

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:23-CV-22042-GAYLES/TORRES

CARA MCDOWELL, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

**FONTAINEBLEAU FLORIDA HOTEL,
LLC**,

Defendant.

_____ /

PRELIMINARY APPROVAL ORDER

THIS CAUSE came before the Court upon Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion"), [ECF No. 39], the terms of which are set forth in a Settlement Agreement between Plaintiffs and Defendant Fontainebleau Florida Hotel, LLC ("Fontainebleau" or "Defendant" and together with Plaintiff, the "Parties"). The Settlement Agreement with accompanying exhibits is attached as **Exhibit A** to the Mason Barney Declaration in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Settlement Agreement").¹ The Court, having fully considered the issue, grants the Motion and ORDERS as follows:

1. **Class Certification for Settlement Purposes Only.** The Settlement Agreement provides for a Settlement Class defined as follows:

¹ All capitalized terms not defined 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.

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.

Excluded from the Settlement Class are (i) all persons who are employees, directors, officers, and agents of Fontainebleau; (ii) the judge assigned to the Action and to evaluate the fairness, reasonableness, and adequacy of this Settlement, and that judge's 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.

Pursuant to Federal Rules of Civil Procedure 23(e)(1), the Court finds that giving notice is justified. The Court finds that it will likely approve the proposed Settlement as fair, reasonable, and adequate. The Court also finds that it will likely certify the Settlement Class for purposes of judgment on the Settlement because it meets all of the requirements of Rule 23(a) and the requirements of Rule 23(b)(3). Specifically, the Court finds for settlement purposes that it is likely to find: (a) the Settlement Class is so numerous that joinder of all Settlement Class members would be impracticable; (b) there are issues of law and fact that are common to the Settlement Class; (c) the claims of the Class Representative are typical of and arise from the same operative facts and the Class Representative seeks similar relief as the claims of the Settlement Class Members; (d) the Class Representative will fairly and adequately protect the interests of the Settlement Class as the Class Representative has no interests antagonistic to or in conflict with the Settlement Class and has retained experienced and competent counsel to prosecute this Action on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this Litigation.

2. **Proposed Settlement Class Representative and Settlement Class Counsel.**

The Court finds that Plaintiff Cara McDowell will likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed as the Class Representative. Additionally, the Court finds that Mason A. Barney and Tyler J. Bean of Siri & Glimstad LLP will likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed as Class Counsel pursuant to Rule 23(g)(1).

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds the Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the Settlement Class and accordingly is preliminarily approved. In making this determination, the Court has considered the monetary and non-monetary benefits provided to the Settlement Class through the Settlement, the specific risks faced by the Settlement Class in prevailing on their claims, the good faith, arms' length negotiations between the Parties and absence of any collusion in the Settlement, the effectiveness of the proposed method for distributing relief to the Settlement Class, the proposed manner of allocating benefits to Participating Settlement Class Members, the Settlement treats the Participating Settlement Class Members equitably, and all of the other factors required by Rule 23 and relevant case law.

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

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on December 9, 2024, at 10:00 a.m. at the Wilkie D. Ferguson, Jr. U.S. Courthouse, Courtroom 11-1, 400 North Miami Avenue, Miami, FL 33128, where the Court will determine, among other things, whether: (a) this Litigation should be finally certified as a class action for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (b) the Settlement should be approved as fair, reasonable, and

adequate, and finally approved, pursuant to Fed. R. Civ. P. 23(e); (c) this Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Participating Settlement Class Members (who have not timely and validly excluded themselves from the Settlement) should be bound by the releases set forth in the Settlement Agreement; and (e) the application of Class Counsel for an award of Attorneys' Fees and should be approved pursuant to Fed. R. Civ. P. 23(h).

6. **Settlement Administrator.** The Court appoints RG2 Claims Administration LLC as the Settlement Administrator, with responsibility for class notice and settlement administration. The Settlement Administrator is directed to perform all tasks the Settlement Agreement requires. The Settlement Administrator's fees will be paid pursuant to the terms of the Settlement Agreement.

7. **Notice.** The proposed Notice Program set forth in the Settlement Agreement and Claim Form and the Notices attached to the Settlement Agreement as **Exhibits 1, 2, and 3** are hereby approved. Non-material modifications to these Exhibits may be made by the Settlement Administrator in consultation and agreement with the Parties, but without further order of the Court.

8. **Findings Concerning Notice.** The Court finds that the proposed form, content, and method of giving Notice to the Settlement Class as described in the Notice Program and the Settlement Agreement and its exhibits (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including, but not limited to, their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the

Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; (d) meet all applicable requirements of law, including Federal Rule of Civil Procedure 23(c); and (e) meet the requirements of the Due Process Clause(s) of the United States and Florida Constitutions. The Court further finds that the Notice provided for in the Settlement Agreement is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement.

9. **Class Action Fairness Act Notice.** Within ten (10) days after the filing of this Settlement Agreement with the Court, the Settlement Administrator, acting on behalf of Defendant, shall have served (or cause to be served) a notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b).

10. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator. The written notice must include:

- a) the name of the Action: *McDowell et al. v. Fontainebleau Resorts, LLC d/b/a Fontainebleau Miami Beach*, Case No. 1:23-cv-22042, pending in United States District Court for the Southern District of Florida
- b) full name of the member of the Settlement Class;
- c) current address of the member of the Settlement Class;
- d) telephone number of the member of the Settlement Class;

- e) signature of the member of the Settlement Class; and
- f) the words “Request for Exclusion” or a clear and similar statement that the member of the Settlement Class does not wish to participate in the Settlement.

All signatures on opt-out notices shall be wet signatures to ensure authenticity of same. To be effective, such requests for exclusion must be postmarked no later than the Opt-Out Date, which is no later than the Opt-Out and Objection Deadline which shall be forty-five (45) days from the date on which the Notice Program commences.

A complete list of all Participating Settlement Class Members who submitted timely, valid exclusion requests (opt-outs) will be filed with the Court as part of the declaration or affidavit of the Settlement Administrator, at the same time that Plaintiffs file their Motion for Final Approval of the Class Action Settlement. The Court will permit the list to be anonymized, referring to the Settlement Class Members opting out by their unique Class Member IDs assigned to them by the Settlement Administrator in any public filings.

If a Final Order and Judgment is entered, all Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class shall be bound by the terms of the Settlement Agreement and the Final Order and Judgment. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall not receive any cash benefits of and/or be bound by the terms of the Settlement Agreement.

11. **Objections and Appearances.** A Participating Settlement Class Member (who does not submit a timely written request for exclusion) desiring to object to the Settlement Agreement may submit a timely written notice of his or her objection by the Opt-Out and Objection Deadline and as stated in the Notice. The Long Form Notice and the Settlement Website shall

instruct Participating Settlement Class Members who wish to object to the Settlement Agreement to send their written objections to the Settlement Administrator at the address indicated in the Long Notice, and to the attorneys for the Parties at their addresses specified in the Notice. The Notice shall advise Participating Settlement Class Members of the deadline for submission of any objections—the “Opt-Out and Objection Deadline.” Any such notices of an intent to object to the Settlement Agreement must be written and must include:

- a) the objector’s full name, address, telephone number, and e-mail address (if any);
- b) information identifying the objector as a Participating Settlement Class Member, including proof that the objector is a member of the Settlement Class (i.e., copy of notice and a copy of original notice of the Data Incident);
- c) a written statement of all grounds for the objection, accompanied by any legal support for the objection and all evidence the objector believes applicable;
- d) the identity of any and all counsel representing the objector in connection with the objection;
- e) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing;
- f) the objector’s wet signature and the wet signature of the objector’s duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and

- g) a list, by case name, court, and docket number, of all other cases in which the objector has filed an objection to any proposed class action settlement within the last three years.

To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court and contain the case name and docket number, no later than the Opt-Out and Objection Deadline and served concurrently therewith on Class Counsel and counsel for Fontainebleau. An objecting Participating Settlement Class Member has the right, but is not required to, attend the Final Approval Hearing. Any objector or their counsel who intends to make an appearance at the Final Approval Hearing file with the Court and shall serve on Class Counsel and Fontainebleau's Counsel a notice of intention to appear at the Final Approval Hearing by no later than the Opt-Out and Objection Deadline.

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

12. **Claims Process.** Settlement Class Counsel and Defendant have created a process for Participating Settlement Class Members to claim benefits under the Settlement. The Court preliminarily approves this process and directs the Settlement Administrator to make the Claim Form or its substantial equivalent available to Participating Settlement Class Members in

the manner specified in the Notice. The Settlement Administrator will be responsible for effectuating the Claims Process. Participating Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirement and procedures specified in the Notice and the Claim Form. If the Final Order and Judgment is entered, all Participating Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Final Order and Judgment, including the releases contained therein.

13. **Termination of Settlement.** This Preliminary Approval Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing before the Court entered this Preliminary Approval Order and before they entered the Settlement Agreement, if: (a) the Court does not enter this Preliminary Approval Order; (b) Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement; (c) there is no Effective Date; or (d) otherwise consistent with the terms of the Settlement Agreement. In such event: (i) the Parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, (iii) any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*; and (iv) Fontainebleau shall be obligated to pay amounts already billed or incurred for costs of Notice to the Settlement Class, and

Settlement Administration, and shall not, at any time, seek recovery of same from any other party to the Action or from counsel to any other party to the Action. Notwithstanding any statement in the Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees and costs shall constitute grounds for cancellation or termination of the Settlement.

14. **Use of Order.** This Preliminary Approval Order shall be of no force or effect if the Final Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability. Nor shall this Preliminary Approval Order be construed or used as an admission, concession, or declaration by or against the Class Representative or any other Participating Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims they may have in this Action or in any other lawsuit.

15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website maintained by the Settlement Administrator. The Court may approve the Settlement, with such modifications as may be agreed upon by the Parties, if appropriate, without further notice to the Settlement Class.

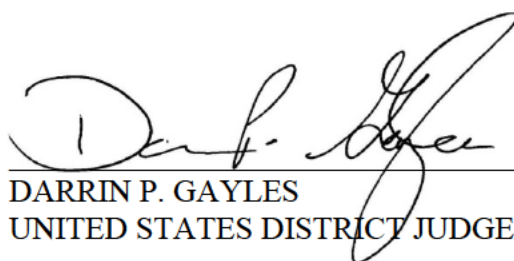
16. **Stay of Litigation.** All proceedings in the Litigation, other than those related to approval of the Settlement Agreement, are hereby stayed. Further, any actions brought by Participating Settlement Class Members concerning the Released Claims are hereby enjoined and stayed pending Final Approval of the Settlement Agreement.

17. **Schedule and Deadlines.** The Court orders the following schedule of dates for

the specified actions/further proceedings:

| Event | Days after entry of this Preliminary Approval Order |
|---|--|
| Fontainebleau provides Class List to the Settlement Administrator | 14 days |
| Settlement Administrator to Provide CAFA Notice Required by 28 U.S.C. § 1715(b) | 10 days |
| Notice Date | 30 days |
| Class Counsel’s Motion for Attorneys’ Fees and Costs | 60 days |
| Opt-out and Objection Deadline | 75 days |
| Settlement Administrator shall distribute the Opt-Out and Objection Report | 85 days |
| Claims Deadline | 120 days |
| Final Approval Hearing | 150 days (at minimum) |
| Motion for Final Approval | 21 days before Final Approval Hearing |

DONE AND ORDERED in Chambers at Miami, Florida, this 3rd day of July, 2024.



DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE