

## **NOTICE OF CLASS ACTION SETTLEMENT**

**This is a Court-approved Legal Notice. This is not an advertisement.  
Important Information—Please Read This Entire Notice Carefully**

To Members of the following Class (the “Class”): Customers who directly or indirectly subscribed to email services provided by Hostway Corporation and/or Hostway Services, Inc. (“Hostway” or “Defendants”), including email services provided by Defendants’ predecessors, affiliates, subsidiaries and/or parents, and whose email accounts utilized Hostway’s shared servers located in Florida that were “blacklisted” at any time from November 1, 2008, through and including March 31, 2009 (“Settlement Class Members”).

You are receiving this Notice of Class Action Settlement (“Notice”) because the Settlement Administrator has identified you as a potential Settlement Class Member based on internal Hostway documentation. A class action settlement has been proposed in this lawsuit. The lawsuit concerns alleged damages to Settlement Class Members arising from the blacklisting of certain of Hostway’s shared servers located in Florida from November 1, 2008 through March 31, 2009 (the “Class Period”). Pursuant to a proposed Settlement (the “Settlement”), Settlement Class Members may receive a Settlement benefit identified herein.

### **Settlement Class Members May Submit Their Claims Now**

If you received this Notice from the Settlement Administrator and paid any of the Defendants for email services during the Class Period, you are a “Paid User” and entitled to elect one of the following Settlement benefits: (1) a check in the amount of \$9.95 from Hostway; or (2) a Voucher from Hostway for waiver of a \$15.00 setup fee for up to five (5) email addresses for one account if you upgrade an existing email service with Hostway to Hostway’s Microsoft 365 Business Basic plan, and agree to pay the standard subscription fee for that plan, and any professional services fees (such as for, but not limited to, data migration from an existing account); or (if you do not have an existing email service with Hostway) if you subscribe to Hostway’s Microsoft 365 Business Basic plan, and agree to pay the standard subscription fee for that plan, and any professional services fees (such as for, but not limited to, data migration from an existing account) (the “Voucher”). The Voucher will expire ninety (90) days from the Effective Date of the Settlement. You must choose your Settlement benefit when you submit your Paid User Claim Form.

If you received this Notice from the Settlement Administrator, you subscribed to email services provided by Hostway during the Class Period, and you did not pay any of the Defendants for those email services, you are an “Unpaid User” and are entitled to elect receipt of a Voucher as your Settlement benefit. You must claim this Settlement benefit when you submit your Unpaid User Claim Form.

Under the parties’ Settlement Agreement, Hostway has also agreed to implement certain business practices designed to provide additional benefits to its customers going forward. In addition, Hostway has agreed to coordinate with the Settlement Administrator with respect to distribution of Settlement benefits to Settlement Class Members; pay for the costs of the settlement administration; pay court-approved attorneys’ fees, costs and expenses to the named Plaintiff’s counsel; and pay a service award to the named Plaintiff (the “Settlement Class Representative”). In exchange, Settlement Class Members will release any and all claims they have against Defendants and their affiliates that arise out of and/or directly relate to the facts and claims alleged in the lawsuit as described in detail below.

If approved, the proposed Settlement will resolve this lawsuit, now pending before The Honorable Michael A. Robinson in the Circuit Court for the 17th Judicial Circuit in and for Broward County, Florida (the “Court”). The Court must decide whether to finally approve the Settlement. No payments or Vouchers will be sent until the Settlement becomes final and not subject to appeal. The class action settlement approval process will take at least several months to complete.

If you believe you are a Settlement Class Member, but did not receive this Notice from the Settlement Administrator directly, please contact the Settlement Administrator at 855-917-3476 or by visiting [www.HostwaySettlement.com](http://www.HostwaySettlement.com).

Please read this Notice carefully.

This Settlement affects your legal rights even if you do nothing.  
Questions? Go to [www.HostwaySettlement.com](http://www.HostwaySettlement.com) or call 855-917-3476.

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

The purpose of this Notice is to advise you of the proposed Settlement and how it may affect your rights. You must decide whether to submit a claim, ask to be excluded from the Class before the Court enters judgment, or do nothing and receive no benefit from the Settlement. You have to decide this before October 5, 2020. Your options regarding this lawsuit are as follows:

<b>FILE A CLAIM</b>	<p>You must make a claim in order to receive any Settlement benefit. To file your Claim Form electronically or by mail visit <a href="http://www.HostwaySettlement.com">www.HostwaySettlement.com</a> and provide the Unique ID number provided for you at the top of this Notice.</p> <p>If you did not receive a Notice directly via email and do not have a Unique ID, but believe you are a Settlement Class Member, you can contact the Settlement Administrator telephonically at 855-917-3476 or via email at <a href="mailto:claims@HostwaySettlement.com">claims@HostwaySettlement.com</a> to review your status as a Settlement Class Member, and if you are a Settlement Class Member, obtain your Unique ID.</p>	Deadline: October 5, 2020
<b>EXCLUDE YOURSELF FROM THIS SETTLEMENT</b>	<p>You can exclude yourself from the Settlement by informing the Settlement Administrator that you want to “opt-out” of the Settlement. If the Settlement becomes final, this is the only option that allows you to retain any rights to sue Hostway for any claims related to the blacklisting that occurred during the Class Period.</p> <p>If you exclude yourself, you will not be eligible to receive any Settlement benefit.</p>	Deadline: October 5, 2020
<b>OBJECT TO OR COMMENT ON THE SETTLEMENT</b>	<p>You may object to the Settlement by writing to the Court explaining why you do not believe the Settlement should be approved. You can also write to the Court to provide comments or reasons why you support the Settlement.</p> <p>For detailed information on how to object to or comment on the Settlement, see <a href="http://www.HostwaySettlement.com">www.HostwaySettlement.com</a>.</p>	Deadline: October 5, 2020
<b>DO NOTHING</b>	<p>By doing nothing, you will remain a member of the Settlement Class, but you will not be entitled to any Settlement benefit. However, if the Court approves the Settlement and enters judgment, you will surrender any rights to sue Defendants and their affiliates for all claims that arise out of and/or directly relate to the facts and claims alleged in the lawsuit.</p>	Deadline: October 5, 2020

## **QUESTIONS AND ANSWERS REGARDING THE PROPOSED SETTLEMENT**

### **BACKGROUND INFORMATION**

#### **1. Why is there a notice?**

The Court authorized this Notice because you have a right to know how the proposed Settlement may affect your rights. This Notice explains the nature of the litigation and the general terms of the proposed Settlement, and what they may mean to you. This Notice also explains the ways you may participate in or exclude yourself from the Settlement.

#### **2. What is this lawsuit about?**

During the Class Period, certain email service providers blacklisted or stopped accepting email from certain of Hostway's shared servers in Florida. When a server was blacklisted, a Class Member's email service may have been interrupted and as a result, the Class Member's account(s) may have been prevented from sending or receiving email without notice of such failure.

The lawsuit was brought on behalf of Hostway customers, who directly or indirectly subscribed to Hostway's email services, and whose email accounts utilized Hostway's shared servers located in Florida that were "blacklisted" at any time during the Class Period. The Plaintiff claims that Hostway violated the Florida Deceptive and Unfair Trade Practices Act, breached the covenant of good faith and fair dealing, and unjustly enriched itself. Hostway denies any wrongdoing. No Court or other entity has made any judgment or determination of any wrongdoing or that the law has been violated. The Complaint filed in this Action is available at [www.HostwaySettlement.com](http://www.HostwaySettlement.com).

#### **3. Who are the Defendants in this lawsuit?**

The Defendants are Hostway Corporation and Hostway Services, Inc. ValueWeb was a trade name for certain products offered by Hostway during the Class Period.

#### **4. Why is this a Class Action?**

Even if you have not filed your own lawsuit against Hostway regarding the blacklisting, you can obtain the benefits provided by this Settlement because the litigation is proceeding as a class action.

In a class action, one or more people file a lawsuit to assert legal claims on behalf of themselves and other persons who have experienced the same or similar circumstances. Here, Plaintiff has served as the "Settlement Class Representative," representing not only its own interests, but the interests of all Settlement Class Members, as well. Because this is a class action, even persons who did not file their own lawsuit can obtain relief from harm that may have been caused by Defendants' alleged conduct.

#### **5. Why is there a Settlement?**

A Settlement avoids the costs and uncertainty of a trial and related appeals, while providing benefits to Settlement Class Members when the Settlement becomes final. The Court has not decided in favor of Plaintiff or Defendants. Instead, both sides have agreed to the Settlement. Plaintiff and the attorneys for the Settlement Class Members ("Class Counsel") believe that the Settlement is fair and in the best interests of the Settlement Class Members.

### **SETTLEMENT CLASS MEMBERSHIP**

#### **6. How do I know if I am a part of the Settlement?**

You are a Settlement Class Member and are affected by this Settlement if:

- You subscribed to Hostway's email services, and your email account utilized Hostway's shared servers located in Florida that were "blacklisted" at any time during the Class Period.

However, the following entities and individuals are not Settlement Class Members:

- The Defendants, their officers, directors, employees, subsidiaries, divisions, units and affiliates.
- Any individual or entity which timely and validly opts-out of the Settlement Class, or who previously has timely and validly opted-out of the Class.

If you received this Notice from the Settlement Administrator, you were identified as a potential Settlement Class Member based on internal Hostway documentation.

If you did not receive this Notice from the Settlement Administrator, but believe that you are a Settlement Class Member, you may go to the Settlement website at [www.HostwaySettlement.com](http://www.HostwaySettlement.com), call the Settlement toll-free number at 855-917-3476, or email [claims@HostwaySettlement.com](mailto:claims@HostwaySettlement.com) to ask the Settlement Administrator to help advise you whether or not you are a Settlement Class Member.

**7. Do I have a lawyer in this case?**

Yes. The Court appointed Wolf Haldenstein Adler Freeman & Herz LLP and Saxena White P.A. as “Class Counsel” to represent you and the other Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**8. How will Class Counsel be paid?**

The Parties agree that Class Counsel may seek an award of attorneys’ fees, costs and expenses to be paid by Defendants separate and apart from the Settlement Fund, in a total amount not to exceed three hundred fifty thousand dollars (\$350,000). Defendants will not oppose such an application. The motion shall be filed at least ten (10) days before the deadline for filing objections to the Settlement. All costs and expenses shall conform to the Florida Statewide Uniform Guidelines for Taxation of Costs in Civil Actions. The Parties negotiated the amount of these requested fees, costs and expenses, subject to Court approval, with the assistance of retired Circuit Court Judge and mediator Jeffrey E. Streitfeld and only after the Parties had reached agreement on the other terms of the Settlement. The request for fees, costs and expenses shall encompass all work performed, and all costs and expenses incurred, by Class Counsel in connection with the Action. Hostway shall pay the attorneys’ fees, costs and expenses awarded by the Court to Class Counsel from funds provided by Hostway separate and apart from the Settlement Fund.

Class Counsel also will ask the Court to approve a Service Award of up to \$4,000 to compensate the Settlement Class Representative. The Settlement Class Representative has been required to respond to discovery, had its deposition taken and attended a settlement mediation. Defendants have agreed not to oppose this request.

Class Counsel’s application for attorneys’ fees, costs and expenses and the Service Award will be made available on the Settlement Website at [www.HostwaySettlement.com](http://www.HostwaySettlement.com) before the deadline for you to comment or object to the Settlement. You can request a copy of the application by contacting the Settlement Administrator, via telephone at 855-917-3476 or email at [claims@HostwaySettlement.com](mailto:claims@HostwaySettlement.com).

**BENEFITS FOR SETTLEMENT CLASS MEMBERS**

**9. What benefits does the Settlement provide?**

This Settlement provides the following benefit to Paid Users: the option to receive either (1) a payment in the amount of \$9.95 or (2) a Voucher.

This Settlement provides the following benefit to Unpaid Users: a Voucher.

Additionally, this Settlement also requires Hostway to implement certain business practices designed to provide additional benefits to its customers going forward.

**10. Will the Settlement help protect me and other Hostway users from future interruption of email services?**

This Settlement provides that Hostway will maintain a help desk committed to aiding customers with their email services, including, but not limited to, non-receipt of incoming email and non-delivery of outgoing email for a period of at least two years from the Effective Date of the Settlement.

Additionally, Hostway will make available online to all customers (whether the customers are Class Members or not), for a period of at least two years from the Effective Date of the Settlement, a password tutorial to educate them regarding the importance of password strength and the recommendation that customers and end users should change passwords at regular intervals to prevent infiltration of an email account by a third party.

## HOW TO FILE A CLAIM

### 11. How do I file a claim as a Paid User?

If you are a Paid User, to obtain a Settlement benefit as a Paid User, you must file your Paid User Claim Form electronically or by mail by visiting [www.HostwaySettlement.com](http://www.HostwaySettlement.com) and providing the Unique ID number provided for you at the top of this Notice to receive either: (1) a payment in the amount of \$9.95 or (2) a Voucher. You may choose one remedy or the other, not both.

The deadline to submit a completed Paid User Claim Form is October 5, 2020.

### 12. How do I file a claim as an Unpaid User?

If you are an Unpaid User, to obtain a Voucher as an Unpaid User, you must file your Unpaid User Claim Form electronically or by mail by visiting [www.HostwaySettlement.com](http://www.HostwaySettlement.com) and providing the Unique ID number provided for you at the top of this Notice.

The deadline to submit a completed Unpaid User Claim Form is October 5, 2020.

### 13. When and how will I receive the benefits I claim from the Settlement?

If you make a valid claim for payment, the Settlement Administrator will mail you a check for the amount of \$9.95 to the mailing address that you provide in the Paid User Claim Form.

If you make a valid claim for a Voucher, the Settlement Administrator will send you information on how to access this Voucher.

### 14. What happens if my contact information changes after I submit a claim?

If, after you submit a Claim Form, you change your mailing address or email address, it is your responsibility to inform the Settlement Administrator of your updated information. Notify the Settlement Administrator of any changes to your mailing address or your email address by contacting the Settlement Administrator via email [claims@HostwaySettlement.com](mailto:claims@HostwaySettlement.com), visiting the Contact Us section of the Settlement Website ([www.HostwaySettlement.com](http://www.HostwaySettlement.com)) or via telephone at 855-917-3476.

### 15. What happens if some of the money from this Settlement is not claimed?

Any money remaining in the Settlement Fund after payment of Paid User claims, and any Taxes and Tax-Related Expenses related to the Settlement Fund, will be returned to Hostway within ten (10) days of the final payment of such monies by the Settlement Administrator.

## LEGAL RIGHTS RESOLVED THROUGH SETTLEMENT

### 16. What am I surrendering to stay in the Settlement Class?

If you make a claim, or if you do nothing, you will be releasing all of your legal claims against Defendants and their affiliates that arise out of and/or directly relate to the facts and claims alleged in the lawsuit—including any claims related to the blacklisting of certain of Hostway's shared servers located in Florida, and any email service interruptions and non-delivery and/or non-receipt of emails due to the blacklisting, during the Class Period. By releasing your legal claims, you are surrendering any right to file lawsuits against, or seek further compensation from, the Defendants and their affiliates for any harm related to the blacklisting, and any email service interruptions and non-delivery and/or non-receipt of emails during the Class Period—whether or not you are currently aware of those claims. Unless you exclude yourself from the Settlement, all of the orders and decisions by the Court will bind you. That means you will be bound to the terms of the Settlement, and all accompanying Court orders, and that you cannot bring a lawsuit, or be part of another lawsuit against Defendants or their affiliates, relating to the blacklisting, and any email service interruptions and non-delivery and/or non-receipt of emails during the Class Period.

This Notice provides only a summary of the claims being released. The specific details of the claims being released by Settlement Class Members who do not exclude themselves from the Settlement are set forth in Section 12 of the Settlement Agreement. If you have any questions or concerns about the release, you should access the Settlement Agreement and read the specific details of the legal claims being released at the Settlement Website ([www.HostwaySettlement.com](http://www.HostwaySettlement.com)). You may also contact the Settlement Administrator with questions.

## OBJECTING TO OR COMMENTING ON THE SETTLEMENT

### 17. How do I tell the Court that I like or dislike the Settlement?

If you do not exclude yourself, you can comment on or object to the Settlement, Class Counsel's request for attorneys' fees, costs and expenses, and/or the request for a Service Award to the Settlement Class Representative.

Filing an objection means asking the Court to deny approval of the Settlement. You cannot ask the Court to order a larger settlement—the Court can only approve or deny the Settlement. If the Court denies approval, no benefit will be provided to Settlement Class Members and the lawsuit will continue. If you want that to happen, you may so state in the objection. If you choose to make an objection or comment, it must be in writing and contain the following:

- the name and case number of this lawsuit;
- your full name and mailing address, and email address or telephone number;
- your personal signature or the name, address and signature of your counsel;
- an explanation why you believe you are a Settlement Class Member;
- all reasons for your objection or comment;
- a statement identifying the number of class action settlements you have objected to or commented on since January 1, 2016; and
- whether you intend to appear and/or personally testify at the Final Fairness Hearing either in-person or through counsel, and if through counsel, identifying counsel by name, address and telephone number.

If you or your counsel wish to appear and be heard at the Final Fairness Hearing, you must file:

- a written objection or comment, as required above;
- a statement why you desire to appear and to be heard at the Final Fairness Hearing; and
- all documents and writings you want the Court to consider.

For any objections or comments to be considered by the Court, or for you to be heard at the Final Fairness Hearing, the above materials must be: (1) filed with the Clerk of the Circuit Court at the address below; and (2) served on the following counsel by hand delivery, by email, by U.S. Mail or by overnight delivery service, on or before October 5, 2020. If served by U.S. mail, the transmittal must be postmarked no later than that date.

THE COURT	THE PARTIES' COUNSEL
CLERK OF THE COURT Circuit Court for the 17 <sup>th</sup> Judicial Circuit in and for Broward County, Florida 201 S.E. 6th Street Fort Lauderdale, FL 33301	WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP Mark C. Rifkin Benjamin Y. Kaufman Patrick Donovan donovan@whafh.com kaufman@whafh.com rifkin@whafh.com 270 Madison Avenue New York, NY 10016  SAXENA WHITE P.A. Adam D. Warden awarden@saxenawhite.com 7777 Glades Road Suite 300 Boca Raton, FL 33434  CHENG COHEN LLC Fredric A. Cohen fredric.cohen@chengcohen.com 363 West Erie Street Suite 500 Chicago, IL 60654  FOLEY & LARDNER LLP Richard S. Davis rdavis@foley.com One Biscayne Tower 2 South Biscayne Boulevard Suite 1900 Miami, FL 33131

**18. What is the difference between objecting and excluding myself?**

You object to the Settlement when you disagree with some aspect of the Settlement and think the Court should not give Final Approval to the Settlement. An objection, like a comment, allows your views to be heard in Court.

Excluding yourself from the Settlement Class means that you are no longer a Settlement Class Member and do not want the Settlement to apply to you. Once you are excluded, you lose any right to receive any benefits from the Settlement or to object to any part of the Settlement because the case no longer affects you.

**19. When and where will the Court decide whether to approve the Settlement?**

The Court will hold the Final Fairness Hearing at 9:30 a.m. on November 6, 2020, in Courtroom #WW14150 of the Circuit Court for the 17th Judicial Circuit in and for Broward County, Florida, 201 SE 6th Street, Fort Lauderdale, FL 33301. Please check the Settlement Website ([www.HostwaySettlement.com](http://www.HostwaySettlement.com)) for any updates about the Settlement or the Final Fairness Hearing. If the date, time or location of the Final Fairness Hearing changes, an update to the Settlement Website will be the only way you will be informed.

At the Final Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may listen to people who appear at the hearing and who have provided notice of their intent to appear. The Court may also consider Class Counsel's application for attorneys' fees, costs and expenses and for the Service Award. At or after the hearing, the Court will determine whether to approve the Settlement.

**20. Do I have to come to the hearing?**

No. Class Counsel will answer any questions that the Court has. You may attend at your own expense if you wish. If you submit a written objection, you do not have to come to Court to talk about it. As long as your written objection was submitted in a timely manner, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**21. May I speak at the hearing?**

At the hearing, the Court will at its discretion hear any objections and arguments concerning the fairness of the Settlement.

You may attend, but you do not have to. You may speak at the Final Fairness Hearing if you: (a) timely served your written comment or objection pursuant to Section 17 above; and (b) identified in your comment or objection whether you intend to appear at the Final Fairness Hearing.

You cannot speak at the hearing if you exclude yourself from the Settlement Class.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

**22. How do I exclude myself from the Settlement?**

If you want to maintain any right to sue or continue to sue Defendants and other persons or entities based on the claims the Settlement resolves, you must take steps to exclude yourself from the Settlement Class (sometimes called "opting out"). If you exclude yourself, however, you will not be eligible to receive any Settlement benefit.

To exclude yourself from the Settlement, you either have previously excluded yourself from the Class, or you must submit to the Settlement Administrator, a request for exclusion ("Request for Exclusion") by First-Class Mail to Hostway Settlement Administrator, P.O. Box 5110, Portland, OR 97208-5110, or electronically via email at [claims@HostwaySettlement.com](mailto:claims@HostwaySettlement.com). A Request for Exclusion must be postmarked no later than October 5, 2020. If submitted electronically, a Request for Exclusion must be submitted by that same date. A Request for Exclusion must be signed and state (a) your name, address, and telephone number; and (b) that you wish to be excluded from the Class.

You cannot exclude yourself by submitting a notification other than as directed above, or after the deadline. You cannot exclude yourself via telephone. A request for exclusion can only request exclusion for that one Settlement Class Member. Purported "mass" or "class" opt-outs made on behalf of multiple persons or classes of persons therefore will be deemed invalid. If you submit a claim for a Settlement benefit and you also submit a Request for Exclusion, the Request for Exclusion will be deemed invalid. If you previously excluded yourself from the Class but now submit a claim for a Settlement benefit, the prior Request for Exclusion will be deemed invalid. If you previously excluded yourself from the Class, you need not submit another Request for Exclusion.

**23. If I do not exclude myself, can I sue Defendants for the same thing later?**

No. Unless you exclude yourself, you will surrender any rights to sue Defendants and their affiliates regarding the blacklisting of certain of Hostway's shared servers located in Florida, as described in detail above.

**24. If I exclude myself, can I still get the Settlement benefits?**

No. You will not be eligible to receive any Settlement benefit if you exclude yourself.

**25. If I exclude myself, am I still represented by Class Counsel?**

No. Class Counsel represents the members of the Settlement Class. If you exclude yourself from the Settlement Class, you are not represented by Class Counsel.

**DOING NOTHING**

**26. What happens if I do nothing?**

If you do nothing, you will not be eligible to receive any Settlement benefit and if the Settlement becomes final, you will surrender any rights to sue Defendants and their affiliates regarding the blacklisting of certain of Hostway's shared servers located in Florida, as described in detail above.

**GETTING MORE INFORMATION**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement itself. You can get a copy of the Settlement Agreement, view other case documents, and get additional information and updates by visiting the Settlement Website ([www.HostwaySettlement.com](http://www.HostwaySettlement.com)).

All of the case documents that have been publicly filed in this case are available at the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida. The case is called *Golf Clubs Away LLC v. Hostway Corp., et al.*, Case No. 09-29596-13.

You can also get additional information or request a copy of the Settlement Agreement by calling toll-free 855-917-3476 or by contacting the Settlement Administrator as directed on the Settlement Website ([www.HostwaySettlement.com](http://www.HostwaySettlement.com)) or via email at [claims@HostwaySettlement.com](mailto:claims@HostwaySettlement.com).

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE  
TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS**