

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

CARLA PLOWMAN

Plaintiff

-VS-

TY INC

Defendant

2024CH000205
CASE NUMBER**FILED**

25 Jun 10 PM 02: 22

CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**ORDER****ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, AWARD OF ATTORNEYS' FEES SERVICE AWARD, AND ENTERING FINAL ORDER AND JUDGMENT**

Plaintiff Carla Plowman, individually and on behalf of the Settlement Class,[1] entered into a Class Action Settlement Agreement ("Settlement Agreement" or "Settlement") with Defendant Ty Inc. in late November 2024. The Court granted preliminary approval of the Settlement on February 3, 2025, provisionally certifying the proposed Class for settlement purposes.

On June 10, 2025, the Court held a Final Approval Hearing on (1) Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement, and (2) Plaintiff's Unopposed Motion for Attorney Fees and Service Award ("Fee Petition"). The Court heard argument from counsel for Plaintiff and Defendant. No Settlement Class Members filed Opt-Out requests to the Settlement. No Settlement Class Members objected to the Settlement. Through the briefs, exhibits, and argument presented at the Final Approval Hearing, the Court has thoroughly examined and considered the Settlement and the exhibits thereto (collectively, the "Settlement Agreement"), the and the Fee Petition.

Having reviewed the motions and all related pleadings and filings, and having heard the evidence and argument presented at the Final Approval Hearing, which are incorporated herein by reference, THE COURT HEREBY FINDS, CONCLUDES, AND ORDERS THE FOLLOWING:

FINAL ORDER AND JUDGMENT**A. Certification of the Settlement Class**

1. The Court certifies, for settlement purposes only, the following class (hereinafter and for purposes of this Final Order and Judgment, the "Settlement Class"):

All individuals residing in the United States whose Personal Information may have been compromised in the Security Incident experienced by Ty Inc. on or around April 2023, including all those who received notice of the breach.

Excluded from the Settlement Class are: (i) Defendant, its officers and directors; (ii) all Settlement Class Members who

timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and immediate family; and (iv) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident or who pleads *nolo contendere* to any such charge.

1. For the reasons stated in its Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) and as summarized below, the Court finds that the Settlement Class meets the requirements of 735 ILCS 5/2-801 and 735 ILCS 5/2-802 for certification for settlement purposes: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class, which predominate over any questions affecting only individual members of the Settlement Class; (c) the Representative Plaintiff and her attorneys will fairly and adequately protect the interests of the Settlement Class; and (d) a class action is an appropriate method for the fair and efficient adjudication of the controversy.
2. The Court hereby appoints Raina C. Borrelli and Cassandra P. Miller of Strauss Borrelli PLLC as Settlement Class Counsel for the Settlement Class.

A. Notice

1. The Court affirms the appointment of CPT Group as the Settlement Administrator.
2. Pursuant to the terms of the Settlement Agreement and this Court’s Preliminary Approval Order, on March 20, 2025, the Settlement Administrator launched the settlement website that included the Settlement Agreement, the Long Notice, the Summary Notice, and the Claim Form. On March 20, 2025, the Settlement Administrator the Court-approved Summary Notice to all Settlement Class Members. The Settlement Administrator undertook reasonable efforts to confirm the address, and to resend notice, for any Settlement Class Members for which the Settlement Administrator received returned mail from the U.S. Postal Service indicating that the initial mailing was not delivered.
3. The Notice Program, together with all included and ancillary documents thereto, complied with all the requirements of the United States Constitution and 735 ILCS 5/2-803. The Notice Program (a) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice; (b) is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action and of their right to object to or to exclude themselves from the proposed settlement; and (c) meets all applicable requirements of applicable law.
4. The Court finds that Settlement Class Members have been provided the best notice practicable of the Settlement, and that such notice fully satisfies all requirements of law as well as all requirements of due process.

A. Final Approval of Settlement

1. At the Final Approval Hearing, the Court fulfilled its duty to independently evaluate the fairness, reasonableness, and adequacy of, *inter alia*, the Settlement Agreement and the Fee Petition, and considered the pleadings and argument of the Parties and their counsel, as well as the interests of all absent members of the Settlement Class.
2. After thoroughly considering the briefing and arguments of the Parties and considering the factors required by the Constitution and the Illinois Code of Civil Procedure, this Court concludes that the Settlement Agreement is fair, reasonable, and adequate, consistent and in compliance with all requirements of due process and applicable law, and in the best interests of the Representative Plaintiff and the Settlement Class.
3. Specifically, the Court determines that:
 - a. the Representative Plaintiff and Settlement Class Counsel have adequately protected the Settlement Class;
 - b. the Settlement was negotiated at arm's length, is non-collusive, and was entered into in good faith;
 - c. the Settlement is informed by Settlement Class Counsel's thorough investigation and consideration of documents and information provided by Ty Inc. regarding the legal and factual issues in this Action. Having previously brought similar class actions, and having reviewed and considered Ty Inc.'s productions, Settlement Class Counsel were in an excellent position to evaluate the merits of the Settlement Agreement against the risks and costs associated with continued litigation;
 - d. the relief to the Settlement Class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of distributing relief to the Settlement Class, including the method of processing Settlement Class Members' claims; (iii) the terms of the proposed award of attorneys' fees, including the timing of payment;
 - e. the recommendation of experienced counsel and the positive reaction from Settlement Class Members favor Final Approval of the Settlement;
 - f. the Settlement Agreement treats Settlement Class Members equitably relative to each other because all members of the proposed Settlement Class are eligible for reimbursement of Out-of-Pocket Losses up to an overall limit of \$5,000 per Settlement Class Member, and reimbursement for Lost Time up to an overall limit of \$80.00 per Settlement Class Member, and Credit Monitoring Services.
4. The Parties have represented that no agreements exist between the Parties aside from those referred to in the Settlement Agreement or otherwise submitted to the Court.
5. The Settlement Agreement is the result of extended, arm's-length negotiations among experienced counsel and is non-collusive.
6. The Court finds that the Settlement Agreement is in all respects fair, reasonable, adequate, and in the best interest of the Settlement Class, and the Court grants final approval to the Settlement Agreement.

A. Implementation of Settlement

1. The Court directs the Parties and their counsel to use their best efforts to implement and consummate the Settlement Agreement in accordance with its terms and provisions.

A. Attorneys' Fees and Expenses and Service Award

1. Settlement Class Counsel requested a combined \$159,000.00 in fees and expenses. Having reviewed the Fee Petition and supporting documentation, and given that no party or Settlement Class Member has opposed or objected to the requested fees and expenses, the Court finds the request supported and reasonable.
2. Settlement Class Counsel also request a Service Award for the Representative Plaintiff in the amount of \$5,000. When courts evaluate such awards, "relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (approving \$25,000 award);[2] *see also GMAC Mort. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 497 (1st Dist. 1992) (noting that service awards to represented plaintiffs are common in class actions). Here, Plaintiff initiated litigation, and through counsel, negotiated an arm's-length Settlement Agreement that equally benefits thousands of Settlement Class Members who otherwise would not or may not receive any relief. The Court concludes that the requested Service Award is appropriate for Plaintiff.
3. For the reasons stated above, the Court approves Settlement Class Counsel's requests for Attorneys' Fees and Expenses and for Plaintiff's Service Award.

A. Exclusions from the Settlement Class

1. The Claims Administrator has received no requests for exclusion from the Settlement Class Members.

A. Releases

1. The Court adjudges that in consideration of the Settlement and as set forth in the Settlement Agreement, Plaintiff, on behalf of herself and all Settlement Class Members, Settlement Class Counsel, each of the Settlement Class Members and their respective heirs, executors, administrators, representatives, agents, partners, predecessors, successors, attorneys, assigns, and any other person purporting to assert a claim on their behalf (the “Releasing Parties”), fully, finally, conclusively and forever release, relinquish, acquit, discharge, and hold harmless Ty Inc. and each and every of its respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, owners, and related or affiliated entities of any nature whatsoever, including any related entity whose data or customer data may have been impacted in the Security Incident, whether direct or indirect, as well as any and all of Defendant’s and these entities’ respective predecessors, successors, officers, directors, current and former employees, advisors, vendors, stockholders, partners, agents, attorneys, representatives, insurers, reinsurers, subrogees and assigns (the “Released Parties”) of and from any and all claims, any and all claims, liabilities, rights, demands, suits, actions, causes of action, obligations, damages, penalties, costs, attorneys’ fees, losses, and remedies of every kind or description—whether known or unknown, existing or potential, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that relate to or arise from the Security Incident, the operative facts alleged in the Action, including the complaint and any amendment thereto, Defendant’s information security policies and practices, or Defendant’s maintenance or storage of Personal Information, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law.

A. Covenant Not to Sue

1. In consideration of the terms of the Settlement Agreement, all members of the Settlement Class, including the Representative Plaintiff, are found to have (a) covenanted and agreed that neither Plaintiff nor any members of the Settlement Class, nor anyone authorized to act on behalf of any of them, will commence, authorize, prosecute, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Settlement Agreement, against Ty Inc. with respect to any claim, matter, or issue that in any way arises from, is based on, or related to, any alleged loss, harm, or damages allegedly caused by Ty Inc. in connection with the Released Claims; (b) waived and disclaimed any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by, or on behalf of, any of them or any putative class of Settlement Class Members; and (c) agreed that this judgment shall be a complete bar to any such action by the Representative Plaintiff or any Settlement Class Member.

I. Settlement Agreement as Exclusive Remedy for Released Claims

1. This Settlement Agreement and the Final Order and Judgment shall be binding on and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the release described herein maintained by or on behalf of the Releasing Parties. Enforcement of the Settlement Agreement shall be the exclusive remedy for all members of the Settlement Class, including the Representative Plaintiff, all of whom are bound by all proceedings, orders and judgments in the Action and are permanently barred and enjoined from instituting, commencing, prosecuting, or continuing to prosecute, either directly or indirectly, any of the Released Claims. Members of the Settlement Class who are prosecuting or asserting any of the Released Claims are ordered to take whatever measures are necessary to effectuate dismissal of their claims.
2. This Final Order and Judgment bars and permanently enjoins all members of the Settlement Class from (a) filing, commencing, prosecuting, intervening in or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action or the Released Claims, and (b) organizing Settlement Class Members that have not been excluded from the class into a separate class for purposes of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action or the Released Claims, except that Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency.

A. Effect of Judicial Determination of Invalidity or Unenforceability

1. If for any reason this Final Order is reversed, vacated or materially modified on appeal (and, in the event of material modification, which shall not include any modification to an award of Attorneys' Fees and Expenses or to the Service Award), this Final Order shall be null and void, the Settlement Agreement shall be deemed terminated (except for any paragraphs that, pursuant to the terms of the Settlement Agreement, survive termination of the Settlement), and the Settling Parties shall return to their positions without prejudice in any way, as provided for in the Settlement Agreement, and nothing stated herein or in the Settlement Agreement shall be deemed an admission or waiver of any kind by any of the Settling Parties or used as evidence against, or over the objection of, any of the Settling Parties for any purpose in this action or any action.

A. No Admission of Liability

1. As set forth in the Settlement Agreement, the fact and terms of this Final Order and the Court's Preliminary Approval Order, all negotiations, discussions, drafts, and proceedings in connection with this Final Order, the Court's Preliminary Approval Order and the Settlement Agreement, and any act performed or document signed in connection with this Final Order, the Court's Preliminary Approval Order and the Settlement Agreement, shall not, in this or any other court, administrative agency, arbitration forum or other tribunal, be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made or that could have been made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever. The fact and terms of this Final Order, the Court's Preliminary Approval Order and the Settlement Agreement, all negotiations, discussions, drafts and proceedings in connection with this Final Order, the Court's Preliminary Approval Order and the Settlement Agreement, including but not limited to the judgment and the release of the Released Claims provided for in the Settlement Agreement and any judgment, shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum or other tribunal, except as necessary to enforce the terms of this Final Order and/or the Settlement.

A. Entry of Final Judgment

1. Representative Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement is **GRANTED**.
2. Representative Plaintiff's Unopposed Motion for Attorneys' Fees and Service Award is **GRANTED**.
3. The Court dismisses the Action now pending before the Court on the merits and with prejudice and without fees or costs except as provided herein. The Court orders the entry of, and enters, this Final Order and Judgment on all claims, counts, and causes of action alleged in this Action by the Representative Plaintiff, on behalf of herself, the Settlement Class, or both. In entering this Final Order and Judgment with the provisions stated herein and other limiting provisions, this Court specifically refers to and invokes the Full Faith and Credit Clause of the United States Constitution and the doctrine of comity, and requests that any court in any other jurisdiction reviewing, construing, or applying this Final Order and Judgment implement and enforce its terms and limitations in their entirety.
4. Without affecting the finality of the Final Order and Judgment in any way, the Court shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute between the Parties arising out of or relating to this Settlement Agreement that cannot be resolved by negotiation and agreement by counsel for the Settling Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Settlement Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator consents to the jurisdiction of the Court for this purpose and any dispute between or among the Settlement Administrator, Plaintiff, and/or Defendant.
5. The Court authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and all exhibits thereto as (a) shall be consistent in all material respects with this Final Order and Judgment and (b) do not limit the rights of the Parties or Settlement Class Members.

[1] Unless defined differently herein, this Final Order and Judgment incorporates the definitions in the Settlement Agreement, and terms used herein shall have the same meanings as set forth in the Settlement Agreement. The Settlement Agreement is adopted by the Court and made part of this Final Order and Judgment as if set out in full herein. In the event of any inconsistency between the Settlement Agreement and a term defined differently herein, the definition herein shall apply.

[2] Federal decisions interpreting Federal Rule of Civil Procedure 23 are persuasive authority, as section 2-801 of the Illinois Code of Civil Procedure was modeled on Rule 23. *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (2005).

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JUDGE JENNIFER BARRON

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