, and “treatment of any award of attorney's fees, with respect to both the
23 manner of negotiating the fee award and its terms.” Fed. R. Civ. P. 23 advisory committee's note
24 to 2018 amendments.

25 Co-Lead Settlement Class Counsel collectively have significant experience prosecuting
26 and successfully resolving noteworthy data breach class actions. ECF 331-2 (Barnow
27 Declaration, Exhibits A–D: Resumes of Co-Lead Settlement Class Counsel). They possess
28

1 extensive knowledge of applicable law and, in fact, have been actively involved in the
2 development of data breach jurisprudence over the course of the last decade.⁵

3 The Settlement was reached after years of hard-fought litigation and extensive discovery.
4 Prior to reaching the Settlement, Co-Lead Settlement Class Counsel were in possession of
5 Zappos's initial disclosures, written discovery responses, and more than 160,000 pages of
6 documents produced by Zappos. They had also filed three motions to compel to ensure they had
7 the facts needed to litigate this case. When negotiating the Settlement, Co-Lead Settlement Class
8 Counsel were well-versed in the legal claims at issue, the risks of this case, and the relevant
9 facts.

10 The Settlement is the product of extensive, arm's length negotiations conducted by
11 experienced counsel. The Parties engaged in months of intensive negotiations between July and
12 November 2014 assisted by a highly respected mediator, Judge Infante (Ret.), including three
13 mediation sessions. After those discussions did not result in an agreement, the Parties continued
14 to aggressively litigate the matter—a process that included briefing and arguing an appeal before
15 the Ninth Circuit Court of Appeals and briefing a petition for writ of certiorari to the Supreme
16 Court of the United States. During the summer of 2019, the Parties engaged in renewed
17 settlement discussions and, on September 11, 2019, executed the Settlement Agreement.
18 Although the renewed negotiations did not involve Judge Infante, the negotiations and mediation
19 sessions overseen by Judge Infante provided the framework for the relief provided to Settlement
20 Class Members under the Settlement.

21 Co-Lead Settlement Class Counsels' treatment of attorneys' fees confirms that the
22 Settlement Class is well represented. The Parties did not discuss attorneys' fees in connection
23 with the Settlement until after the substantive elements of the Settlement were agreed upon, and

24 ⁵ See, e.g., *In re Zappos, Inc., Customer Data Security Breach Litig.*, 888 F.3d 1020 (9th Cir.
25 2018); *Krottner v. Starbucks Corp.*, 628 F.3d 1139 (9th Cir. 2010); *Galaria v. Nationwide Mut.*
26 *Ins. Co.*, No. 18-3063/18-3064, 2018 WL 3472315 (6th Cir. 2018); *Dieffenbach v. Barnes &*
27 *Noble, Inc.*, 887 F.3d 826 (7th Cir. 2018); *In re Horizon Healthcare Servs. Inc. Data Breach*
28 *Litig.*, 846 F.3d 625 (3d Cir. 2017).

1 the Settlement expressly provides that attorneys' fees are intended to be considered by the Court
2 separately from the Court's consideration of the fairness, reasonableness, and adequacy of the
3 Settlement. SA ¶ III.G. Because the Settlement qualifies as a coupon settlement under the Class
4 Action Fairness Act, any award of attorney's fees will be based on the value of Discount Codes
5 redeemed by Settlement Class Members. Additionally, any attorneys' fees awarded by the Court
6 will be paid directly by Zappos and will not diminish Settlement Class members' recoveries
7 under the Settlement.

8 Co-Lead Settlement Class Counsels' experience, the extensive negotiations that went into
9 negotiating the Settlement (including the involvement of a respected mediator), and the treatment
10 of attorneys' fees demonstrate that the Settlement Class is well-represented.

11 **B. The Settlement Benefits Are Excellent Considering the Strength of Plaintiffs'**
12 **Case as Compared to the Risks, Complexity, and Likely Duration of Continued**
13 **Litigation**

14 "The court shall consider the vagaries of the litigation and compare the significance of
15 immediate recovery by way of compromise to the mere possibility of relief in the future, after
16 protracted and expensive litigation. In this respect, it has been held proper to take the bird in
17 hand instead of a prospective flock in the bush." *Grant v. Capital Mgmt. Servs., L.P.*, No. 10-
18 CV-WQH BGS, 2014 WL 888665, at *3 (S.D. Cal. Mar. 5, 2014) (citations and quotations
19 omitted). "There are weighty justifications, such as the reduction of litigation and related
20 expenses, for the general policy favoring the settlement of litigation." *Weinberger v. Kendrick*,
21 698 F.2d 61, 73 (2d Cir. 1982); *see also In re Sunrise Sec. Litig.*, 131 F.R.D. 450, 455 (E.D. Pa.
22 1990) (approving a class action settlement because, in part, the settlement "will alleviate . . . the
23 extraordinary complexity, expense and likely duration of this litigation").

24 The risks of continued litigation weighed against the significant and immediate benefits
25 provided for by the Settlement support its approval. Plaintiffs and Co-Lead Settlement Class
26 Counsel believe the claims asserted in the Litigation have merit. They would not have fought so
27 hard over more than seven years to advance their claims if it were otherwise. But they also
28

1 recognize the substantial risks involved in continuing to litigate this matter. Zappos has
2 aggressively maintained its position regarding class certification, liability, and damages—it
3 believes a class would not be certified, that it would prevail on liability, and that Plaintiffs would
4 be unable to prove damages at trial. Zappos has also demonstrated it has the resources and
5 willingness to remain steadfast in its position until it exhausts all available avenues and
6 procedures.

7 While Co-Lead Settlement Class Counsel disagree with Zappos’s views, they are mindful
8 of the inherent problems of proof and possible defenses to the claims asserted in the litigation.
9 They also recognize the difficulties in establishing liability on a class-wide basis through
10 summary judgment or trial and in achieving a result better than that offered by the Settlement
11 here. *See Fulton-Green v. Accolade, Inc.*, No. 18-274, 2019 WL 4677954, at *4 (E.D. Pa. Sept.
12 24, 2019) (recognizing in granting final approval to a data breach class action settlement that
13 “[t]his is a complex case in a risky field of litigation because data breach class actions are
14 uncertain and class certification is rare”).

15 Prosecuting this litigation through trial and appeal would be lengthy, complex, and costly
16 to all parties. *See, e.g., In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174
17 (S.D.N.Y. 2000) (recognizing that “[m]ost class actions are inherently complex and settlement
18 avoids the costs, delays, and multitude of other problems associated with them”). Continued
19 proceedings necessary to litigate this matter to final judgment would likely include substantial
20 motion practice, continued fact discovery, class certification proceedings, further dispositive
21 motions and, of course, a trial and appeal(s). Given the complex nature of the Data Breach, a
22 battle of the experts at trial is almost a certainty and, as such, continued proceedings would likely
23 include costly expert discovery and significant related motion practice. Also, considering the size
24 of the Settlement Class and the amount of money at stake, any decision on the merits would
25 likely be appealed, causing further delay.

26 The Settlement, in contrast, delivers a timely and significant remedy to Settlement Class
27 Members without the risks and delay inherent in further litigation. The Discount Codes emailed
28

1 to Settlement Class Members are usable for 10% off a purchase of goods from Zappos.com or
2 the Zappos.com app, subject to no monetary caps or limitations on the number of items included
3 in a purchase order. They are also transferable via gift or sale for personal use and stackable with
4 other discounts or sales. As of November 7, 2019, more than 110,000 Discount Codes had
5 already been used on the purchase of goods, resulting in a redemption value to Settlement Class
6 Members of \$1,547,640 and an average redemption value of \$13.94. Settlement Class Members
7 have until 11:59 p.m. PT on December 31, 2019, to redeem the Discount Codes and it is
8 anticipated that the collective redemption value of Discount Codes used by Settlement Class
9 Members will continue to increase during the next seven plus weeks.

10 The Settlement represents an excellent result for the Settlement Class, considering the
11 significant and timely benefits provided for by the Settlement, as compared to the risks, delay,
12 and expense of continued litigation. *Chambers v. Whirlpool Corp.*, No. CV111733FMOJCGX,
13 2016 WL 5922456, at *6 (C.D. Cal. Oct. 11, 2016) (“The very essence of a settlement is
14 compromise, a yielding of absolutes and an abandoning of highest hopes.”)

15 **C. Experienced Counsel Recommend Approval of the Settlement**

16 “Great weight is accorded to the recommendation of counsel, who are most closely
17 acquainted with the facts of the underlying litigation . . . because parties represented by
18 competent counsel are better positioned than courts to produce a settlement that fairly reflects
19 each party’s expected outcome in the litigation.” *Whirlpool*, 2016 WL 5922456, at *7 (quoting
20 *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 528)); *see also Rodriguez v. W. Publ’g Corp.*, 563
21 F.3d 948, 697 (9th Cir. 2009) (“Parties represented by competent counsel are better positioned
22 than courts to produce a settlement that fairly reflects each party’s outcome in litigation.”).

23 Co-Lead Settlement Class Counsel are experienced data breach class action attorneys.
24 They, along with counsel for Zappos, believe the Settlement is fair, reasonable, and adequate.
25 This factor supports final approval of the Settlement.

1 **C. Effectiveness of Distributing Relief to Settlement Class Members**

2 Rule 23(e)(2)(C)(ii) requires consideration of “the effectiveness of any proposed method
3 of distributing relief to the class, including the method of processing class-member claims.” For
4 this provision, the advisory committee’s notes instruct:

5 Often it will be important for the court to scrutinize the method of claims
6 processing to ensure that it facilitates filing legitimate claims. A claims processing
7 method should deter or defeat unjustified claims, but the court should be alert to
8 whether the claims process is unduly demanding.

9 Fed. R. Civ. P. 23 advisory committee’s note to 2018 amendments. The Discount Codes
10 provided under the Settlement are immediately usable and transferable at Settlement Class
11 Members’ election. Because the Settlement does not involve a claims process, the concerns
12 underlying this provision are not present, rendering this factor neutral.

13 **D. The Terms of the Proposed Award of Attorneys’ Fees**

14 Rule 23(e)(2)(C)(ii) requires consideration of “the terms of any proposed award of
15 attorney’s fees, including timing of payment.” The Rule 23 advisory committee notes for this
16 provision explain:

17 Examination of the attorney-fee provisions may also be valuable in assessing the
18 fairness of the proposed settlement. Ultimately, any award of attorney’s fees must
19 be evaluated under Rule 23(h), and no rigid limits exist for such awards.
20 Nonetheless, the relief actually delivered to the class can be a significant factor in
21 determining the appropriate fee award.

22 Fed. R. Civ. P. 23(e) advisory committee notes to 2018 amendments.

23 The terms of the proposed attorney’s fee award are consistent with class action best
24 practices. The Parties did not discuss attorneys’ fees, costs, or service awards until after the
25 substantive elements of the Settlement were agreed upon. SA ¶ III.G. Additionally, the amounts
26 of any awards of attorneys’ fees, costs, and service awards are intended to be considered by the
27 Court separately from the Court’s consideration of the fairness, reasonableness, and adequacy of
28 the Settlement. SA ¶ III.G.

 There is no quick-pay provision in the Settlement. Rather, the Settlement provides that
Zappos will pay attorneys’ fees, costs, and service awards awarded by the Court by the later of:

1 (1) the Effective Date; or (2) 30 days after the Court’s award of attorney’s fees, costs, and
2 service awards, if any, has become final for all purposes with no possibility of appellate or
3 certiorari review. SA ¶ III.G. Additionally, as explained above and consistent with the
4 requirements of CAFA, Plaintiffs’ request for an award of attorney’s fees will be based on the
5 value of Discount Codes redeemed by Settlement Class Members.

6 Pursuant to the Preliminary Approval Order and Fed. R. Civ. P. 23(h), Plaintiffs’ Motion
7 for Award of Attorneys’ Fees, Costs, and Representative Plaintiff Service Awards will be filed
8 no later than November 14, 2019, and posted on the Settlement website soon thereafter. This
9 factor further demonstrates that the Settlement is fair, reasonable, and adequate.

10 **E. The Parties’ Agreements**

11 Rule 23(e)(3) provides that “parties seeking approval must file a statement identifying
12 any agreement made in connection with the proposal.” No side agreements were entered into in
13 connection with the Settlement.

14 **F. Equitable Treatment of Settlement Class Members**

15 The Settlement treats all Settlement Class Members equitably, because all Settlement
16 Class Members were eligible to receive the Discount Codes provided for by the Settlement. This
17 factor supports approval of the Settlement.

18 **G. Settlement Class Members’ Reaction to the Settlement**

19 Settlement Class Members’ reaction to the Settlement has been positive. With more than
20 seven weeks remaining before the Discount Codes expire, more than 110,000 Discount Codes
21 have already been redeemed, resulting in a redemption value of \$1,547,640, and an average
22 redemption value of \$13.94. Additionally, out of a Settlement Class estimated to include more
23 than 17 million members, only 92 opt-out requests and 31 objections have yet been received,
24 with three weeks remaining for Settlement Class members to request exclusion from or object to
25
26
27
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1 the Settlement.⁶ The number and value of Discount Codes redeemed, combined with the fact that
2 nowhere close to 1/100 of one percent of all Settlement Class Members have requested exclusion
3 from or objected to the Settlement support that the Settlement is fair, reasonable, and adequate,
4 and should be granted final approval.

5 **II. The Settlement Class Should be Certified for Settlement Purposes Only**

6 “The ultimate decision to certify the class for purposes of settlement cannot be made until
7 the hearing on final approval of the proposed settlement.” Fed. R. Civ. P. 23 advisory committee
8 notes to 2018 amendments.

9 The Court’s Preliminary Approval Order conditionally certified the Settlement Class for
10 settlement purposes only. Nothing relevant to the certification analysis has changed. The
11 requirements of Rule 23(a) and 23(b)(3) are satisfied, and the Settlement Class should be
12 certified for settlement purposes only.

13 **A. The Requirements of Rule 23(a) Are Satisfied**

14 **1. Numerosity**

15 Rule 23(a)(1) requires that a class be “so numerous that joinder of all members is
16 impracticable.” Fed. R. Civ. P. 23(a)(1). Joinder is generally considered impracticable when a
17 class includes forty or more individuals. *Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir.
18 2010). The Settlement Class is estimated to include over 17 million individuals. Perry Decl. ¶ 4.
19 Joinder of all Settlement Class Members in a single proceeding is both impracticable and
20 improbable. The numerosity requirement is satisfied.

21 **2. Commonality**

22 Rule 23(a)(2) requires the existence of a question of law or fact that is common to all
23 class members and capable of class-wide resolution, the determination of which is central to the
24 validity of all Settlement Class Members’ claims. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338,
25 _____

26 ⁶ Plaintiffs will respond to all objections to the Settlement in their reply brief in support of final
27 approval filed on or before December 16, 2019.

1 350 (2011). “All questions of fact and law need not be common to satisfy the [commonality
2 requirement]. The existence of shared legal issues with divergent factual predicates is sufficient,
3 as is a common core of salient facts coupled with disparate legal remedies within the class.”
4 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

5 Several questions of law and fact common to all Settlement Class Members exist in this
6 litigation, including: whether Zappos failed to adopt and maintain reasonable and industry-
7 standard security measures to protect and secure Settlement Class Members’ PII, whether
8 Zappos omitted material information regarding the security of Zappos.com, whether Zappos
9 misrepresented that it used reasonable measures to protect the confidentiality, security, and
10 integrity of the PII collected from its customers, whether Settlement Class members were
11 damaged as a result of criminals accessing their PII, and whether Plaintiffs and the other
12 Settlement Class Members are entitled to actual, statutory, and other forms of damages and
13 monetary relief.

14 Rule 23(a)(2)’s commonality requirement is satisfied.

15 **3. Typicality**

16 The focus of Rule 23(a)(3)’s typicality requirement “is whether other members have the
17 same or similar injury, whether the action is based on conduct which is not unique to the named
18 plaintiffs, and whether other class members have been injured by the same course of conduct.”
19 *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir. 2012).

20 Plaintiffs’ claims are typical of the claims of the other Settlement Class Members.
21 Plaintiffs’ and the other Settlement Class Members’ claims and injuries arise from substantially
22 the same conduct, and Plaintiffs advance the same claims and legal theories on behalf of
23 themselves and the Settlement Class. Plaintiffs also are not aware of any defenses available to
24 Zappos that would be unique to Plaintiffs. Thus, the typicality requirement is satisfied.

25 **4. Adequacy**

26 Rule 23(a)(4) requires that representative plaintiffs and class counsel adequately
27 represent the interests of the class. Fed. R. Civ. P. 23(a)(4). When analyzing adequacy, courts
28

1 ask: “(1) do the named plaintiffs and their counsel have any conflicts of interest with other class
2 members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on
3 behalf of the class?” *Evon*, 688 F.3d at 1031 (quoting *Hanlon*, 150 F.3d at 1020)).

4 Plaintiffs’ interests are aligned with, and do not conflict with, the interests of the
5 Settlement Class. Plaintiffs have actively participated in the Litigation, including responding to
6 written discovery. Additionally, Co-Lead Settlement Class Counsel have significant experience
7 prosecuting complex class actions, such as this matter, and are well-qualified to represent the
8 interests of the Settlement Class. Co-Lead Settlement Class Counsel have and will continue to
9 vigorously prosecute this matter on behalf of the Settlement Class. The adequacy requirement is
10 satisfied.

11 **B. The Requirements of Rule 23(b)(3) Are Satisfied**

12 **1. Predominance**

13 Rule 23(b)(3)’s predominance element requires that “questions of law or fact common to
14 class members predominate over any questions affecting only individual members.” Fed. R. Civ.
15 P. 23(b)(3). The predominance inquiry focuses on whether a proposed class is “sufficiently
16 cohesive to warrant adjudication by representation.” *Wolin v. Jaguar Land Rover N. Am., LLC*,
17 617 F.3d 1168, 1172 (9th Cir. 2010). “Predominance is not, however, a matter of nose-counting.
18 Rather, more important questions apt to drive the resolution of the litigation are given more
19 weight in the predominance analysis over individualized questions which are of considerably less
20 significance to the claims of the class.” *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d at 557
21 (quotations omitted). “When common questions present a significant aspect of the case and they
22 can be resolved for all members of the class in a single adjudication, there is clear justification
23 for handling the dispute on a representative rather than on an individual basis.” *Local Joint Exec.*
24 *Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir.
25 2001).

26 As noted above, several questions of law and fact common to all members of the
27 Settlement Class exist in this litigation. These common questions predominate over any potential
28

1 questions affecting only individual Settlement Class Members. The predominance element is
2 satisfied.

3 **2. Superiority**

4 Rule 23(b)(3) requires a class action to be “superior to other available methods for the
5 fair and efficient adjudication of the controversy.” The manageability concerns present when a
6 court certifies a class for litigation purposes are not present when a class is certified for
7 settlement purposes, because the case is not to be tried. *Amchem Prods., Inc. v. Windsor*, 521
8 U.S. 591, 621 (1997). “[A] class action has to be unwieldy indeed before it can be pronounced an
9 inferior alternative—no matter how massive the fraud or other wrongdoing that will go
10 unpunished if class treatment is denied—to no litigation at all.” *Carnegie v. Household Int’l Inc.*,
11 376 F.3d 656, 661 (7th Cir. 2004).

12 A class action is superior to other available means for the fair and efficient adjudication
13 of this controversy. The damages, harm, and other detriment suffered by Settlement Class
14 Members are relatively small compared to the burden and expense that would be required to
15 individually litigate their claims against Zappos, making it impracticable for Settlement Class
16 Members to individually bring actions against Zappos. Even if Settlement Class Members could
17 afford individual litigation, the court system should not be required to bear the burden and
18 expense of such inefficiency. Individualized litigation would also create the potential for
19 inconsistent or contradictory judgments and increase the delay and expense to all parties and the
20 court system. By contrast, the class action device provides the benefits of a single adjudication,
21 economy of scale, and comprehensive supervision by a single court. The requirements of Rule 23
22 are satisfied and certification of the Settlement Class for settlement purposes is appropriate.

23 **CONCLUSION**

24 As the foregoing demonstrates, the Settlement is fair, reasonable, and adequate, and
25 satisfies the standard for final approval. Therefore, Plaintiffs, individually and on behalf of the
26 Settlement Class, by and through Co-Lead Settlement Class Counsel, respectfully pray that this
27 Honorable Court enter an Order:

- 1 (1) Finding that the Settlement is fair, reasonable, and adequate, and granting final
2 approval to the Settlement;
3 (2) Certifying the Settlement Class for settlement purposes only; and
4 (3) Granting such other relief as the Court deems just and appropriate.

5 Dated: November 8, 2019

6 Respectfully submitted,

7 BARNOW AND ASSOCIATES, P.C.
8 BEN BARNOW (*pro hac vice*)
9 ERICH P. SCHORK (*pro hac vice*)

10 By: /s Ben Barnow
 BEN BARNOW

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22 *Other Plaintiffs' Counsel*

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List, and that I shall cause the foregoing document to be mailed via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

/s Ben Barnow

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

IN RE ZAPPOS SECURITY BREACH
LITIGATION

Case No. 3:12-CV-00325-RJC-
VPC

**DECLARATION OF ANDREW PERRY ON BEHALF OF SETTLEMENT
ADMINISTRATOR REGARDING ADMINISTRATION**

I, Andrew Perry declare:

1. I am employed as a Senior Project Manager by KCC Class Action Services (“KCC”), a nationally-recognized notice and claims administration firm located at 462 S. 4th Street, Louisville, KY 40202. KCC was retained as the Settlement Administrator in this case, and as the Senior Project Manager, I oversaw the administrative services provided. I submit this declaration regarding the *In Re Zappos Security Breach Litigation* settlement administration.

2. KCC received an initial class data file from Defense Counsel on October 1, 2019 containing 24,723,969 records of email addresses, name, and

Discount Codes. On October 18, 2019, KCC received an additional dataset containing 8,755 records. KCC identified and removed 857,637 duplicate records. On October 7, 2019, Defense Counsel provided a list containing 392,275 records they identified as fraudulent that were found in the previous datasets provided and KCC removed them from the dataset. The final Settlement Class Member dataset totaled 23,482,812 records. KCC caused the 23,482,812 email addresses to be cleansed and verified prior to the email blast to improve deliverability and 5,841,025 emails were excluded from the Email Notice table.

3. The initial notice plan indicated that Email Notice was to take place spanning two days beginning October 15, 2019 and completing October 16, 2019. KCC was informed by its email provider that this would limit deliverability of the email notice. Due to the large volume of emails being sent within a short time frame the Email Notice would potentially be flagged as spam by email servers. Upon approval from Class and Defense Counsels, KCC initiated the Notice Plan, by sending approximately 300,000 Email Notices per hour beginning October 15, 2019 and closing October 21, 2019. A true and correct copy of the Email Notice is attached hereto as Exhibit A.

4. Between October 15, 2019 and October 21, 2019, 17,641,787 Email Notices were sent to Settlement Class Members. Below is the approximate count of Email Notices sent per day.

- a. 964,759 Email Notices sent on October 15, 2019;
- b. 4,398,611 Email Notices sent on October 16, 2019;
- c. 4,721,101 Email Notices sent on October 17, 2019;
- d. 5,021,882 Email Notices sent on October 18, 2019;
- e. 2,535,434 Email Notices sent on October 21, 2019.

12,878,922 of the Email Notices were successfully delivered to the intended recipient inbox.

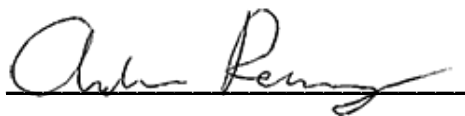
5. On October 15, 2019, the Zappos Data Breach Settlement telephone helpline (“Helpline”) went live at 1-855-263-1060. The Helpline provides information regarding the case and answers to frequently asked questions in both English and Spanish. As of November 8, 2019, the Helpline has received a total of 515 phone calls.

6. On October 15, 2019, the Settlement Website, located at www.zapposdatasettlement.com, went live. The Settlement Website allowed anyone interested in the Settlement to review the Email Notice, Long-Form Notice, Settlement Agreement, Motion for Preliminary Approval, Preliminary Approval

Order, and read answers to frequently asked questions and relevant deadlines. As of November 8, 2019, the Settlement Website has received a total of 38,103 visits.

7. The postmark deadline for Settlement Class Members to submit a Request for Exclusion is November 29, 2019. As of November 8, 2019, KCC has received 92 Requests for Exclusion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed this 8th Day of November, 2019.

A handwritten signature in cursive script, appearing to read "Andrew Perry", is written over a solid horizontal line.

Andrew Perry

EXHIBIT A

Please take a moment to read this email.

Hi «First1» «Last1»,

You are receiving this email because you were a Zappos customer in January 2012. As such, we are writing to inform you that a resolution has been reached in the class action lawsuit filed because of the data breach that occurred during that time.

Important additional information is below, but the short version is that you are getting a 10%-off discount code to use on an order placed before the end of year. You may also transfer the code to someone else.

Here is your one-time-use code: «CouponCODE». Once you've selected the items you want to purchase on Zappos.com or the Zappos App, select "Proceed to Checkout" and you'll have a chance to enter your code.

- For Desktop Users: Under "2. Payment Method," you'll see a dropdown for "Add gift card or rewards code." Simply enter the code there, click "Apply," and continue checking out.
- For App Users: Select "Gift Codes" in the top right corner, enter your code, select save, and continue checking out.

Thank you for your patience and understanding and, as always, we're here to help. If you need help with placing an order, please don't hesitate to reach out by contacting us at 2012action@zappos.com. If you need assistance regarding your legal rights related to this Notice, please see below and contact Zappos Settlement Administrator, P.O. Box 43434, Providence, RI 02940-3434, 1-855-263-1060.

Your Friends at Zappos

In re: Zappos.com, Inc. Customer Data Security Breach Litigation
United States District Court, District of Nevada,
Case No. 3:12-cv-00325-RCJ-VPC,
MDL No. 2357

COURT ORDERED NOTICE OF CLASS ACTION SETTLEMENT

You are a member of the Settlement Class in the above-captioned lawsuit, which relates to a data security hack against Zappos.com in January 2012. The case has settled, and you may use the unique code provided above for 10% off a single future online purchase of goods on Zappos.com (or via the Zappos.com mobile app), exclusive of shipping costs and taxes. You may also transfer or sell this code to someone else for personal, non-commercial use.

The Court has preliminarily approved this settlement. It will hold a Final Approval Hearing in this case on December 20, 2019 at 10:00 a.m. in Courtroom 3 of United States District Court for the District of Nevada, located at 400 S. Virginia Street, Reno, Nevada 89501. At the Final

Approval Hearing, the Court will decide whether to approve the settlement and whether to grant Class Counsel's requests for \$1,597,500 in attorneys' fees, costs, and expenses, and for service awards of \$2,500 to each of the nine Representative Plaintiffs (i.e., a total of \$22,500 in requested service awards). You have the right to attend the Final Approval Hearing and to be represented by counsel of your choice (at your own expense). For more information, including information about how to object to the settlement or to the request for attorneys' fees, costs, expenses or to the request for service awards, please visit this website www.zapposdatasettlement.com.

If you do not use or transfer your discount code, you have the right to request exclusion from the settlement ("opt out") or to object to the settlement, but the deadline for this is November 29, 2019. Please click [here](#) for additional details.

If you do not request exclusion from the settlement before the deadline and if the Court approves the settlement, you will release (give up) all claims against Zappos and related parties (including Amazon.com) that pertain in any way to the January 2012 data security hack.

If the court does not approve the settlement, the discount code may expire at the time of the Final Approval Hearing; otherwise the discount code is good until December 31, 2019.

Please review the complete, court-approved notice [here](#) for additional information, rules for use of the discount code and information about how to obtain a substitute code if you are unable to use it due to hospitalization or military service.