

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

McDowell v. Fontainebleau Florida Hotel, LLC

Case No. 1:23-CV-22042

United States District Court for the Southern District of Florida

IF YOU RECEIVED NOTICE FROM FONTAINEBLEAU INDICATING THAT YOUR PRIVATE INFORMATION MAY HAVE BEEN IMPACTED IN A DATA BREACH

A court has authorized this Notice. This is not a solicitation from a lawyer.

You are not being sued.

Please read this Notice carefully and completely.

- A proposed Settlement has been reached with Fontainebleau Florida Hotel, LLC (“Fontainebleau” or “Defendant”), in a class action lawsuit concerning the unauthorized access to Defendant’s computer systems that occurred between August 30 and September 2, 2022 (the “Data Incident”), in which certain files that contained personal information were accessed. The information included names, Social Security numbers, and financial account numbers (“Private Information” or “PI”).
- The lawsuit is captioned *McDowell v. Fontainebleau Florida Hotel, LLC*, Case No. 1:23-cv-22042, currently pending in the United States District Court for the Southern District of Florida (the “Action”).
- Fontainebleau denies each and all of the claims and contentions alleged against it in the Action and denies all charges of wrongdoing or liability alleged (or which could be alleged) in the Action but has agreed to the Settlement to avoid the costs and risks associated with continuing the litigation.
- You are included in the Settlement Class if you were impacted by the Data Incident. You may have already been notified of the Data Incident directly by Fontainebleau in May 2023.
- Your rights are affected whether you act or don’t act. Please read this Notice carefully and completely.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
SUBMIT A CLAIM	<p>The only way to receive benefits from this Settlement is by submitting a valid, complete, and timely Claim Form.</p> <p>You can submit your Claim Form online at www.FontainebleauDataSettlement.com, or download the Claim Form from the Settlement Website and mail it to the Settlement Administrator. You may also call or email the Settlement Administrator to receive a paper copy of the Claim Form. The Settlement Website will remain active from the beginning of the Claims Period until 180 days following Final Approval of the Settlement.</p>	October 31, 2024
OPT OUT OF THE SETTLEMENT	<p>You can choose to opt out of the Settlement and receive no benefits from this Settlement. This option allows you to sue, continue to sue, or be part of another lawsuit against the Defendant related to the legal claims resolved by this Settlement. You can hire your own legal counsel at your own expense.</p>	September 16, 2024
OBJECT TO THE SETTLEMENT AND/OR ATTEND A HEARING	<p>If you do not opt out of the Settlement, you may object to it by writing to the Court about why you don't like the Settlement. You may also ask the Court for permission to speak about your objection at the Final Approval Hearing. If you object, you may also file a claim for Settlement benefits.</p>	September 16, 2024
DO NOTHING	<p>Unless you opt out of the settlement, you are automatically part of the Settlement. If you do nothing, you will not receive benefits from this Settlement and you will give up the right to sue, continue to sue, or be part of another lawsuit against the Defendant related to the legal claims resolved by this Settlement.</p>	No Deadline

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement.

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Basic Information

1. Why was this Notice issued?

The United States District Court for the Southern District of Florida authorized this Notice because you have a right to know about the proposed Settlement of this class action lawsuit, and about all of your options before the Court decides whether to grant final approval of the Settlement. This Notice explains the lawsuit, your legal rights, what benefits are available, and who can receive them.

The lawsuit is captioned *McDowell et al. v. Fontainebleau Florida Hotel, LLC*, Case No. 1:23-cv-22042. The person that filed this lawsuit, *Cara McDowell*, is called the “Plaintiff” (or “Class Representative”) and the entity they sued, Fontainebleau, is called the “Defendant.”

2. What is this lawsuit about?

This lawsuit alleges that private and sensitive information may have been impacted due to the unauthorized access to Defendant’s computer systems on or between August 30 and September 2, 2022. The information affected, depending on the individual, included names, Social Security numbers, and financial account numbers.

3. What is a class action?

In a class action, one or more individuals sue on behalf of other people with similar claims. These individuals are known as “Plaintiffs” or “Class Representatives.” Together, the people included in the class action are called a “class” or “class members.” One court resolves the lawsuit for all class members, except for those who opt out from a settlement. In this Settlement, the Class Representative is Cara McDowell, and everyone included in this Action are the Participating Settlement Class Members.

4. Why is there a Settlement?

The Plaintiff and Defendant do not agree about the claims made in this Action. The Action has not gone to trial, and the Court did not decide in favor of the Plaintiff or Defendant. Instead, the Plaintiff and Defendant have agreed to a Settlement to avoid the costs and risks of a trial, and to allow the Participating Settlement Class Members to receive benefits from the Settlement. The Plaintiff and her attorneys think the Settlement is best for all Participating Settlement Class Members. The Settlement does not mean that any law was broken or that Defendant did anything wrong.

Who is in the Settlement?

5. Who is included in the Settlement?

If you received a mailed notice of this Settlement, you have been identified as a member of the Settlement Class and included in the Settlement. More specifically, the Settlement Class includes all individuals in the United States who were impacted by the Data Incident, including all who were sent a notice of the Data Incident that occurred on or around August 30 to September 2, 2022.

6. Are there exceptions to being included?

Yes. Excluded from the Settlement Class are: (i) all persons who are employees, directors, officers, and agents of Fontainebleau; (ii) the judges assigned to the Action and to evaluate the fairness, reasonableness, and adequacy of this Settlement, and those judges’ immediate family and Court staff; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of perpetrating, aiding, or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

If you are not sure whether you are included in the Settlement Class, you can ask for free help by emailing or writing to Settlement Administrator at:

FontainebleauDataSettlement@rg2claims.com

Fontainebleau Miami Beach Data Incident Settlement, c/o Settlement Administrator, RG/2 Claims Administration LLC, P.O. Box 59479, Philadelphia, PA 19102-9479.

You may also view the Settlement Agreement at www.FontainebleauDataSettlement.com.

The Settlement Benefits

7. What does the Settlement provide?

The Settlement provides the following Settlement Class Member Benefits. You are not limited to one benefit. If you are eligible for multiple benefits, as described below, you may file a claim for each of them.

Documented Out-of-Pocket Expenses Incurred as a Result of the Data Incident. Participating Settlement Class Members who submit a Valid Claim using the Claim Form, including providing necessary supporting documentation, are eligible to be reimbursed for any documented ordinary losses that were incurred as a result of the Data Incident (“Out-of-Pocket Expenses”), including but not limited to:

1. unreimbursed bank fees;
2. long distance phone charges;
3. cell phone charges (only if charged by the minute);
4. data charges (only if charged based on the amount of data used);
5. postage;
6. gasoline for local travel;
7. fees for credit reports, credit monitoring, or other identity theft insurance product purchased between August 30, 2022, and October 31, 2024.

Reimbursement for Attested Lost Time. Participating Settlement Class Members are also eligible to receive reimbursement for up to six (6) hours of lost time spent dealing with the Data Incident (calculated at the rate of \$25.00 per hour), as follows:

Participating Settlement Class Members may receive up to three (3) hours of lost time by attesting that they spent the claimed time responding to issues raised by the Data Incident (“Lost Time”); and

Participating Settlement Class Members may also claim an additional three (3) hours of lost time (also calculated at the rate of \$25.00 per hour), for a total of six (6) hours, if such hours can be supported by reasonable documentation establishing a connection between the lost time and the Data Incident, which may not be self-prepared (“Additional Lost Time”).

Cap for Out-of-pocket Expenses and Lost Time: The total amount validly claimed by each Participating Settlement Class Member for documented Out-of-Pocket Expenses and reimbursement of Lost Time and Additional Lost Time may not exceed \$1,000.00 per Participating Settlement Class Member.

Compensation for Extraordinary Losses for a Victim of Actual Identity Theft. Participating Settlement Class Members who submit a Valid Claim using the Claim Form,

including necessary supporting documentation, are eligible for up to \$4,000.00 per Settlement Class Member if:

1. the loss was an actual, documented, and unreimbursed monetary loss;
2. the loss was fairly traceable to the Data Incident;
3. the loss occurred between August 30, 2022, and October 31, 2024;
4. the loss is not already covered by one or more of the normal reimbursement categories above; and
5. Participating Settlement Class Member made reasonable efforts to avoid the loss (this includes trying to get the loss reimbursed, and using any credit monitoring insurance or identity theft insurance that was available) (“Extraordinary Losses”).

Identity Theft Protection and Credit Monitoring. Participating Settlement Class Members who did not previously enroll in the credit monitoring offered by Fontainebleau may submit a Claim to accept two years of free credit monitoring services. Participating Settlement Class Members who did previously enroll in the credit monitoring offered by Fontainebleau may submit a Claim to accept one year of free credit monitoring services in addition to the one year of credit monitoring they are already enrolled in for a total of two years of such credit monitoring. The credit monitoring shall provide three-bureau monitoring for all Valid Claims and shall include:

1. Real time monitoring of credit file at all three bureaus;
2. Dark web scanning with immediate notification of potential unauthorized use;
3. Comprehensive public record monitoring;
4. Medical identity monitoring;
5. Identity theft insurance (with no deductible); and
6. Access to fraud resolution agents.

Participating Settlement Class Members will need to enroll to receive this benefit. Fontainebleau will pay for the credit monitoring services separate and apart from other Settlement benefits.

Information Security Improvements. In addition to cash payments and/or credit monitoring, Fontainebleau has improved its information security enhancements to date and will provide information regarding security enhancements it is committed to making. Plaintiff will evaluate Defendant’s proposed injunctive relief, and propose additions thereto, once she learns more about the Data Incident and the steps that have been taken since the discovery of the Data Incident. Costs associated with these business practice commitments (injunctive relief) will be paid by Defendant separate and apart from other settlement benefits.

8. How much will my payment be?

Payments will vary depending on the Settlement Class Member Benefits selected and, for Out-of-Pocket expenses and Identity Theft losses, the supporting documentation provided.

9. What claims am I releasing if I stay in the Settlement Class?

Unless you opt out of the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against the Defendant about any of the legal claims this Settlement resolves. The “Releases” section in the Settlement Agreement describes the legal claims that you give up if you remain in the Settlement Class. The Settlement Agreement is available for review at www.FontainebleauDataSettlement.com.

Submitting a Claim Form for Settlement Benefits

10. How do I submit a claim for a Settlement benefit?

Claim Forms may be submitted online at www.FontainebleauDataSettlement.com or printed from the website and mailed to the Settlement Administrator at: Fontainebleau Miami Beach Data Breach Settlement, c/o Settlement Administrator, RG/2 Claims Administration LLC, P.O. Box 59479, Philadelphia, PA 19102-9479.

You may also contact the Settlement Administrator to request a Claim Form by telephone 1-866-742-4955, by email FontainebleauDataSettlement@rg2claims.com, or by U.S. mail at the address above.

11. What is the deadline for submitting a claim?

If you submit a claim by U.S. mail, the completed and signed Claim Form, along with any supporting documentation, must be mailed so it is postmarked no later than **October 31, 2024**. If submitting a Claim Form online, you must do so by **October 31, 2024**.

12. When will the Settlement benefits be issued?

The Court will hold a final approval hearing on December 9, 2024. If the Court approves the Settlement, there may be appeals. It is always uncertain whether appeals will be filed and, if so, how long it will take to resolve them.

Settlement benefits will be distributed if the Court grants final approval of the Settlement and after any appeals are resolved, or after the period to seek an appeal has expired.

The Lawyers Representing You

13. Do I have a lawyer in the case?

Yes, the Court appointed Mason A. Barney and Tyler J. Bean, of Siri & Glimstad LLP, to represent you and other members of the Settlement Class (“Class Counsel”).

14. Should I get my own lawyer?

You will not be charged for Class Counsel’s services. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will Class Counsel be paid?

Class Counsel will seek Court approval for attorneys' fees and costs not to exceed \$300,000.00.

Fontainebleau may oppose any request for attorneys' fees that exceed \$175,000.00, but shall pay any attorneys' fees and costs as ordered by the Court separate and apart from any Settlement Class Member Benefits provided to Participating Settlement Class Members and Settlement Administration Costs.

Excluding Yourself from the Settlement

16. How do I opt out of the Settlement?

If you do not want to receive any benefits from the Settlement, and you want to keep your right, if any, to separately sue Defendant about the legal issues in this case, there are steps that you must take to exclude yourself from the Settlement Class. This is called requesting an exclusion from, or "opting out" of the Settlement Class. The deadline to submit a request for exclusion from the Settlement is **September 16, 2024**.

To exclude yourself from the Settlement, you must submit a written request for exclusion that includes the following information:

- the name of the Action: *McDowell v. Fontainebleau Florida Hotel, LLC, Case No. 1:23-cv-22042*, pending in United States District Court for the Southern District of Florida
- your full name;
- your current address;
- your telephone number;
- your personal wet signature; and
- the words "Request for Exclusion" or a clear and similar statement that you do not wish to participate in the Settlement.

Your request for exclusion must be mailed to the Settlement Administrator at the address below, **postmarked no later than September 16, 2024**.

Fontainebleau Miami Beach Data Breach Settlement
ATTN: Exclusion Request
c/o Settlement Administrator,
RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479

If you exclude yourself, you are telling the Court that you do not want to be part of the Settlement. You will not be eligible to receive any Settlement benefits if you exclude yourself. You may only exclude yourself— not any other person.

Commenting on or Objecting to the Settlement

17. How do I tell the Court if I like or do not like the Settlement?

If you are a Participating Settlement Class Member and do not like a portion or all of the Settlement, you can object to it, if you choose. You can give reasons why you think the Court should not approve it. The Court will consider your views.

For an objection to be considered by the Court, the objection must include:

1. your full name, address, telephone number, and e-mail address (if any);
2. information identifying you as a Settlement Class Member, including proof that the you are a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident);
3. a written statement of all grounds for the objection, accompanied by any legal support for the objection you believe is applicable;
4. the identity of any and all counsel representing you in connection with the objection;
5. a statement as to whether you and/or your counsel will appear at the Final Fairness Hearing;
6. your wet signature and the signature of your duly authorized attorney or other duly authorized representative, if any (along with documentation setting forth such representation); and
7. a list, by case name, court, and docket number, of all other cases in which you and/or your counsel has filed an objection to any proposed class action settlement within the last three years.

To be timely, a written notice of an objection containing the above information must be filed with the Clerk of the Court and contain the case name and docket number, with copies served on Class Counsel and counsel for Fontainebleau no later than **September 16, 2024**.

Clerk of the Court	Class Counsel	Counsel for Fontainebleau
Wilkie D. Ferguson, Jr. U.S. Courthouse, Courtroom 11-1, 400 North Miami Avenue, Miami, FL 33128	Mason A. Barney Tyler J. Bean Siri & Glimstad, LLP 745 Fifth Av, Ste. 500 New York, New York 10151	John Hutchins Baker & Hostetler, LLP 1170 Peachtree St. Ste. 2400 Atlanta, Georgia 30309

Any Participating Settlement Class Member who fails to strictly comply with the requirements for objecting shall waive and forfeit any and all rights they may have to appear separately and/or to object to the Settlement, and shall be bound by all the terms of the Settlement and by all proceedings, orders and judgments in the Litigation.

18. What is the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is opting out and stating to the Court that you do not want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because the Settlement no longer affects you.

The Court's Final Approval Hearing

19. When is the Court's Final Approval Hearing?

The Court will hold a final approval hearing on **December 9, 2024 at 10 a.m. C.T.**, at the Wilkie D. Ferguson, Jr. U.S. Courthouse, 400 North Miami Avenue, Miami, FL 33128 in Courtroom 11-1.

At the final approval hearing, the Court will consider whether to approve the Settlement, how much attorneys' fees and costs to award to Class Counsel for representing the Settlement Class, and whether to award a Service Award to each of the Class Representatives who brought this Action on behalf of the Settlement Class. The Court will also consider any objections to the Settlement.

If you are a Settlement Class Member, you or your attorney may ask permission to speak at the hearing at your own cost (**See Question 17**).

The date and time of this hearing may change without further notice. Please check www.FontainebleauDataSettlement.com for updates.

20. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you file an objection, you do not have to come to the Final Approval Hearing to talk about it. If you file your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but such attendance is not necessary for the Court to consider an objection that was filed on time.

If I Do Nothing

21. What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, you will give up the rights described in **Question 9**, including your right to start a lawsuit, continue a lawsuit, or be part of any other lawsuit against the Defendant and the Released Parties about the legal issues resolved by this Settlement. In addition, if you do nothing, you will not receive a payment or credit monitoring from this Settlement.

Getting More Information

22. How do I get more information?

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at the Settlement Website, www.FontainebleauDataSettlement.com.

If you have additional questions, you may contact the Settlement Administrator by email, phone, or mail:

Email: FontainebleauDataSettlement@rg2claims.com

Toll-Free: 1-866-742-4955

Mail: Fontainebleau Miami Beach Data Breach Settlement, c/o Settlement Administrator, RG/2 Claims Administration LLC, P.O. Box 59479, Philadelphia, PA 19102-9479.

Publicly filed documents can also be obtained by visiting the office of the Clerk of Court for the United States District Court for the Southern District of Florida.