

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

<p>CARLA PLOWMAN, on behalf of herself and all others similarly situated,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>TY INC.,</p> <p style="text-align: right;">Defendant.</p>	<p>Case No. 2024CH000205</p> <p><b>JURY TRIAL DEMANDED</b></p> <p>Candice Adams e-filed in the 18th Judicial Circuit Court DuPage County ENVELOPE: 30396106 2024CH000205 FILEDATE: 11/27/2024 3:08 PM Date Submitted: 11/27/2024 3:08 PM Date Accepted: 12/2/2024 8:25 AM IH</p>
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**PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Plaintiff Carla Plowman (“Plaintiff”), individually and on behalf of all others similarly situated, by and through their undersigned counsel, respectfully submit their Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion”). The terms of the class action settlement (the “Settlement”) are set forth in the Parties’ Settlement Agreement, attached hereto as **Exhibit 1** (the “Settlement Agreement” or “SA”).

**I. INTRODUCTION**

Ty Inc. (“Defendant”) is an Illinois company that is the largest manufacturer of stuffed plush toys in the world, touting itself as “an American multinational corporation” with “over 30 years of experience.” As part of its business, Defendant collects and maintains the personally identifiable information (“PII”) and protected health information (“PHI”) (collectively with PII, “Sensitive Information”) of current and former employees. On or near April 26, 2023, Defendant experienced a data security incident affecting the Sensitive Information that Defendant collected

and stored from its current and former employees (the “Security Incident”). Plaintiff was a victim of the Security Incident.

Plaintiff, individually and on behalf of the Settlement Class (as defined below), filed suit against Defendant, alleging Defendant failed to adequately protect their Sensitive Information. Defendants deny any allegations of wrongdoing and deny liability. Recognizing the risks of protracted litigation, the Parties negotiated an agreement that provides for significant monetary relief for the Settlement Class.

Pursuant to the Parties’ agreement, Plaintiff now respectfully request that this Court: (1) preliminarily approve the Parties’ settlement as fair, adequate, reasonable, and within the range of possible final approval; (2) appoint Carla Plowman as Settlement Class Representative; (3) appoint Raina C. Borrelli and Cassandra P. Miller of Strauss Borrelli PLLC as Settlement Class Counsel; (4) provisionally certify the Settlement Class for settlement purposes only; (5) approve the Parties’ proposed notice program and confirm it is appropriate and satisfies due process; (6) set a date for a final approval hearing; and (7) set deadlines for members of the Settlement Class to submit claims for compensation and to object to or exclude themselves from the settlement.

## **II. CASE SUMMARY**

### **A. The Security Incident**

On April 26, 2023, Ty Inc. identified suspicious activity in its corporate computer network that resulted in “an unauthorized party access[ing] or acquir[ing] certain files stored on servers in the network.” Complaint (“Comp.”) ¶ 27. The specific personal information of individuals impacted by the Security Incident included: name, driver’s license number, financial account number, passport number, Social Security number, check images, and beneficiary and dependent

information. Declaration of Raina Borrelli in Support of Motion for Preliminary Approval (“Borrelli Decl.”), ¶ 4. The Security Incident impacted approximately 2,797 individuals. *Id.*

### **B. Procedural Posture**

On November 16, 2023, in the Circuit Court for the Eighteenth Judicial Circuit Court in and for DuPage County, Illinois, Plaintiff Carla Plowman filed a class action complaint against Defendant. The case was subsequently refiled on August 12, 2024. Plaintiff Plowman alleged five causes of action: (1) Negligence; (2) Breach of Implied Contract; (3) Unjust Enrichment; (4) Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act 815 Ill. Comp. Stat. 505/1, *et. seq.* and (6) Invasion of Privacy.

### **C. History of Negotiations**

Shortly after the case was initially filed in 2023, the parties began exploring early resolution. Borrelli Decl., ¶ 4. Plaintiff requested, and Defendant produced, informal discovery necessary to evaluate the strengths and weaknesses of Plaintiff’s claims, including information about the size and scope of the Security Incident and Defendant’s response to the Security Incident. *Id.* ¶ 6. Over the following months, Plaintiff’s counsel and Defendant’s counsel, both of whom are experienced in data breach class actions, conducted multiple rounds of arms’ length negotiations before ultimately agreeing on the terms of the Settlement. *Id.* ¶¶ 7-8. The Parties did not negotiate attorney’s fees or a service award until after they had agreed on benefits for the Settlement class. *Id.* ¶ 11. Plaintiff’s counsel is confident that the Settlement terms are fair, reasonable, adequate, and provide significant relief to the Settlement Class. *Id.* ¶ 14.

## **III. SUMMARY OF THE SETTLEMENT**

The Settlement Agreement details how to implement the Parties’ settlement from beginning to end, including how to define the Settlement Class, the benefits they will receive, the

claims process, and how Plaintiff may petition for fees and service awards. Further, the Settlement Agreement provides for the resolution of all claims and causes of action asserted, or could have been asserted, against Defendant relating to the Security Incident and the Action, by and on behalf of Plaintiff and members of a nationwide class of individuals potentially impacted by the Security Incident.

#### **A. Settlement Class Definition**

The Settlement Agreement defines the Settlement class as all living 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 (1) Defendant, its officers and directors; (2) all Settlement Class members who timely and validly request exclusion from the Settlement Class; (3) any judges assigned to this case, their staff, and immediate family members, and (4) 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. SA ¶ 56.

#### **B. Benefits to the Settlement Class**

The Settlement establishes excellent and timely benefits for all Approved Claims. Under the Settlement, Defendant shall pay for all Approved Claims in full, with no limit or cap.

##### **1. Credit Monitoring**

Settlement Class Members will be offered an enrollment in two years of Credit Monitoring Services provided through CyEx. *Id.* ¶ 40. This will ensure that Settlement Class Members' Personal Information is protected well into the future.

##### **2. Out-of-Pocket Losses Payment**

Settlement Class Members may make a claim for compensation for unreimbursed Out-of-Pocket Losses up to \$5,000.00 upon submission of a valid Claim Form and supporting documentation. *Id.* ¶ 41(a). Out-of-Pocket Losses may include, but are not limited to, professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after Notice Commencement Deadlines through the Claims Deadline; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. *Id.*

### **3. Lost Time Payment**

Settlement Class Members may also make a claim for compensation for Lost Time up to 4 hours at a rate of \$20.00 per hour, for a total of \$80.00, upon submission of a valid claim, provided they identify the activities engaged in and the time spent on each activity and an attestation on the Claim Form that the activities they performed were related to the Security Incident. *Id.* ¶ 41(b). These claims are subject to the \$5,000 cap for Out-of-Pocket Losses. *Id.*

### **4. Business Practice Changes**

In addition to the monetary benefits offered, the Settlement confirms that, after the Security Incident, Defendants implemented a number of cybersecurity changes designed to protect Settlement Class Members' PII and PHI moving forward. *Id.* ¶ 42. Defendant will pay for the cost of these cybersecurity improvements separate from any other Settlement Class Member benefits.

## **C. Notice and Claims Process**

### **1. Notice**

Subject to Court approval, the Parties have agreed to use CPT Group as the Settlement Administrator. *Id.* ¶ 32. Notice and Administration Expenses will be paid by Defendant, separately

form costs associated with providing the Settlement Benefits. *Id.* ¶ 52. Within 15 days after the entry of the Preliminary Approval Order, Defendant will provide the Settlement Class List to the Settlement Administrator. Within 45 days after the entry of the Preliminary Approval Order, the Settlement Administrator will provide Notice to the Settlement class via U.S. mail. *Id.* ¶ 49. Notices returned to the Settlement Administrator will result in the Settlement Administrator making reasonable efforts to identify an updated mailing address and resend the notice if an updated mailing address is identified. *Id.*

Further, the Settlement Administrator will make the Long Form Notice and the Claim Form, as well as the Settlement Agreement, Complaint, Plaintiff's Motion for Preliminary Approval, and other relevant documents available to the Settlement Class Members on the Settlement Website, which will be created as soon as practicable following entry of the Preliminary Approval Order. *Id.* ¶ 51. The Settlement Administrator will maintain and update the Settlement Website until at least 60 days after all Settlement Payments have been distributed. *Id.*

## **2. Claims, Objections, and Requests for Exclusion**

The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide whether they would like to opt-out or object.

Class Members will have 90 days from the Notice Deadline to submit their Claim Form to the Settlement Administrator. *Id.* ¶ 5. The Settlement Administrator has sole discretion and authority to determine the validity of a Claim, and upon receipt of an incomplete or unsigned Claim Form, is required to notify the Settlement Class Member of the deficiencies and allow 21 days to cure the defect before rejecting the claim. *Id.* ¶ 44.

Settlement Class Members who wish to object to the terms of the Settlement Agreement must do so in writing by submitting a Request for Exclusion to the Settlement Administrator no later than 60 days after the Notice Commencement Deadline. *Id.* ¶ 53. The Request for Exclusion must include: (i) the name of the proceeding; (ii) the individual’s full name, current mailing address, personal signature, and the words “Request for Exclusion” or comparable statement that the individual does not wish to participate in the Settlement. *Id.*

#### **D. Attorneys’ Fees, Costs, and Expenses and Service Awards**

As part of the Settlement, Defendant has agreed to not oppose an application by Settlement Class Counsel for an award of attorneys’ fees and litigation costs in the amount of up to \$159,000.00. *Id.* ¶ 68. The Settlement Agreement also provides for a reasonable Service Award to the named Plaintiff in the amount of \$5,000. *Id.* ¶ 66. The Service Award is meant to compensate Plaintiff for her efforts in the Action, including maintaining contact with counsel, assisting in the investigation of the case, reviewing pleadings, remaining available for consultation throughout settlement negotiations, answering counsel’s many questions, and reviewing the Settlement Agreement. Borrelli Decl., ¶ 11. Plaintiff will seek the Court’s approval of the requested attorneys’ fees, costs and Service Awards prior to the Final Fairness Hearing by way of a separate motion.

### **IV. ARGUMENT**

#### **A. The Settlement Class Should be Certified for Settlement Purposes**

Plaintiff respectfully moves the Court to grant class certification to a Settlement Class under 735 ILCS 5/2-801 and 735 ILCS 5/2-802 on behalf of all persons whose Sensitive Information was potentially compromised in the Security Incident involving Defendant’s computer network on or about April 26, 2023, and who were the subject of the notice of breach that Defendants sent Plaintiff and the Settlement Class on or about September 15, 2023.

“An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds: (1) The class is so numerous that joinder of all members is impracticable. (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members. (3) The representative parties will fairly and adequately protect the interest of the class. (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.” 735 ILCS 5/2-801. Here, the Settlement Class meets the requirements of 735 ILCS 5/2-801 and warrants certification for settlement purposes.

**1. The Settlement Class Members are so Numerous That Joinder is Impracticable**

The class must be so numerous that joinder of all members is impracticable. 735 ILCS 5/2-801(1). Courts have held that where a putative class contains forty or more members, numerosity is typically presumed. One court thus stated, “One leading scholar has offered the following guideline: ‘If the class has more than forty people in it, numerosity is satisfied....’ Our research has supported this guideline.” *Wood River Area Dev. Corp. v. Germania Fed. Sav. & Loan Ass’n*, 198 Ill. App. 3d 445, 450 (5th Dist. 1990) (citing Arthur Miller, *An Overview of Federal Class Actions: Past, Present, and Future*, Federal Judicial Center 22 (1977)); *see also Barragan v. Evanger’s Dog & Cat Food Co.*, 259 F.R.D. 330, 333 (N.D. Ill. 2009) (“Although there is no number requiring or barring a finding of numerosity, a class including more than 40 members is generally believed to be sufficient.”). Here, there are 2,797 of Settlement Class Members. Thus, the Settlement Class satisfies the numerosity requirement.

**2. Common Questions of Law and Fact are Common to the Claims of all Settlement Class members, including Plaintiff**



Commonality is met if “(1) there are questions of fact or law common to the class; and (2) the common questions predominate over any questions affecting only individual members.” *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 674 (2nd Dist. 2006). The critical inquiry is whether “successful adjudication of the purported class representatives’ individual claims will establish a [common] right of recovery in other class members.” *Id.* at 674; *see also Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100 (2005), *cert. denied*, 547 U.S. 1003 (2006)

. “Where the predominance test is met, a judgment in favor of the class members should decisively settle the entire controversy, and all that should remain is for other members of the class to file proof of their claim.” *Bemis v. Safeco Ins. Co. of Am.*, 407 Ill. App. 3d 1164, 1167 (5th Dist. 2011) (quoting *Smith v. Ill. Cent. R.R. Co.*, 223 Ill. 2d 441, 449 (2006)) (internal quotation marks omitted). “Where a question of law involves ‘standardized conduct of the defendants toward members of the proposed class, a common nucleus of operative facts is typically presented, and the commonality requirement . . . is usually met.’” *Primack v. State Farm Auto. Ins. Co.*, No. 13-cv-6694, 2013 U.S. Dist. LEXIS 188160, at \*7 (N.D. Ill. Sept. 18, 2013) (alteration in original) (quoting *Franklin v. City of Chic.*, 102 F.R.D. 944, 949 (N.D. Ill. 1984)).

Here, commonality is satisfied because the circumstances of each Settlement Class Member involve a common core of factual and legal issues with the rest of the class. Plaintiff’s claims center on whether Defendant failed to adequately safeguard the sensitive information of Plaintiff and other Settlement Class Members. Issues common to all Settlement Class Members include:

- Whether Defendant had a duty to use reasonable care in safeguarding Plaintiff’s and the Class’s Sensitive Information;

- Whether Defendant failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the Security Incident;
- Whether Defendant was negligent in maintaining, protecting, and securing Sensitive Information;
- Whether Defendant breached contract promises to safeguard Plaintiff's and the Class's Sensitive Information;
- Whether Defendant took reasonable measures to determine the extent of the Security Incident after discovering it;
- Whether Defendant's Breach Notice was reasonable;
- Whether the Security Incident caused Plaintiff's and the Class's injuries;
- What the proper damages measure is; and
- Whether Plaintiff and the Class are entitled to damages, treble damages, or injunctive relief.

These common questions, and others alleged by Plaintiff are central to the causes of action brought here and can be addressed on a class-wide basis because they all tie back to the same common nucleus of operative facts—the Security Incident and Defendants' data protection measures. *See Parker v. Risk Mgmt. Alternatives, Inc.*, 206 F.R.D. 211, 213 (N.D. Ill. 2002) (“[A] common nucleus of operative fact is usually enough to satisfy the [commonality] requirement”) Thus, Plaintiff has met the commonality requirement

### **3. Plaintiff's Claims are Typical of the Claims of the Members of the Class She Represents**

A claim is typical of the claims of the class members where a named plaintiff's claims are based on the same legal or remedial theory as each of the class members' claims. *See Rubino v. Circuit City Stores*, 324 Ill. App. 3d 931, 939 (1st Dist. 2001). Put another way, where the defendant engages "in a standardized course of conduct vis-a-vis the class members, and plaintiff's alleged injury arises out of that conduct," typicality is "generally met." *Hinman v. M & M Rental Center*, 545 F. Supp. 2d 802, 806–07 (N.D. Ill. 2008) (citing *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998); *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983)).

Here, the claims of Plaintiff and all Settlement Class Members arise out of the same course of conduct— Defendant's alleged failure to reasonably protect the Settlement Class Members' Sensitive Information—and assert the same theories of liability. As a result, the typicality requirement is satisfied.

### **4. The Adequacy Requirement is Satisfied**

For a class to be certified, a putative class representative must "fairly and adequately protect the interests of the class." 735 ILCS 5/2-801(3). "The test of adequate representation is whether the interests of the named parties are the same as the interests of those who are not named" such that no conflict of interest exists between the plaintiffs and the other class members. *Cruz v. Unilock Chi., Inc.*, 383 Ill. App. 3d 752, 778–80 (2nd Dist. 2008) (citing *P.J.'s Concrete Pumping Serv. v. Nextel W. Corp.*, 345 Ill. App. 3d 992, 1004 (2nd Dist. 2004)) (holding that even if a conflict exists, that plaintiff may be replaced with another plaintiff who does not have a conflict). Additionally, "[d]ue process requires that the plaintiff's attorney be qualified, experienced, and able to conduct the proposed litigation." *Clark v. TAP Pharm. Prods., Inc.*, 343 Ill. App. 3d 538,

551 (5th Dist. 2003). Therefore, plaintiffs may adequately represent the class if their interests “are the same as those who are not joined,” “[t]he attorney for the representative party ‘must be qualified, experienced[,] and generally able to conduct the proposed litigation,’” and “[the representative party’s] interests must not appear collusive.” *Hall v. Sprint Spectrum L.P.*, 376 Ill. App. 3d 822, 876 (5th Dist. 2007) (alterations in original) (quoting *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981)).

Here, the Class Representative and proposed Settlement Class Counsel meet the test of adequacy. First, there is no conflict between Plaintiff and the Settlement Class Members. Plaintiff alleges she was harmed in the same way as all other Settlement Class Members, by Defendant’s failure to adequately secure her Sensitive Information, resulting in the Security Incident. Plaintiff and all Settlement Class Members seek relief for similar injuries arising out of the same event, the Security Incident. In light of this common event and injury, the named Plaintiff has every incentive to vigorously pursue the class claims, and no conflict exists.

Further, proposed Settlement Class Counsel are well-qualified to represent the class. Settlement Class Counsel have extensive experience in data privacy and consumer class actions and are leaders in the field. Borrelli Decl., ¶ 13, Ex. 1 (firm resume). The excellent results obtained by this settlement confirm counsel’s adequacy. Thus, the requirements of adequacy are satisfied.

#### **5. The Requirements of 735 ILCS 5/2-801(4) are Satisfied**

“While Federal Rule of Civil Procedure 23(b)(3) requires that a class action be superior to other available methods of adjudication, the Illinois statute requires that the trial court find that the class action is an appropriate method of litigating the controversy.” *Avery v. State Farm*, 1997 Ill. Cir. LEXIS 1, \*19 (Ill. Cir. Ct. Dec. 5, 1997) (citing 735 ILCS 5/2-801(4)). “To satisfy the ‘appropriate method’ requirement, the plaintiff must demonstrate that the class action (1) can best

secure the economies of time, effort, and expense and promote a uniformity of decision or (2) can accomplish the other ends of equity and justice that class actions seek to obtain.” *Clark*, 343 Ill. App. 3d at 552.

The key question in this case is whether Defendant had a duty to exercise reasonable care in safeguarding, securing, and protecting the Sensitive Information of Plaintiff and the Settlement Class, and whether Defendant breached that duty. Although the Illinois statute does not require a predominance analysis, it is significant that the common questions that arise from Defendant’s alleged conduct do indeed predominate over any individualized issues, as other courts have recognized in the data breach context. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 312-15 (N.D. Cal. 2018) (finding predominance was satisfied because “Plaintiffs’ case for liability depend[ed], first and foremost, on whether [the defendant] used reasonable data security to protect Plaintiffs’ personal information,” such that “the claims rise or fall on whether [the defendant] properly secured the stolen personal information,” and that these issues predominated over potential individual issues); *see also Hapka v. CareCentrix, Inc.*, No. 2:16-cv-02372-KGG, 2018 WL 1871449, at \*2 (D. Kan. Feb. 15, 2018) (finding predominance was satisfied in a data breach case because “[t]he many common questions of fact and law that arise from the E-mail Security Incident and [defendant’s] alleged conduct predominate over any individualized issues”); *In re The Home Depot, Inc., Customer Data Sec. Breach Litig.*, No. 1:14-md-02583-TWT, 2016 WL 6902351, at \*2 (N.D. Ga. Aug. 23, 2016) (finding common predominating questions included whether Home Depot failed to reasonably protect class members’ personal and financial information, whether it had a legal duty to do so, and whether it failed to timely notify class members of the data breach); *In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1059 (S.D. Tex. 2012) (finding predominance satisfied in data breach case despite variations in state laws at

issue, concluding such variations went only to trial management, which was inapplicable for settlement class). The fact that the core liability issues here predominate over individualized issues suggests that a class action will best secure the economies of time, effort, and expense and promote a uniformity of decision.

Additionally, because Plaintiff seeks to certify the claims here for purposes of settlement, there are no issues with manageability and resolution of thousands of claims in one action promotes judicial economy. Class certification—and class resolution—guarantee an increase in judicial efficiency and conservation of resources over the alternative of individually litigating thousands of individual data breach cases arising out of the same Security Incident. Accordingly, the class should be certified for settlement purposes.

#### **B. The Court Should Preliminarily Approve the Settlement**

The law favors compromise and settlement of class action suits. *Langendorf v. Irving Tr. Co.*, 244 Ill. App. 3d 70, 78 (1st Dist. 1992); *Sec. Pac. Fin. Serv. v. Jefferson*, 259 Ill. App. 3d 914, 919 (1st Dist. 1994). The approval of a proposed class action settlement is a matter of discretion for the trial court. *See Fauley v. Metro. Life Ins. Co.*, 52 N.E.3d 427, 439 (Ill. App. Ct. 2016) (“In Illinois, a trial court’s final approval of a class-action settlement will not be disturbed unless the trial court abused its discretion.”); *Steinberg v. Sys. Software Assocs.*, 306 Ill. App. 3d 157, 169 (1st Dist. 1999) ; *City of Chic. v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990) (“A trial court’s approval of a settlement should not be overturned on appeal unless, taken as a whole, the settlement appears on its face so unfair as to preclude judicial approval.”); Newberg on Class Actions § 11.41 (4th ed. 2002) (“The compromise of complex litigation is encouraged by the courts and favored by public policy.”). In exercising this discretion, courts should give deference to the private consensual

decision of the parties. *See Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996) (“A settlement will not be rejected solely because it does not provide a complete victory to the plaintiffs.”).

In reviewing proposed settlements, courts do not “judge the legal and factual questions by the same criteria applied in a trial on the merits.” *GMAC Mortg. Corp. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). The standard for class settlement approval requires that a settlement be fair, reasonable, and adequate. *People ex rel. Wilcox v. Equity Funding Life Ins. Co.*, 61 Ill. 2d 303, 317 (1975); *Korshak*, 206 Ill. App. 3d at 972. A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery. *Zolkos v. Scriptfleet, Inc.*, No. 12 Civ. 8230, 2014 U.S. Dist. LEXIS 172519, at \*4 (N.D. Ill. Dec. 12, 2014) (quoting *Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, Nos. 07 Civ. 2898, 09 Civ. 2026, 2012 U.S. Dist. LEXIS 25265, at \*10 (N.D. Ill. Feb. 28, 2012)); *see also Gowdey v. Commonwealth Edison Co.*, 37 Ill. App. 3d 140, 150 (1st Dist. 1976).

Here, the Settlement was reached after weeks of arms-length negotiations between experienced and sophisticated counsel. Based on their experience in handling other class action matters, Settlement Class Counsel believe this Settlement provides fair, reasonable, and adequate relief for the Settlement Class.

Preliminary approval by this Court requires an “initial evaluation” of the fairness of the proposed settlement. *Wyms v. Staffing Solutions, Inc.*, No. 15-cv-0634-MJR-PMF, 2016 U.S. Dist. LEXIS 149752, at \*10 (S.D. Ill. Oct. 28, 2016); Newberg § 11.25. To grant preliminary approval, this Court determines whether there is probable cause to submit the settlement to class members and hold a full-scale hearing as to its fairness. *See Lambert v. Tellabs, Inc.*, No. 13-cv-07945, 2015 U.S. Dist. LEXIS 156284, at \*4-5 (N.D. Ill. Mar. 5, 2015). If the settlement is “within the range

of possible approval,” the court should grant preliminary approval. *Wyms*, 2016 U.S. Dist. LEXIS 149752, at \*10.

In deciding whether to grant preliminary approval, the Court may consider the factors that will underlie the final analysis of whether the settlement is fair, reasonable, and adequate during the final approval phase of the class settlement. *Korshak*, 206 Ill. App. 3d at 972. These factors include: “(1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant’s ability to pay; (3) the complexity, length, and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed.” *Id.* Here, all eight factors support granting preliminary approval.

#### **1. The Strength of Plaintiff’s Case on the Merits, Balanced Against the Relief Offered in Settlement**

By their very nature, class actions readily lend themselves to compromise because of the many uncertainties of outcome, difficulties of proof, and lengthy duration. Indeed, there is an “overriding public interest in favor of settlement,” particularly in class actions that have the well-deserved reputation as being among the most complex types of litigation. *In re: Sears, Roebuck & Co. Front-loading Washer Prod. Liab. Litig.*, No. 06 C 7023, 2016 WL 772785, at \*6 (N.D. Ill. Feb. 29, 2016). This matter is no exception.

Here, the Parties entered into the Settlement only after both sides were fully apprised of the facts, risks, and obstacles involved with protracted litigation. At the outset of their investigation, Settlement Class Counsel conducted extensive research regarding the Plaintiff’s



claims, Defendant, and the Security Incident. The Parties then spent months exchanging informal discovery and making demands and counter-offers. Borrelli Decl., ¶¶6-8.

The Settlement provides for substantial relief, especially considering the costs, risks, and delay of trial, the effectiveness of distributing relief, and the proposed attorneys' fees. "The most important factor relevant to the fairness of a class action settlement is the first one listed: the strength of the plaintiffs' case on the merits balanced against the amount offered in the settlement." *Synfuel Techs, Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (internal quotes and citations omitted). Nevertheless, "[b]ecause the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to plaintiffs." *In re AT&T Mobility Wireless Data Servs. Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010). "In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." Newberg § 11:50. This is in part because "the law should favor the settlement of controversies, and should not discourage settlement by subjecting a person who has compromised a claim to the hazard of having the settlement proved in a subsequent trial." *Grady v. de Ville Motor Hotel, Inc.*, 415 F.2d 449, 451 (10th Cir. 1969). It is also in part because "[s]ettlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 228 (N.D. Ill. 2016) ("The essential point here is that the court should not "reject[ ]" a settlement "solely because it does not provide a complete victory to plaintiffs," for "the essence of settlement is compromise.").

Here, as described in detail *supra*, the Settlement provides for several different types of monetary relief, including reimbursement for out-of-pocket expenses and lost time, as well as Credit Monitoring Services. *See* SA ¶¶ 40-41. The Settlement was uniquely designed to address the specific harms caused by the facts of the Security Incident and allows Settlement Class Members to tailor their recovery accordingly. As such, the Court should preliminarily approve the Settlement with an order directing that notice be provided to the Class.

## **2. The Defendant's Ability to Pay**

A “defendant’s ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair.” *Viafara v. MCIZ Corp.*, No. 12-cv-7452-RLE, 2014 WL 1777438, at \*7 (S.D.N.Y. Apr. 30, 2014) (citation omitted). Here, under the terms of the Settlement Agreement, Defendants will pay up to \$5,000 per claimant for Documented Out-of-Pocket costs and up to \$80.00 per Approved Claim for Lost Time compensation *See* SA ¶ 40-41. And Defendant will pay all Approved Claims in full, with no cap. Although Defendant may be able to withstand a greater judgment, the financial obligations the Settlement imposes on the Defendant are substantial.

## **3. The Complexity, Length and Expenses of Further Litigation**

The value achieved through the Settlement Agreement here is guaranteed, where chances of prevailing on the merits are uncertain. While Plaintiff strongly believes in the merits of her case, she also understands Defendant will assert a number of defenses and deny all claims and liability in the Action. Should litigation continue, Plaintiff would likely immediately face a motion to dismiss, resulting in further costs, delays, and uncertainties. Due at least in part to their cutting-edge nature and the rapidly evolving law, data breach Plaintiffs generally face substantial hurdles. *See, e.g., Hammond v. The Bank of N.Y. Mellon Corp.*, 2010 WL 2643307, at \*1 (S.D.N.Y. June

25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6) or Rule 56 stage). Plaintiff would face another uncertain hurdle in class certification. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013). Moreover, due to the evolving nature of case law pertaining to data protection, it is likely any outcome will result in appeals, further increasing costs and extending the time until Plaintiff and Class members obtain relief.

Plaintiff firmly believes in the merits of her claims, and dispute the defenses Defendant is likely to assert, but success at trial is not guaranteed. “In light of the potential difficulties at class certification and on the merits . . . the time and extent of protracted litigation, and the potential of recovering nothing, the relief provided to class members in the Settlement Agreement represents a reasonable compromise.” *Wright v. Nationstar Mortg. LLC*, No. 14 C 10457, 2016 WL 4505169, at \*10 (N.D. Ill. Aug. 29, 2016).

#### **4. The Amount of Opposition to the Settlement and the Reaction of Class Members to the Settlement**

The fourth and sixth factors, the amount of opposition to the Settlement and the reaction of members of the Class to the Settlement, are often considered together due to their similarity. *Korshak*, 206 Ill. App. at 973. At the preliminary approval stage, these factors are premature and are impossible to weigh prior to notice and hearing. However, the Class Representative approves of this Settlement. Settlement Class Counsel will further address these factors in the final approval papers.

#### **5. The Absence of Collusion in Reaching a Settlement**

Here, the Settlement resulted from good faith, arm’s-length settlement negotiations over many weeks. At all times, the settlement negotiations were highly adversarial, non-collusive, and conducted at arm’s length. The Parties reached an agreement in principle after extensive

negotiations. Thereafter, the Parties spent several weeks negotiating the central terms finalizing all settlement documents.

Accordingly, it is clear the Parties negotiated this proposed Settlement at arm's length and absent any fraud or collusion. *See, e.g., Aranda v. Caribbean Cruise Line, Inc.*, No. 12 C 4069, 2017 WL 818854, at \*1 (N.D. Ill. Mar. 2, 2017) (granting preliminary approval to privacy settlement resolved with the assistance of a mediator); *Wright*, 2016 WL 4505169, at \*11 (finding no evidence of fraud or collusion where the parties participated in two prior mediations and engaged in lengthy discovery). Thus, this factor weighs in favor of preliminary approval.

## **6. The Opinion of Competent Counsel**

In a case where experienced counsel represent the class, the Court “is entitled to rely upon the judgment of the parties’ experienced counsel.” *In re Capital One TCPA Litig.*, 80 F. Supp. 3d at 792; *Armstrong v. Bd. of Sch. Dirs. of City of Milw.*, 616 F.2d 305, 315 (7th Cir. 1980) (“Judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel.”). Here, Settlement Class Counsel believe the Parties’ settlement is fair, reasonable, and adequate, and in the best interests of the members of the class. Settlement Class Counsel also believe the benefits of the Parties’ settlement far outweigh the delay and considerable risk of attempting to proceed through a motion to dismiss, class certification, summary judgment, and to trial.

This settlement proposes significant, effective Settlement Class Member relief. Cash Awards will be distributed based upon the method provided by claimants on their respective claim forms. SA ¶ 41. Settlement Class Members will have the opportunity to receive some compensation by submitting a claim form and providing documentary evidence. *Id.* Settlement

Class Members will have 90 days from the Notice Deadline to make a claim for a portion of the settlement by submitting their claim form either online or via U.S. Mail. *Id.* ¶ 43. The Settlement Administrator will have the authority to assess the validity of the claims, and upon receipt of an incomplete or unsigned Claim Form, is required to request additional information and/or documentation and give the Settlement Class Member time to cure the defect before rejecting the claim. *Id.* ¶ 44. Accordingly, all Settlement Class Members who submit Approved Claims will receive their award within a reasonable amount of time. For these reasons, Settlement Class Counsel believe the Settlement is fair, reasonable, and adequate.

#### **7. The Stage of Proceedings and the Amount of Discovery Completed**

The “stage of the proceedings” concerns “whether Class Plaintiffs had sufficient information on the merits of the case to enter into a settlement agreement . . . and whether the Court has sufficient information to evaluate such a settlement.” *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 224 (E.D.N.Y. 2013) (citations omitted). Courts have found that to meet this requirement, “formal discovery need not have necessarily been undertaken yet by the parties.” *In re Sony SXRDR Rear Projection Television Class Action Litig.*, 2008 WL 1956267, at \*9 (S.D.N.Y. May 1, 2008)). It is appropriate for Plaintiff to enter into a settlement after “Class Counsel [has] conducted extensive investigation into the facts, circumstances, and legal issues associated with this case[,]” particularly when the case is not one “that [is] likely to turn on facts initially in Defendant’s sole possession.” *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-cv-1113-VAB, 2016 WL 6542707, at \*8 (D. Conn. Nov. 3, 2016).

Prior to filing suit, Plaintiff’s counsel conducted extensive investigations into the Security Incident. Plaintiff’s counsel had to understand Defendants’ business and its relationship with its

with its current and former employees. Borrelli Decl., ¶ 3. Plaintiff's counsel next had to investigate Defendant's response to the Security Incident and whether it was sufficiently thorough and prompt. *Id.* Plaintiff's counsel examined sample data breach notices and related information that Defendant submitted to the various governmental entities. *Id.* Plaintiff's counsel analyzed these notices to determine the extent to which they complied with state-mandated notice requirements. *Id.*

In addition, proposed Settlement Class Counsel requested, and Defendant voluntarily provided prior to settlement negotiations, informal discovery regarding its investigation of the Security Incident, the scope of the Security Incident, and its response to the Security Incident. *Id.* ¶ 6. Proposed Settlement Class Counsel reviewed and analyzed this information to determine the scope of necessary injunctive relief and the appropriate measure of settlement benefits to Plaintiff and the Class. *See id.*

### **C. The Parties' Notice Plan Satisfies Due Process Requirements**

According to 735 ILCS 5/2–803, “[u]pon a determination that an action may be maintained as a class action, or at any time during the conduct of the action, the court in its discretion may order such notice that it deems necessary to protect the interests of the class and the parties.” However, the exercise of the court's discretion is limited by the dictates of due process. *Carrao v. Health Care Serv. Corp.*, 118 Ill. App. 3d 417, 429 (1983). The Illinois Supreme Court has indicated that “[t]he question of what notice must be given to absent class members to satisfy due process necessarily depends upon the circumstances of the individual action.” *Miner v. Gillette Co.*, 87 Ill. 2d 7, 15 (1981) (citing *Frank v. Teachers Ins. & Annuity Ass'n of Am.*, 71 Ill.2d 583, 593 (1978)). The United States Supreme Court has explained that the best practicable notice is that which “is reasonably calculated, under all of the circumstances, to apprise interested parties of the

pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Here, Notice will be provided directly to individual Settlement Class Members via the contact information they provided to Defendant when obtaining employment from them. SA ¶ 49. Specifically, the Settlement Administrator will send Notice to the Settlement Class via U.S. mail using the addresses in Defendant’s possession *Id.* The Settlement Administrator will also create and maintain a Settlement Website where Settlement Class Members can view relevant documents, submit their claims, and get answers to frequently asked questions. *Id.* ¶ 51.

The proposed Notice will include, in a manner that is understandable to potential Settlement Class Members, information regarding: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members. (*citation needed*)

Because the class notice and notice plan set forth in the Settlement Agreement satisfy the requirements of due process and provide the best notice practicable under the circumstances, the Court should direct the Parties and the Settlement Administrator to proceed with providing notice to Settlement Class Members pursuant to the terms of the Settlement Agreement and its order granting preliminary approval.

## **V. CONCLUSION**

Plaintiff respectfully requests that this Court: 1) preliminarily approve the Parties’ settlement as fair, adequate, reasonable, and within the range of possible final approval; (2) appoint Carla Plowman as Settlement Class Representative; (3) appoint Raina C. Borrelli and Cassandra

P. Miller of Strauss Borrelli PLLC as Settlement Class Counsel; (4) provisionally certify the Settlement Class for settlement purposes only; (5) approve the Parties' proposed notice program and confirm it is appropriate and satisfies due process; (6) set a date for a final approval hearing; and (7) set deadlines for members of the Settlement Class to submit claims for compensation and to object to or exclude themselves from the settlement.

Dated: November 27, 2024

Respectfully submitted,

/s/ Raina C. Borrelli

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*\*Appearing Pro Hac Vice  
Counsel for Plaintiff and the Proposed Class*



**CERTIFICATE OF SERVICE**

I hereby certify that on November 27, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Raina C. Borrelli  
Raina C. Borrelli

**— EXHIBIT 1 —**

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

CARLA PLOWMAN, on behalf of herself and all others similarly situated,  Plaintiff,  v.  TY INC.,  Defendant.	Case No. 2024CH000205  <b>JURY TRIAL DEMANDED</b>
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**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into by and between Carla Plowman (“Plaintiff”), individually and on behalf of the Participating Settlement Class Members (as defined in Paragraph 22), and Ty Inc. (“Defendant” or “Ty”) (collectively the “Parties”), in the action *Carla Plowman v. Ty Inc.* (Case No. 2024CH000205) filed on August 12, 2024, in the Circuit Court for the Eighteenth Judicial Circuit in and for DuPage County, Illinois (the “Action”).

**RECITALS**

**WHEREAS**, on November 16, 2023, Plaintiff filed a Complaint against Defendant in the Circuit Court for the Eighteenth Judicial Circuit in and for DuPage County, Illinois related to a cybersecurity incident that began on April 26, 2023 (the “Security Incident”) affecting Defendant;

**WHEREAS**, Defendant denies the allegations and causes of action pled in the Action and otherwise denies any liability to Plaintiff in any way;

**WHEREAS**, following prolonged and extensive arm's-length negotiations, the Parties reached an agreement of the essential terms of a settlement;

**WHEREAS**, on August 12, 2024, Plaintiff refiled the Action in the Circuit Court for the Eighteenth Judicial Circuit in and for DuPage County, Illinois;

**WHEREAS**, this Agreement is for settlement purposes only, and nothing in this Agreement shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or fact alleged by Plaintiff in this Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Released Parties or admission of the validity or lack thereof of any claim, allegation, or defense asserted in this Action or any other action.

**NOW, THEREFORE**, in exchange for the mutual promises and valuable consideration provided for in this Agreement, the Parties agree to a full, complete, and final settlement and resolution of the Action and any and all Released Claims (including Unknown Claims), subject to Court approval, on the following terms and conditions:

**I. DEFINITIONS**

In addition to terms defined elsewhere in this Agreement, the following defined terms shall have the meanings set forth below:

1. "Approved Claim" means the timely submission of a Claim Form by a Participating Settlement Class Member that has been approved by the Settlement Administrator subject to the Claims Review Process.

2. "Defendant's Counsel" means Devin Haymond and Casie D. Collignon of Baker & Hostetler LLP.

3. “Claim Form” means the form(s) Participating Settlement Class Members must submit to be eligible for Credit Monitoring Services, Out-of-Pocket Losses, or Lost Time under the terms of the Settlement, which form is attached hereto as **Exhibit C**, or form(s) approved by the Court substantially similar to **Exhibit C**.

4. “Claims Deadline” means the deadline by which Settlement Class Members must submit valid Claim Form(s), which deadline is ninety (90) days after the Notice Commencement Deadline.

5. “Claims Period” means the period of time during which Settlement Class Members may submit Claim Forms, which will end ninety (90) days after the Notice Commencement Deadline.

6. “Claims Review Process” means the process for reviewing and determining whether claims are valid as set forth in Paragraph 44.

7. “Court” means the Circuit Court for the Eighteenth Judicial Circuit in and for DuPage County, Illinois.

8. “Credit Monitoring Services” means the credit monitoring services described in Paragraph 40, which include two (2) years of one-bureau credit monitoring and \$1 million in identity theft protection insurance, among other features.

9. “Effective Date” means one business day following the latest of: (i) the date upon which the time expires for filing or noticing any reconsideration or appeal of the Final Approval Order and Judgment, or entry of the Final Approval Order and Judgment if no person or entity has standing to appeal or seek reconsideration; (ii) if there is an appeal or appeals or reconsideration sought, the date on which the Final Approval Order and Judgment is affirmed without any material modification and is no longer subject to judicial review; or (iii) the date of final dismissal of any

appeal or reconsideration or the final dismissal of any proceeding on certiorari with respect to the Final Approval Order and Judgment, and the Final Approval Order and Judgment is no longer subject to judicial review. Notwithstanding the above, any order modifying or reversing any attorneys' fees, costs, and expenses or Service Award to a Class Representative shall not affect the "Effective Date" or any other aspect of the Final Approval Order and Judgment.

10. "Fee Award and Costs" means the amount of attorneys' fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Settlement Class Counsel in satisfaction of any request or claim for payment of attorneys' fees, costs, and litigation expenses in connection with this Action.

11. "Final Approval Order and Judgment" means an order and judgment substantially in the form attached hereto as **Exhibit E** that the Court enters, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, and otherwise satisfies the settlement-related provisions of the Illinois Rules of Civil Procedure and is consistent with all material provisions of this Agreement.

12. "Final Approval Hearing" means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement.

13. "Litigation Costs and Expenses" means costs and expenses incurred by Settlement Class Counsel and their law practices in connection with commencing, prosecuting, and settling the Action.

14. "Lost Time" means time Settlement Class Members spent monitoring accounts or otherwise dealing with issues related to the Security Incident, up to a maximum of four (4) hours at \$20/hour, supported by an attestation that the activities were related to the Security Incident, as set forth in Paragraph 41(b).

15. “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members in the manner set forth in this Settlement Agreement, substantially in the forms attached hereto as **Exhibit A** (“Short Form Notice”) and **Exhibit B** (“Long Form Notice”)

16. “Notice Commencement Deadline” means the first day by which Notice is issued to the Settlement Class Members and will occur no later than forty-five (45) days after entry of the Preliminary Approval Order.

17. “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, performing National Change of Address search(es) and/or skip tracing for undeliverable notices, processing claims, determining the eligibility of a person to be a Settlement Class Member, and administering, calculating and distributing payments to Settlement Class Members who submit valid Claim Forms. Notice and Administrative Expenses also includes all reasonable fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

18. “Objection Deadline” is the last day on which a Settlement Class Member may file an objection to the Settlement, which will be sixty (60) days after the Notice Commencement Deadline.

19. “Opt Out” means a Settlement Class Member: (i) who timely submits a properly completed and executed Request for Exclusion; (ii) who does not rescind that Request for Exclusion prior to the Opt-Out Deadline; and (iii) as to which there is not a successful challenge to the Request for Exclusion.

20. “Opt-Out Deadline” is the last day on which a Settlement Class Member may submit a Request for Exclusion, which will be sixty (60) days after the Notice Commencement Deadline.

21. “Out-of-Pocket Loss” means documented expenses and fees incurred or spent as a result of the Security Incident between April 26, 2023, and the Claims Deadline, including, without limitations, out of pocket expenses incurred, fees for credit reports, credit monitoring or other identity theft insurance products purchased as a result of the Security Incident.

22. “Participating Settlement Class Member” means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Deadline, as set forth in Paragraph 53.

23. “Personal Information” includes, but is not limited to, name, address, driver’s license number, Bank Account Number, Bank Account Routing Number, date of birth, Medical Reference Number, Medicare Number, cell phone number, home phone number, health insurance information, email, and Social Security number. The term “Personal Information” is not intended here, nor should it be viewed as, having any bearing on the meaning of this term or similar term in any statute or other source of law beyond this Agreement, or how the Parties may use the term in other circumstances.

24. “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement under Illinois Civil Code and Procedure, and determining that the Court will likely be able to certify the Settlement Class for purposes of resolving this Action. Such order will include the forms and procedure for providing notice to the Settlement Class, including notice of the procedure for



Settlement Class Members to object to or opt-out of the Settlement, and set a date for the Final Approval Hearing, substantially in the form annexed hereto as **Exhibit D**.

25. “Released Claims” means 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 (including Unknown Claims), 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.

26. “Released Parties” means Defendant 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. Each of the Released Parties may be referred to individually as a “Released Party.”

27. “Releasing Parties” and a “Releasing Party” means the Settlement Class Representative and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, predecessors, successors, attorneys, assigns, and any other person purporting to assert a claim on their behalf.

28. “Request for Exclusion” means a writing by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class in the form and manner provided for in the Notice and as described below in Paragraph 53.

29. “Security Incident” means the cybersecurity incident affecting Defendant which occurred on or near April 26, 2023.

30. “Service Award Payment” means compensation awarded by the Court and paid to the Settlement Class Representative in recognition of her role in this Action as set forth in Paragraph 66.

31. “Settlement” means the settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

32. “Settlement Administrator” means CPT Group, subject to Court approval.

33. “Settlement Class” means all living individuals residing in the United States whose Personal Information may have been compromised in the Security Incident experienced by Ty on or around April 2023, including all those who received notice of the breach.

34. “Settlement Class Counsel” means Raina C. Borrelli and Cassandra P. Miller of Strauss Borrelli PLLC.

35. “Settlement Class List” means the list of the names and current or last known address information for Settlement Class Members Defendant used to inform individuals of the Security Incident, to the extent reasonably available, which Defendant shall provide to the Settlement Administrator within fifteen (15) days of entry of the Preliminary Approval Order.

36. “Settlement Class Member” means an individual who falls within the definition of the Settlement Class.

37. “Settlement Class Representative” means Carla Plowman.

38. “Settlement Payment” or “Settlement Check” means the payment to be made via mailed check or via electronic means (agreed to by the Parties) to a Participating Settlement Class Member pursuant to the claims process set forth in Paragraph 45.

39. “Settlement Website” means the website the Settlement Administrator will establish and use to provide Settlement Class Members with information about the Settlement and relevant case documents and deadlines, as set forth in Paragraph 51.

## **II. SETTLEMENT BENEFITS AND REIMBURSEMENT**

40. **Credit Monitoring Services.** Settlement Class Members shall be offered an opportunity to enroll in 2 years of Credit Monitoring Services provided through CyEx.

41. **Cash Benefits.** Defendant will pay Approved Claims for Documented Out-of-Pocket Loss, and Lost Time as described below. Settlement Class Members who submit a valid and timely Claim Form may choose from all applicable claim categories (a) through (b) below.

- a. **Claims for Compensation of Documented Out-of-Pocket Losses** up to a total of \$5,000.00 per claimant upon submission of a valid documented claim. Documented Out-of-Pocket Losses would include, without limitation and by way of example: *Out of pocket expenses incurred* as a result of the Security Incident, including, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after the Security Incident through the Claims Deadline; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

- b. **Claims for Compensation of Lost Time** up to 4 hours at a rate of \$20.00 per hour (for a total of \$80.00) per Settlement Class Member upon submission of a valid claim for Lost Time, provided they identify the activities engaged in and the time spent on each such activity and an attestation on the Claim Form that the activities they performed were related to the Security Incident. Claims for Lost Time are subject to the \$5,000.00 cap for Out-of-Pocket Losses.

42. **Business Practice Commitments.** Upon request, Defendant will provide reasonable confirmatory information, subject to reasonable confidentiality protections (e.g. confidentiality agreement, protective order, or filing under seal if requested by the Court) to Settlement Class Counsel describing its information security enhancements since the Security Incident and estimating, to the extent reasonably calculable, the annual cost of those enhancements. The cost of such enhancements will be paid by Defendant separate and apart from all other settlement benefits.

### **III. CLAIMS PROCESS AND PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS**

43. **Submission of Electronic and Hard Copy Claims.** Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via the Settlement Website or physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked on or before the Claims Deadline. The Settlement Administrator will maintain records of all Claim Forms submitted until the later of: (a) one hundred and eighty (180) Days after the Effective Date; or (b) the date all Claim Forms have been fully processed in accordance with the terms of this Agreement. Information submitted by Settlement Class Members in connection with Claim Forms shall be deemed confidential and protected as such by the Settlement Administrator, Settlement Class Counsel, and Defendant's Counsel.

44. **Claims Review Process.** The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent a claim for Credit Monitoring Services, Out-of-Pocket Losses, or Lost Time is valid.

- a. The Settlement Administrator will verify that each person who submits a Claim Form is a member of the Settlement Class.
- b. The Settlement Administrator will determine that each Claim Form submitted by a Settlement Class Member was submitted during the Claims Period and is timely.
- c. In determining whether claimed Out-of-Pocket Losses are more likely than not caused by the Security Incident, the Settlement Administrator will consider (i) the timing of the alleged loss and whether it occurred on or after April 26, 2023; (ii) whether the alleged loss for the specific Participating Settlement Class Member involved the types of information for that individual that may have been affected in the Security Incident; (iii) the explanation by the Settlement Class Member as to why the alleged loss was caused by the Security Incident; and (iv) other factors the Settlement Administrator reasonably finds to be relevant.
- d. The Settlement Administrator is authorized to contact any Settlement Class Member (by email, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.
- e. No decision of the Settlement Administrator shall be deemed to constitute a finding, admission, or waiver by Defendant as to any matter of fact, law, or evidence having any collateral effect on any proceedings in any forum or before any authority.

- f. To the extent the Settlement Administrator determines that a timely claim for Credit Monitoring Services, Out-of-Pocket Losses, Lost Time, or by a Settlement Class Member is deficient in whole or in part, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and provide the Settlement Class member twenty-one (21) days to cure the deficiencies. If the Settlement Administrator subsequently determines that the Settlement Class Member has not cured the deficiencies, the Settlement Administrator will notify the Settlement Class Member within ten (10) days of that determination. The Settlement Administrator may consult with the Parties in making these determinations.
- g. If a Settlement Class Member receives notice that the Settlement Administrator has determined that the deficiencies it identified have not been cured, the Settlement Class Member may request an appeal in writing, including any supporting documents. The appeal must be submitted within twenty-one (21) days of the Settlement Administrator sending the notice. In the event of an appeal, the Settlement Administrator shall provide the Parties with all relevant documentation regarding the appeal. The Parties will confer regarding the appeal. If they agree on a disposition of the appeal, that disposition will be final and non-appealable. If they cannot agree on disposition of the appeal, the dispute will be submitted to the Settlement Administrator for final, non-appealable disposition. In reaching disposition, the Settlement Administrator is authorized to communicate with counsel for the Parties separately or collectively.

**45. Payment.**

- a. After the Effective Date, and after final determinations have been made with respect to all claims submitted during the Claims Period pursuant to the Claims Review

Process, the Settlement Administrator shall provide the Parties an accounting of all Approved Claims for Credit Monitoring Services, Out-of-Pocket Losses, or Lost Time and also provide funding instructions and a properly completed and duly executed IRS Form W-9, along with any other necessary forms, to Defendant. Within forty-five (45) days of receiving this accounting, Defendant or its representative shall transmit the funds needed to pay Approved Claims for Credit Monitoring Services, Out-of-Pocket Losses, or Lost Time, in accordance with the terms of this Agreement.

- b. Payments issued by the Settlement Administrator for Approved Claims for Out-of-Pocket Losses, or Lost Time shall be issued in the form of a check, or via electronic means (through means agreed to by the Parties) and sent as soon as practicable after the Settlement Administrator receives the funds described in Paragraph 45(a).
- c. All Settlement Class Members who fail to submit a valid Claim Form for any benefits under this Agreement within the time frames set forth herein, or such other period as may be ordered by the Court, shall be forever barred from receiving any payments or benefits pursuant to the Settlement, but will in all other respects be subject to and bound by the provisions of this Agreement, including but not limited to the releases contained herein, and the Final Approval Order and Judgment.

46. **Timing.** Settlement Checks shall bear the legend that they expire if not negotiated within ninety (90) days of their issue date.

47. **Returned Checks.** For any Settlement Check returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall, within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable, send an email and/or telephone that Participating Settlement Class Member to obtain updated address information. Any

replacement Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of issuance and thereafter will automatically be canceled and deemed void if not cashed by the Participating Settlement Class Members within that time.

48. **Voided Checks.** In the event a Settlement Check becomes void, the Participating Settlement Class Member to whom that Settlement Check was made payable will forfeit the right to payment and will not be entitled to payment under the Settlement, and the Agreement will in all other respects be fully enforceable against the Participating Settlement Class Member. No later than one hundred and twenty (120) days after the issuance of the last Settlement Check, the Settlement Administrator shall take all steps necessary to stop payment on any Settlement Checks that remain uncashed.

#### **IV. SETTLEMENT CLASS NOTICE**

49. **Timing of Notice.** Within fifteen (15) days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Class List to the Settlement Administrator. Within forty-five (45) days after entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Short Form Notice to Settlement Class Members for whom it has a valid mailing address. The Settlement Administrator shall make the Long Form Notice and Claim Form available to Settlement Class Members on the Settlement Website.

50. **Form of Notice.** Notice shall be disseminated via postcard through First Class U.S. mail to Settlement Class Members on the Settlement Class List. Notice shall also be provided on the Settlement Website. The Notice mailed to Settlement Class Members will consist of a Short Form Notice in a form substantially similar to that attached hereto as **Exhibit A**. The Settlement Administrator shall have discretion to format the Short Form Notice in a reasonable manner to



minimize mailing and administrative costs. Before Notices are mailed, Settlement Class Counsel and Defendant's Counsel shall first be provided with a proof copy (reflecting what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and any orders of the Court.. For Notices sent via postcard that are returned as undeliverable, the Settlement Administrator shall use reasonable efforts (e.g., skip trace) to identify an updated mailing address and resend the postcard notice if an updated mailing address is identified. In addition, the Long Form Notice and Claim Form approved by the Court may be adjusted by the Settlement Administrator in consultation and agreement with the Parties, as may be reasonable and necessary and not inconsistent with such Court approval.

51. **Settlement Website.** The Settlement Administrator will establish the Settlement Website as soon as practicable following entry of the Preliminary Approval Order, but prior to dissemination of the Notice. The Settlement Website shall contain relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, this Agreement, Plaintiff's motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiff's motion for an award of attorneys' fees, costs and expenses, and service awards, and the operative complaint in the Action. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.

52. **Cost of Notice and Administration.** Defendant will pay for the Notice and Administrative Expenses, which will be paid separately from costs associated with providing the Settlements benefits in Paragraphs 41-42, as invoiced. The costs of Notice and Administrative Expenses will be subject to a not to exceed amount. The Settlement Administrator shall provide

wiring instructions and a properly completed and duly executed IRS Form W-9, along with any other necessary forms, to Defendant within ten (10) days of the entry of the Preliminary Approval Order.

**V. OPT-OUTS AND OBJECTIONS**

53. **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or “opt-out” of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than sixty (60) days after the Notice Commencement Deadline. The Notice also must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.

- a. The Request for Exclusion must include the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement.
- b. No person shall purport to exercise any exclusion rights of any other person, or purport: (a) to opt-out Settlement Class Members as a group, in the aggregate, or as a class; or (b) to opt-out more than one Settlement Class Member on a single Request for Exclusion, or as an agent or representative. Any such purported Request(s) for Exclusion shall be void, and the Settlement Class Member(s) who is or are the subject of such purported Request(s) for Exclusion shall be treated as a Participating Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and judgment entered thereon, unless he or she submits a valid and timely Request for Exclusion.

- c. Within seven (7) days after the Opt-Out Deadline, the Settlement Administrator shall provide the Parties with a complete and final list of all Opt-Outs.
- d. All persons who Opt Out shall not receive any benefits or be bound by the terms of this Agreement.

54. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or the request for attorneys' fees and Litigation Costs and Expenses by filing written objections with the Court no later than the Objection Deadline. The written objection must include: (i) the name of the proceedings; (ii) the Settlement Class Member's full name and current mailing address; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) the identity of any attorneys representing the objector; (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vi) the signature of the Settlement Class Member or the Settlement Class Member's attorney; and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three years. The Settlement Class Member shall also send a copy of the written objection to the Settlement Administrator postmarked or emailed no later than the Objection Deadline. Any Settlement Class Member who does not file a timely and adequate objection in accordance with this paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement and shall be bound by the terms of the Agreement and by all proceedings, orders, and judgments in the Action. The exclusive means for any challenge to the Agreement shall be through the provisions of this paragraph. Within seven (7) days after the Objection Deadline, the Claims Administrator shall provide the Parties with all objections submitted.

## **VI. DUTIES OF THE SETTLEMENT ADMINISTRATOR**

55. **Duties of Settlement Administrator.** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following:

- a. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- b. Causing the Notice Program to be effectuated in accordance with the terms of this Settlement Agreement and orders of the Court;
- c. Performing National Change of Address searches on the Settlement Class List and/or skip tracing on undeliverable notices;
- d. Providing Notice to Settlement Class Members via U.S. mail;
- e. Establishing and maintaining the Settlement Website;
- f. Establishing and maintaining a toll-free telephone line with interactive voice response for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries in a timely fashion;
- g. Responding to any mailed or emailed Settlement Class Member inquiries in a timely fashion;
- h. Reviewing, determining the validity of, and processing all claims submitted consistent with the terms of this Agreement;
- i. Receiving and reviewing Requests for Exclusion and objections from Settlement Class Members. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the deadlines set

forth herein, the Settlement Administrator shall promptly provide copies thereof to Settlement Class Counsel and Defendant's Counsel;

- j. Working with the provider of Credit Monitoring Services to receive and send activation codes to Settlement Class Members who submitted valid claims for Credit Monitoring Services after the Effective Date;
- k. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
- l. Providing weekly or other periodic reports to Settlement Class Counsel and Defendant's Counsel that include information regarding claims, objections, Opt Outs and other data agreed to between Settlement Class Counsel, Defendant's Counsel and the Settlement Administrator;
- m. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and
- n. Performing any function related to settlement administration as provided for in this Agreement or agreed-upon among Settlement Class Counsel, Defendant's Counsel, and the Settlement Administrator.

## **VII. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION**

56. **Certification of the Settlement Class.** For purposes of this Settlement only, and in the context of this Agreement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date. 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. Should: (1) the Settlement not receive final approval from the Court; (2) the Effective Date not occur; or (3) the Agreement is otherwise terminated, the certification of the Settlement Class shall be void, and neither the Agreement nor any order or other action relating to the agreement shall be offered by any person as evidence or cited in support of a motion to certify a class for any purpose other than this Settlement. Defendant reserves the right to contest class certification for all other purposes. The Parties further stipulate to designate the Settlement Class Representative as the representative for the Settlement Class.

57. **Preliminary Approval.** Following execution of this Agreement, Settlement Class Counsel shall file a motion for preliminary approval of this Settlement with the Court. Settlement Class Counsel shall provide Defendant's counsel with a draft of the motion for preliminary approval within a reasonable time frame prior to filing same to ensure that any requested revisions from Defendant are addressed. The proposed Preliminary Approval Order shall be in the form attached as **Exhibit D**.

58. **Final Approval.** Settlement Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing, substantially in the form set forth in **Exhibit E**. Counsel for the Parties shall request that the Court set a date for the Final Approval Hearing no earlier than one hundred and twenty (120) days after entry of the Preliminary Approval Order. Settlement Class Counsel shall provide

Defendant's counsel with a draft of the motion for final approval within a reasonable time frame prior to filing same to ensure that any requested revisions from Defendant are addressed.

59. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute between the Parties arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the 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.

#### **VIII. MODIFICATION AND TERMINATION**

60. **Modification.** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members or Defendant under this Agreement.

61. **Termination.** Settlement Class Counsel (on behalf of the Settlement Class Members) and Defendant shall have the right to terminate this Agreement by providing written

notice of their or its election to do so (“Termination Notice”): (1) within fourteen (14) days of the Court’s refusal to grant preliminary approval of the Settlement in any material respect; (2) the Court’s refusal to enter the Final Approval Order and Judgment in any material respect; or (3) the date the Final Approval Order and Judgment is modified or reversed in any material respect by any appellate or other court. Defendant may also unilaterally terminate this Settlement Agreement within fourteen (14) days written notice to Settlement Class Counsel if more than 15 Settlement Class Members submit valid Requests for Exclusion.

62. **Effect of Termination.** In the event of a termination as provided in Paragraph 61, this Agreement shall be considered null and void, all of the Parties’ obligations under the Agreement shall cease to be of any force and effect, and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties’ respective pre-Settlement claims and defenses will be preserved. Any Court orders preliminarily or finally approving certification of the Settlement Class and any other orders entered pursuant to the Agreement shall be deemed null and void and vacated.

## **XI. RELEASES**

63. **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each Releasing Party shall be deemed to have completely and unconditionally released, acquitted, and forever discharged Defendant and each of the Released Parties from any and all Released Claims, including Unknown Claims.

64. **Unknown Claims.** The Released Claims include the release of Unknown Claims. “Unknown Claims” means claims that could have been raised in the Action and claims Releasing Parties do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its



decision to agree, object or not to object to the Settlement. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, each-Releasing Party shall be deemed to have, and shall have, waived any and all provisions, rights, and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims or relation of the Released Parties thereto, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this paragraph. The Parties acknowledge, and the Releasing Parties shall be deemed by operation of the Agreement to have acknowledged, that the foregoing waiver is a material term of the Agreement.

65. **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Settlement Class Representative and other Participating Settlement Class Members shall be enjoined from initiating, asserting, or prosecuting any and all Released Claims, including Unknown Claims, in any proceeding against any of the Released Parties or based on any actions

taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order and Judgment. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this Section.

## **XII. SERVICE AWARD PAYMENTS**

66. **Service Award Payments.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Settlement Class Counsel will file a motion seeking a service award payment for the Settlement Class Representative in recognition for her contributions to this Action. Defendant agrees not to oppose Settlement Class Counsel's request for a service award not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00). To the extent more than \$5,000.00 in service awards is sought for the Settlement Class Representative, Defendant reserves all rights to object and oppose such a request. Defendant shall pay the Court-approved service award to an account established by Settlement Class Counsel within thirty (30) days after the Effective Date. Settlement Class Counsel will ensure payment instructions are provided through secure processes. Settlement Class Counsel will then distribute the service award. Defendant's obligations with respect to the Court-approved service award shall be fully satisfied upon transmission of the funds into the account established by Settlement Class Counsel. Defendant shall have no responsibility for, interest in, or liability whatsoever with respect to any distribution or allocation of service awards. Nor shall Defendant be responsible for any tax obligations or payments associated with the amount paid into the account established by Settlement Class Counsel. To the extent the Effective Date does not occur, Defendant shall have no obligation to pay any service awards. This amount was negotiated after the primary terms of the settlement were negotiated.

67. **No Effect on Agreement.** The finality or effectiveness of the Settlement, including the Final Approval Order and Judgement, shall not depend on the amount or timing of service

awards approved and awarded by the Court or any appeal thereof. The amount and timing of service awards is intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the service awards shall constitute grounds for termination of this Agreement.

### **XIII. ATTORNEYS' FEES, COSTS, EXPENSES**

68. **Attorneys' Fees and Costs and Expenses.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Settlement Class Counsel will file a motion for an award of attorneys' fees and litigation costs and expenses, as well as Service Awards, to be paid by Defendant. Defendant agrees not to oppose Settlement Class Counsel's request for an award of attorneys' fees, costs and expenses not to exceed One Hundred Fifty-Nine Thousand Dollars (\$159,000.00). If Settlement Class Counsel seeks more than \$159,000.00 in attorneys' fees, costs and expenses, Defendant reserves all rights to object and oppose such requests. Defendant shall pay the Court-approved attorneys' fees and expenses to an account established by Settlement Class Counsel within thirty (30) days after the Effective Date. Settlement Class Counsel will ensure payment instructions are provided through secure processes. The attorneys' fees and Litigation Costs and Expenses will be allocated by Settlement Class Counsel. Defendant's obligations with respect to the Court-approved attorneys' fees and Litigation Costs and Expenses shall be fully satisfied upon transmission of the funds into the account established by Settlement Class Counsel. Defendant shall have no responsibility for, interest in, or liability whatsoever with respect to any distribution or allocation of attorneys' fees or Litigation Costs and Expenses. Nor shall Defendant be responsible for any tax obligations or payments associated with the amount paid into the account established by Settlement Class Counsel. To the extent the Effective Date does not occur,

Defendant shall have no obligation to pay any attorneys' fees or Litigation Costs and Expenses. The amount of attorneys' fees and Litigation Costs and Expenses was negotiated after the primary terms of the Settlement were negotiated.

69. **No Effect on Agreement.** The finality or effectiveness of the Parties' Settlement shall not depend on the amount or timing of attorneys' fees and Litigation Costs and Expenses approved and awarded by the Court or any appeal thereof. The amount and timing of attorneys' fees and Litigation Costs and Expenses are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount or timing of attorneys' fees or Litigation Costs and Expenses shall constitute grounds for termination of this Agreement.

#### **XIV. NO ADMISSION OF LIABILITY**

70. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall 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.

71. **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiff or any Settlement Class Member, including any Settlement Class Member who opts out of the Settlement; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of,

any fault or omission by the Released Parties in the Action, or any Settlement Class Member who opts out of the Settlement, or in any proceeding in any court, administrative agency or other tribunal.

## **XV. MISCELLANEOUS**

72. **Integration of Exhibits.** The exhibits to this Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

73. **Entire Agreement.** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, communications and understandings among the Parties, including counsel for the Parties. This Agreement may not be changed, modified, or amended except in writing signed by all Parties or their successors in interest. The Parties contemplate that, subject to Court approval or without such approval where legally permissible and consistent with any orders of the Court in this proceeding, the exhibits to this Agreement may be modified by subsequent Agreement of counsel for the Parties prior to dissemination of the Notice to the Settlement Class.

74. **Resolution.** The Parties intend this Agreement to be a final and complete resolution of all disputes between them with respect to the Action. The Parties each agree that the Settlement and this Agreement were negotiated in good faith and at arm's-length and reflects a Settlement reached voluntarily after consultation with legal counsel of their choice.

75. **Other Litigation.** Plaintiff and Settlement Class Counsel will not cooperate with or encourage any action or filing of claims against Defendant or any Released Parties related to any of the allegations or claims alleged in the Action.

76. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to “days” in this agreement shall refer to calendar days unless otherwise specified.

77. **Singular and Plurals.** As used in this Agreement, all references to the plural shall also mean the singular and to the singular shall also mean the plural whenever the context so indicates and reasonably dictates.

78. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

79. **Construction.** For the purpose of construing or interpreting this Agreement, this Agreement is to be deemed to have been drafted equally by all Parties and shall not be construed strictly for or against any Party.

80. **Cooperation of Parties.** The Parties to this Agreement agree to cooperate in good faith to effectuate the Settlement described in this Agreement.

81. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement between the Parties, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.

82. **No Conflict Intended.** Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

83. **Governing Law.** The Agreement shall be construed in accordance with, and be governed by, the laws of the State of Illinois, without regard to choice of law principles.

84. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures

are not required. Any signature submitted electronically, by facsimile, or through email of an Adobe PDF shall be deemed an original.

85. **Notices.** All notices to Settlement Class Counsel and counsel for Defendant provided for herein, shall be sent by email to:

Raina C. Borrelli  
Cassandra P. Miller  
**STRAUSS BORRELLI PLLC**  
980 N Michigan Ave, Suite 1610  
Chicago, IL 60611  
[raina@straussborrelli.com](mailto:raina@straussborrelli.com)  
[cmiller@straussborrelli.com](mailto:cmiller@straussborrelli.com)

All notices to Defendant provided for herein, shall be sent by email to:

Casie D. Collignon  
**BAKER & HOSTETLER LLP**  
1801 California Street, Suite 4400  
Denver, CO 80202  
[ccollignon@bakerlaw.com](mailto:ccollignon@bakerlaw.com)

The notice recipients and addresses designated above may be changed by written notice to the other Party.

86. **Authority.** Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and authorized to bind the Party on whose behalf he, she or they signs this Agreement to all of the terms and provisions of this Agreement.

**SIGNATURES**

**Carla Plowman**

By: 

Date: 11 / 27 / 2024

**Ty Inc.**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to form by:**

*Counsel for Plaintiff and the Settlement Class*

By:   
Raina C. Borrelli

Date: 11 / 27 / 2024

*Counsel for Defendant*

By: \_\_\_\_\_  
Casie D. Collignon

Date: \_\_\_\_\_



**SIGNATURES**

**Carla Plowman**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Ty Inc.**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to form by:**


*Counsel for Plaintiff and the Settlement Class*

By: \_\_\_\_\_

Raina C. Borrelli

Date: \_\_\_\_\_

*Counsel for Defendant*

By:  \_\_\_\_\_

Casie D. Collignon

Date: 11/26/2024

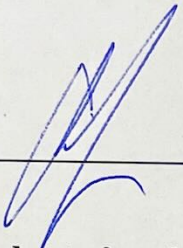
**SIGNATURES**

**Carla Plowman**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Ty Inc.**

By:  \_\_\_\_\_ VP Ty Inc

Date: 11/25/24

**Approved as to form by:**

*Counsel for Plaintiff and the Settlement Class*

By: \_\_\_\_\_

Raina C. Borrelli

Date: \_\_\_\_\_

*Counsel for Defendant*

By: \_\_\_\_\_

Casie D. Collignon

Date: \_\_\_\_\_

**— EXHIBIT A —**

**A proposed Settlement has been reached in a class action lawsuit known as *Carla Plowman v. Ty Inc.* Case No. 2024CH000205 filed on August 12, 2024, in the Circuit Court for the Eighteenth Judicial Circuit in and for DuPage County, Illinois (“Action”).**

**What is this about?** The Action alleges that on or around April 26, 2023, Ty Inc. (“Ty” or “Defendant”) experienced an attack by cybercriminals. After an investigation, Ty became aware that cybercriminals may have accessed or acquired certain files from its network which may have contained Personal Information, including name, address, driver’s license number, Bank Account Number, Bank Account Routing Number, date of birth, Medical Reference Number, Medicare Number, cell phone number, home phone number, health insurance information, email, and Social Security number (the “Security Incident”). Ty maintains that it had meritorious defenses, and it was prepared to vigorously defend the Action. The Settlement is not an admission of wrongdoing or an indication that Ty has violated any laws, but rather the resolution of disputed claims.

**Who is a Settlement Class Member?** You are a Settlement Class Member if your 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.

**What are the benefits?** The Settlement provides the following benefits:

- **Documented Out-of-Pocket Loss Reimbursement:** Up to \$5,000 for Documented Out-of-Pocket Losses incurred as a result of the Security Incident.
- **Lost Time Reimbursement:** Reimbursement for up to four (4) hours of lost time spent dealing with the Security Incident at \$20 per hour (for a total of \$80, subject to the \$5,000 cap on Documented Out-of-Pocket Loss Reimbursement).
- **Credit Monitoring:** Two (2) years of Credit Monitoring Services to include credit monitoring through one national reporting bureau provided through CyEx with \$1,000,000 in identity theft protection insurance.
- **Remedial Relief:** Ty will also continue implementing security enhancements made in response to the Security Incident and the Action to protect Personal Information stored on its systems.

You must file a claim by mail postmarked by [DATE] or online at [WEBSITE] by [DATE] to receive benefits from the Settlement.

**What are my other rights?**

- **Do Nothing:** If you do nothing, you remain in the Settlement. You give up your rights to sue but you will not get any money; you must submit a claim to get money.
- **Exclude yourself:** You can get out of the Settlement and keep your right to sue about the claims in this Action, but you will not get any money from the Settlement. You must exclude yourself by [INSERT DATE].
- **Object:** You can stay in the Settlement, but tell the Court why you think the Settlement should not be approved. Objections must be submitted by [DATE].

Detailed instructions on how to file a claim, get additional credit monitoring, exclude yourself, or object are on the Settlement Website at [WEBSITE]. The Court will hold the Final Fairness Hearing at [DATE, TIME, ADDRESS] to consider whether the proposed Settlement is fair, reasonable, and adequate, to consider an award of combined attorneys’ fees, costs, and expenses of \$159,000 and request the Class Representative’s service award of \$5,000, and to consider whether and if it should be approved. You may attend the hearing, but you don’t have to. This is only a summary. For additional information, including a copy of the Settlement Agreement, Long Form Notice, Claim Form, Class Counsel’s Application for Attorneys’ Fees and Expenses, and other documents, visit [WEBSITE] or call [1-800-xxx-xxxx].

**— EXHIBIT B —**

## **NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

### **If Ty Inc. (“Ty”) Notified You of A Security Incident, You May Be Eligible For Benefits From A Class Action Settlement.**

*This is not a solicitation from a lawyer, junk mail, or an advertisement. A state court authorized this Notice.*

This notice summarizes the proposed settlement reached in a lawsuit entitled *Carla Plowman v. Ty Inc.* (Case No. 2024CH000205 filed on August 12, 2024, in the Circuit Court for the Eighteenth Judicial Circuit in and for DuPage County, Illinois (“Action”). For the precise terms and conditions of the settlement, please see the Settlement Agreement available at **[WEBSITE]** or by contacting the Settlement Administrator at **[1-800-xxx-xxxx]**.

**PLEASE DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR LITIGATION TO THE CLERK OF THE COURT, THE JUDGE, DEFENDANT, OR DEFENDANT’S COUNSEL**

**This Notice explains the nature of the Action and claims being settled, your legal rights, and the benefits to the Settlement Class.**

#### **This notice may affect your rights – please read it carefully.**

The Action alleges that on or around April 26, 2023, Ty Inc. (“Ty” or “Defendant”) experienced an attack by cybercriminals. After an investigation, Ty became aware that cybercriminals may have accessed or acquired certain files from its network which may have contained Personal Information, including name, address, driver’s license number, Bank Account Number, Bank Account Routing Number, date of birth, Medical Reference Number, Medicare Number, cell phone number, home phone number, health insurance information, email, and Social Security number (the “Security Incident”). Ty maintains that it had meritorious defenses, and it was prepared to vigorously defend the Action. The settlement is not an admission of wrongdoing or an indication that Ty has violated any laws, but rather the resolution of disputed claims.

- If you received this Notice, you have been identified as a Settlement Class Member. More specifically, you are a Settlement Class Member because you have been identified by the Settlement Administrator as an individual who received notice from Ty regarding information that was potentially compromised in the Security Incident.
- All Settlement Class Members can receive the following benefits from the Settlement: (1) reimbursement for up to \$5,000 for Documented Out-of-Pocket Losses such as unreimbursed losses relating to fraud or identity theft; professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred after April 26, 2023 through the **[DATE]**; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges, (2) reimbursement for up to four (4) hours of lost time spent dealing with the Security Incident, at \$20 per hour (for a total of \$80, subject to the \$5,000 Out-of-Pocket Loss cap), and (3) two (2) years of credit monitoring services to include credit monitoring through one national reporting bureau provided through CyEx with \$1,000,000 in identity theft protection insurance.

**The deadline to submit a claim is **[DATE]**.**

## YOUR LEGAL RIGHTS & OPTIONS IN THIS SETTLEMENT

<b>SUBMIT A CLAIM</b>	<p><b>You must submit a valid Claim to get money from this Settlement.</b></p> <p>Claim Forms must be submitted online by <b>[DATE]</b> or, if mailed, postmarked no later than <b>[DATE]</b>.</p>
<b>DO NOTHING</b>	<p>If you do nothing, you remain in the Settlement.</p> <p>You give up your rights to sue and you will not get any money or credit monitoring.</p>
<b>EXCLUDE YOURSELF</b>	<p><b>Get out of the Settlement. Get no money. Keep your rights.</b></p> <p>This is the only option that allows you to keep your right to sue about the claims in this Action. You will not get any money or credit monitoring from the Settlement.</p> <p>Your request to exclude yourself must be postmarked no later than <b>[DATE]</b>.</p>
<b>FILE AN OBJECTION</b>	<p>Stay in the Settlement, but tell the Court why you think the Settlement should not be approved.</p> <p>Objections must be postmarked no later than <b>[DATE]</b>.</p>
<b>GO TO A HEARING</b>	<p>You can ask to speak in Court about the fairness of the Settlement, at your own expense. <i>See</i> Question 18 for more details.</p> <p>The Final Approval Hearing is scheduled for <b>[DATE]</b> at <b>[TIME, ADDRESS]</b>.</p>

## WHAT THIS NOTICE CONTAINS

### **Basic Information..... Pages 4-5**

1. How do I know if I am affected by the Action and Settlement?
2. What is this case about?
3. Why is there a Settlement?
4. Why is this a class action?
5. How do I know if I am included in the Settlement?

### **The Settlement Benefits..... Pages 5-6**

6. What does this Settlement provide?
7. How do I submit a Claim?
8. What am I giving up as part of the Settlement?
9. Will the Class Representative receive compensation?

### **Exclude Yourself..... Page 6**

10. How do I exclude myself from the Settlement?
11. If I do not exclude myself, can I sue later?
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### **Do Nothing..... Page 8**

20. What happens if I do nothing?

### **Get More Information ..... Page 8**

21. How do I get more information about the Settlement?



## BASIC INFORMATION

### 1. How do I know if I am affected by the Action and Settlement?

You are a Settlement Class Member if your 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.

The Settlement Class specifically excludes: (i) Ty and 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 associated with the Security Incident or who pleads *nolo contendere* to any such charge.

This Notice explains the nature of the Action and claims being settled, your legal rights, and the benefits to the Settlement Class.

### 2. What is this case about?

This case is known as *Carla Plowman v. Ty Inc.* (Case No. 2024CH000205), filed on August 12, 2024, in the Circuit Court for the Eighteenth Judicial Circuit in and for DuPage County, Illinois. The person who sued is called the “Plaintiff” and the company they sued, Ty Inc., is known as the “Defendant” in this case. Ty will be called “Defendant” in this Notice.

Plaintiff filed the Action against Defendant, individually, and on behalf of anyone whose Personal Information was potentially impacted as a result of the Security Incident.

This Action arises out of unauthorized access to Defendant’s systems and certain files which may have contained sensitive information about individuals that include Defendant’s current and former employees, including, name, address, driver’s license number, Bank Account Number, Bank Account Routing Number, date of birth, Medical Reference Number, Medicare Number, cell phone number, home phone number, health insurance information, email, and Social Security number, which occurred on or around April 26, 2023. After learning of the Security Incident, Defendant sent notification to persons whose Personal Information may have been impacted by the Security Incident. Subsequently, the Action was filed asserting claims against Defendant relating to the Security Incident.

Defendant denies any wrongdoing.

### 3. Why is there a Settlement?

By agreeing to settle, both sides avoid the cost, disruption, and distraction of further litigation. The Class Representative, Defendant, and their attorneys believe the proposed Settlement is fair, reasonable, and adequate and, thus, in the best interests for Settlement Class Members. The Court did not decide in favor of the Plaintiff or Defendant. Full details about the proposed Settlement are found in the Settlement Agreement available at [\[WEBSITE\]](#).

### 4. Why is this a class action?

In a class action, one or more people called a “Class Representative” sue on behalf of all people who have similar claims. All of these people together are the “Settlement Class” or “Settlement Class Members.”

### 5. How do I know if I am included in the Settlement?

You are included in the Settlement if Ty identified you as being among those individuals potentially impacted by the Security Incident, including all who were sent a notice of the Security Incident. If you are not sure whether you are included as a Settlement Class Member, or have any other questions about the Settlement, visit [\[WEBSITE\]](#), call toll-free at [\[1-800-xxx-xxxx\]](#), or write to *Plowman v. Ty Inc., c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606*.

## THE SETTLEMENT BENEFITS

### 6. What does this Settlement provide?

The proposed Settlement will provide the following benefits to Settlement Class Members:

**Documented Out-of-Pocket Loss Reimbursement:** All Settlement Class Members who submit a valid and timely claim using the Claim Form are eligible for the following documented (except lost time, as defined below) loss expense reimbursement, not to exceed \$5,000 per Settlement Class Member: including, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after April 26, 2023 through the [Claims Deadline]; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. To receive reimbursement for any of the above-referenced Documented Out-of-Pocket Losses, Settlement Class Members must submit a valid and timely Claim Form, including necessary supporting documentation, to the Settlement Administrator.

**Lost Time Reimbursement:** Settlement Class Members are also eligible to receive reimbursement for up to four (4) hours of lost time spent dealing with the Security Incident, calculated at the rate of \$20 per hour for a total of \$80. Claims made for lost time can be combined with reimbursement for Documented Out-of-Pocket Loss expense reimbursement and are subject to the same \$5,000 Out-of-Pocket Loss Reimbursement cap for all Settlement Class Members.

**Credit Monitoring:** Settlement Class Members shall be offered an opportunity to enroll in two (2) years of Credit Monitoring Services to include credit monitoring through one national reporting bureau provided through CyEx with \$1,000,000 in identity theft protection insurance.

**Remedial Relief:** Defendant has made certain security enhancements in response to the Security Incident and the Action. Defendant will continue implementing those security enhancements and will pay for those enhancements separate and apart from other settlement benefits.

### 7. How to submit a Claim?

All claims will be reviewed by the Settlement Administrator for completeness and plausibility. You must file a Claim Form to get money from the proposed Settlement. Claim Forms must be submitted online by [\[DATE\]](#) or postmarked no later than [\[DATE\]](#). You can submit an online claim or download a Claim Form at [\[WEBSITE\]](#), or you can call the Settlement Administrator toll-free at [\[1-800-xxx-xxxx\]](#) for a Claim Form.

### 8. What am I giving up as part of the Settlement?

If you stay in the Settlement Class, you will be eligible to receive benefits, but you will not be able to sue Ty and each of its past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of its respective predecessors, successors, assigns, owners, directors, shareholders, members, officers, employees, principals, agents, attorneys, insurers, and reinsurers (collectively, the "Released Parties") regarding the claims in this case.

The Settlement Agreement, which includes all provisions about settled claims, releases, and Released Parties, is available at [\[WEBSITE\]](#).

The only way to keep the right to sue is to exclude yourself (*see* Question 10), otherwise you will be included in the Settlement Class, and, if the Settlement is approved, you give up the right to sue for the claims in this case.

#### **9. Will the Class Representative receive compensation?**

Yes. The Class Representative will receive a service award of up to \$5,000, to compensate her for her services and efforts in bringing the Action. The Court will make the final decision as to the amount, if any, to be paid to the Class Representative.

### **EXCLUDE YOURSELF**

#### **10. How do I exclude myself from the Settlement?**

If you do not want to be included in the Settlement, you must send a timely written request for exclusion. Your request for exclusion must: (a) state the name of the Action, *Carla Plowman v. Ty Inc.*, Case No. 2024CH000205 (Ill. Cir. Ct. DuPage Cnty.), (b) include your full name and current address; (c) contain your personal signature, or the signature of a person previously authorized by law, such as a trustee, guardian, or person acting under a power of attorney to act on your behalf; and (d) include the words “Request for Exclusion” or a comparable statement that you do not wish to participate in the Settlement at the top of the communication.

Your written request for exclusion must be postmarked no later than [DATE] to:

*Plowman v. Ty Inc.*  
c/o CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606

Instructions on how to submit a request for exclusion are available at [WEBSITE] or from the Claims Administrator by calling [1-800-xxx-xxxx].

If you exclude yourself, you will not be able to receive any cash benefit or credit monitoring from the Settlement, and you cannot object to the Settlement at the Final Approval Hearing. You will not be legally bound by anything that happens in the Action, and you will keep your right to sue Defendant on your own for the claims that this Settlement resolves.

#### **11. If I do not exclude myself, can I sue later?**

No. If you do not exclude yourself from the Settlement, and the Settlement is approved by the Court, you forever give up the right to sue the Released Parties (listed in Question 8) for the claims this Settlement resolves.

#### **12. What happens if I do nothing at all?**

If you do nothing, you will be bound by the Settlement if the Court approves it, you will not get any money or credit monitoring services from the Settlement, you will not be able to start or proceed with a lawsuit, or be part of any other lawsuit against the Released Persons (listed in Question 8) about the settled claims in this case at any time.

### **THE LAWYERS REPRESENTING YOU**

#### **13. Do I have a lawyer in the case?**

Yes. The Court has appointed Strauss Borrelli PLLC (called “Settlement Class Counsel”) to represent the interests of all Settlement Class Members in this case. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### 14. How will the lawyers be paid?

Settlement Class Counsel will apply to the Court for an award of combined attorneys' fees, costs, and expenses in an amount not to exceed \$159,000. A copy of Class Counsel's Motion for Attorneys' Fees, Costs, Expenses, and Service Award for Class Representative will be posted on the Settlement Website, [WEBSITE], before the Final Approval Hearing. The Court will make the final decisions as to the amounts to be paid to Settlement Class Counsel, and may award less than the amount requested by Settlement Class Counsel.

### OBJECTING TO THE SETTLEMENT

#### 15. How do I tell the Court that I do not like the Settlement?

If you want to tell the Court that you do not agree with the proposed Settlement or some part of it, you must file an objection with the Court telling it why you do not think the Settlement should be approved.

Objections must be submitted in writing and include all the following information:

- a) the name of the Action, *Carla Plowman v. Ty Inc.*, Case No. 2024CH000205 (Ill. Cir. Ct. DuPage Cnty.);
- b) your full name and current mailing address;
- c) a statement that states with specificity your grounds for your objection, as well as any documents that support your objection;
- d) the identity of any attorneys representing you;
- e) a statement regarding whether you or your attorney will appear at the Final Approval Hearing;
- f) a list of all other lawsuits (if any) in which you and/or your attorney has submitted an objection to a class action settlement within the last three (3) years; and,
- g) your signature or your attorney's signature.

Your Objection must be postmarked no later than [DATE] and filed with the Court at:

[ADDRESS]

In addition, you must concurrently email or mail a copy of your objection to the Settlement Administrator, postmarked no later than [DATE], to:

*Plowman v. Ty Inc.*  
c/o CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606  
[EMAIL]

If you do not submit your objection with all the above requirements, or if your objection is not received by [DATE] you will be considered to have waived all Objections and will not be entitled to speak at the Final Approval Hearing.

#### 16. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

## THE FINAL APPROVAL HEARING

### 17. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Final Approval Hearing on, [DATE, TIME, ADDRESS]. The hearing may be held remotely or moved to a different date, time, or location without additional notice, so it is recommended that you periodically check [WEBSITE] for updated information.

At the hearing, the Court will consider whether the proposed Settlement is fair, reasonable, adequate, and is in the best interests of Settlement Class Members, and if it should be finally approved. If there are valid objections, the Court will consider them and will listen to people who have asked to speak at the hearing if the request was made properly. The Court will also consider the award of attorneys' fees, costs, and expenses to Settlement Class Counsel and the request for a Service Award to the Class Representative.

### 18. Do I have to come to the hearing?

No. You are not required to come to the Final Approval Hearing. However, you are welcome to attend the hearing at your own expense.

If you submit an Objection, you do not have to come to the hearing to talk about it. If your objection was submitted properly and on time, the Court will consider it. You also may pay your own lawyer to attend the Final Approval Hearing, but that is not necessary. However, you must follow the requirements for making objections in Question 15, including the requirements for making appearances at the hearing.

### 19. May I speak at the hearing?

Yes. You can speak at the Final Approval Hearing, but you must ask the Court for permission. You cannot speak at the hearing if you exclude yourself from the Settlement.

## DO NOTHING

### 20. What happens if I do nothing?

If you do nothing, you will not get any money from the Settlement, you will not be able to sue for the claims in this case, and you release the claims against Defendant and the Released Persons described in Question ~~No.~~ 8.

## GET MORE INFORMATION

### 21. How do I get more information about the Settlement?

This is only a summary of the proposed Settlement. If you want additional information about this Action, including a copy of the Settlement Agreement, the Complaint, the Court's Preliminary Approval Order, Settlement Class Counsel's Motion for Attorneys' Fees, Costs, Expenses, and Service Award for Class Representative, and more, please visit [WEBSITE] or call [1-800-xxx-xxxx]. You may also contact the Settlement Administrator at *Plowman v. Ty Inc.*, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606.

**PLEASE DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT  
OR LITIGATION TO THE CLERK OF THE COURT, THE JUDGE, DEFENDANT, OR  
DEFENDANT'S COUNSEL.**

**— EXHIBIT C —**

## GENERAL INSTRUCTIONS

Complete this Claim Form if you are a Settlement Class Member and you wish to receive Settlement benefits.

You are a member of the Settlement Class and eligible to submit a Claim Form if:

You are an individual 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) Ty Inc., 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.

Settlement Class Members may submit a claim form for: (1) Two (2) years of credit monitoring; (2) Documented Out-of-Pocket Loss Claims – up to a total of \$5,000 per claimant; and (3) Lost Time - \$20 per hour for up to four (4) hours (for a total of \$80, subject to the \$5,000 cap on Out-of-Pocket Loss Claims).

**Credit Monitoring Services.** All Settlement Class Members shall have the ability to make a claim for two (2) years of credit monitoring services and identity theft protection by choosing this benefit on this Claim Form.

**Documented Out-of-Pocket Losses:** claims up to \$5,000 must be supported with documentation, including, without limitations, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred after April 26, 2023 through the [DATE]; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

**Lost Time Claims** must be supported by an attestation that the activities they performed were related to the Security Incident. Claims for Lost Time are subject to the \$5,000 cap for Documented Out-of-Pocket Losses.

This Claim Form may be submitted electronically *via* the Settlement Website at [WEBSITE] or completed and mailed, including any supporting documentation, to: *Plowman v. Ty Inc.*, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606.

**[DATE]**

# CLAIM FORM



**Your claim must be  
submitted online or  
postmarked by:**

**[DATE]**

*Carla Plowman v. Ty Inc., Case No. 2024CH000205*  
In the Circuit Court of the Eighteenth Judicial Circuit  
In DuPage County, Illinois

## CLAIM FORM

### III. LOST TIME SELECTION

- ☐ Check this box if you spent time monitoring accounts or otherwise dealing with issues related to the Security Incident. You can submit a claim for reimbursement of \$20 per hour up to four (4) hours (for a total of \$80, subject to the \$5,000 cap for Documented Out-of-Pocket Losses). By checking this box, you are attesting that the activities you performed were related to the Security Incident.

Indicate the number of hours spent:    \_\_\_ 1 Hour    \_\_\_ 2 Hours    \_\_\_ 3 Hours    \_\_\_ 4 Hours

### IV. CREDIT MONITORING SERVICES

- ☐ Check this box if you wish to enroll in credit monitoring services for two (2) years, which includes one-bureau credit monitoring through CyEx with \$1,000,000 in identity theft protection insurance.

### V. PAYMENT SELECTION

If your claim is approved and you qualify for a monetary payment, a physical check will be mailed to the address you provided in Section I if you requested reimbursement for Documented Out-of-Pocket Losses or Lost Time. To receive a digital payment instead, please submit your Claim Form online at **[WEBSITE]**.

### VI. ATTESTATION & SIGNATURE

I swear and affirm that the information provided in this Claim Form, and any supporting documentation provided is true and correct to the best of my knowledge. I understand that my claim is subject to verification and that I may be asked to provide supplemental information by the Settlement Administrator before my claim is considered complete and valid.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**— EXHIBIT D —**

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

**CARLA PLOWMAN**, on behalf of herself and  
all others similarly situated,

Plaintiff,

v.

**TY INC.**,

Defendant.

Case No.: 2024CH000205

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

This matter having come before the Court on Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”) between Plaintiff Carla Plowman (“Plaintiff”), on her own behalf and on behalf of the Settlement Class (as defined below), and Ty Inc. (“Defendant” or “Ty”) (collectively the “Parties”), as set forth in the Settlement Agreement between the Parties, attached as **Exhibit 1** to the Declaration of Raina C. Borrelli in Support of Plaintiff’s Motion for Preliminary Approval, and the Court having duly considered the papers and arguments of counsel, the Court hereby **GRANTS** this Motion and **ORDERS** as follows:

**PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

1. Unless defined herein, all capitalized terms in this Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) shall have the meanings ascribed to them in the Settlement Agreement.
2. This Court has subject matter jurisdiction of the Action and over all claims raised therein and all Parties thereto, including the Settlement Class.

3. This Order is based on 735 ILCS 5/2-801-806.

4. On or around April 26, 2023, Defendant discovered a cybersecurity disruption on its computer network. Defendant launched an investigation, with the assistance of third-party cybersecurity specialists, to determine the nature and scope of the event. On or about July 18, 2023 the investigation determined that an unauthorized third-party cybercriminal gained access to Defendant's systems, and that information contained in those systems may have been compromised by the third-party actor (the "Security Incident"). Defendant's investigation further determined that the Personal Information of individuals that include approximately 2,797 current and former employees (and their dependents) that it maintained on its systems may have been compromised in the Security Incident. The potentially compromised Personal Information in the Security Incident may have included name, address, driver's license number, Bank Account Number, Bank Account Routing Number, date of birth, Medical Reference Number, Medicare Number, cell phone number, home phone number, health insurance information, email, and Social Security number.

5. On August 12, 2024, Plaintiff filed her Complaint and alleged five causes of action: (1) Negligence; (2) Breach of Implied Contract; (3) Unjust Enrichment; (4) Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 Ill. Comp. Stat. 505/1, *et seq.*; and (5) Invasion of Privacy.

6. Defendant has denied Plaintiff's allegations, causes of action, and claims.

7. Shortly after the case was filed, the Parties began discussions to pursue a resolution in this matter. In the following months, Defendant produced informal discovery to Plaintiff's Counsel, including information about the cause and scope of the Security Incident and information about the class size. Through these efforts, the Parties were able to reach an agreement on the

principal terms of settlement for the Action, subject to final mutual agreement on all necessary documentation. Since then, the Parties continued to negotiate in good faith and at arms' length, the finer details of the settlement and drafted and finalized the Settlement Agreement and accompanying Notice and other exhibits.

8. Plaintiff summarizes the relevant terms of the proposed Settlement as follows:

9. Documented Out-of-Pocket Losses. Settlement Class Members are eligible for compensation for Documented Out-of-Pocket Losses up to a total of \$5,000.00 per Settlement Class Member, upon submission of a timely and valid Claim Form and supporting documentation. Out-of-Pocket Losses may include, but are not limited to, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency, credit monitoring costs that were incurred after April 26, 2023 through the date of the Claim Deadline, and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

10. Claims for Compensation for Lost Time. Settlement Class Members are eligible for compensation for up to four (4) hours of Lost Time at a rate of \$20.00 per hour (for a total of \$80.00) per claimant upon submission of a timely and valid documented claim for Lost Time, provided they include a brief description of the activities engaged in and the time spent on each such activity and an attestation on the Claim Form that the activities they performed were related to the Security Incident. Claims for Lost Time are subject to the \$5,000.00 cap for Out-of-Pocket Losses.

11. Claims for Credit Monitoring: Settlement Class Members are eligible for two (2) years of one-bureau credit monitoring and \$1 million in identity theft protection insurance, among other features.

12. The Court finds that: (i) there is good cause to believe that the settlement is fair, reasonable, and adequate; (ii) the Settlement Agreement has been negotiated at arm's length between experienced attorneys familiar with the legal and factual issues of this case; and (iii) the settlement warrants Notice of its material terms to the Settlement Classes for its consideration and reaction.

### **CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

13. The Court has conducted a preliminary evaluation of the settlement set forth in the Settlement Agreement. Based on this preliminary evaluation, the Court finds that the Settlement Agreement meets all applicable requirements of 735 ILCS 2-801, and hereby conditionally certifies the Settlement Class as follows for settlement purposes only (and for no other purposes and with no other effect upon this or any other action, including no effect upon this Action should the settlement not ultimately be approved).

***Settlement Class:*** Shall mean means all individuals residing in the United States whose Personal Information may have been compromised in the Security Incident experienced by Ty 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.

14. For the purposes of the conditional certification, the Court preliminary finds for settlement purposes only that the Settlement Class is sufficiently numerous that joinder of all members is impracticable, that there are questions of law and fact common to members of the Settlement Class that predominate, that the representative parties will fairly and adequately protect the interests of the Settlement Class, and that class treatment is an appropriate method for the fair and efficient adjudication of the controversy.

15. The Settlement Agreement and the proceedings and statements made pursuant to the Settlement Agreement or papers filed relating to the Settlement Agreement and this Preliminary Approval Order, are not and shall not in any event be described as, construed as, offered or received against any of the Released Parties, including Defendant, as evidence of and/or deemed to be evidence of any presumption, concession, or admission by any of the Released Parties, including Defendant, of the truth of any fact alleged by Plaintiff; the validity of any claim that has been or could have been asserted in the Action or in any litigation; the deficiency of any defense that has been or could have been asserted in the Action or in any litigation; or any liability, negligence, fault, or wrongdoing of any of the Released Parties, including Defendant. Defendant has denied and continues to deny the claims asserted by Plaintiff. Notwithstanding, nothing contained herein shall be construed to prevent a Party to the Action from offering the Settlement Agreement into evidence for the purpose of enforcing the Settlement Agreement.

16. The certification of the Settlement Class shall be binding only with respect to the settlement of the Action. In the event that the Settlement Agreement fails to become effective, is overturned on appeal, or does not become final for any reason, the Settlement Agreement shall be

null and void *ab initio*, the Parties shall be restored to their respective positions in the Action as of the date of the signing of the Settlement Agreement, and no reference to the Settlement Class and/or the Settlement Agreement, or any documents, communications, or negotiations related in any way thereto shall be made for any purpose.

### **NOTICE AND SETTLEMENT ADMINISTRATION**

17. Pursuant to the Settlement Agreement, CPT Group is hereby appointed as the Settlement Administrator and shall be required to perform all of the duties of the Settlement Administrator as set forth in the Settlement Agreement and this Preliminary Approval Order.

18. The forms of the Short Form Notice,<sup>1</sup> the Long Form Notice,<sup>2</sup> and the Claim Form,<sup>3</sup> along with the proposed publication notice plan, are constitutionally adequate and are hereby approved. The Notice contains all essential elements required to satisfy state statutory requirements and due process under 735 ILCS 5-2/803 et seq., the United States Constitution, the Illinois Constitution, and other applicable laws. The Court further finds that the form, content, and method of providing Notice, as described in the Settlement Agreement, including the exhibits thereto: (a) constitute the best practicable Notice to the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the settlement, their rights under the settlement, including, but not limited to, their rights to object to or exclude themselves from the settlement; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members.

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<sup>1</sup> Attached as Exhibit A to the Settlement Agreement.

<sup>2</sup> Attached as Exhibit B to the Settlement Agreement.

<sup>3</sup> Attached as Exhibit C to the Settlement Agreement.



19. The Notice program set forth in the Settlement Agreement, and described below, satisfies the requirements of 735 ILCS 5-2/803, provides the best notice practicable under the circumstances, and is hereby approved.

20. The Settlement Administrator is directed to carry out the Notice program as set forth in the Settlement Agreement.

21. Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Settlement Class Counsel and Defendant's Counsel to file with the Court an appropriate affidavit or declaration from the Settlement Administrator with respect to its compliance with the Court-approved Notice Program.

### **EXCLUSIONS AND OBJECTIONS**

#### *Exclusions*

22. The Notice shall inform each Settlement Class Member of his or her right to request exclusion from the Settlement Class and to not be bound by this Settlement Agreement, if within the sixty (60)-day period beginning upon the Notice Commencement Deadline, the Settlement Class Member personally signs and timely submits, completes, and mails a request to be excluded from the Settlement Class ("Opt-Out Request") to the Settlement Administrator at the address set forth in the Notice. To be effective, an Opt-Out Request must be postmarked no later than the final date of the Opt-Out Period (the "Opt-Out Deadline").

23. For a Settlement Class Member's Opt-Out Request to be valid, it must (a) state the case name, *Carla Plowman v. Ty. Inc.*, Case No. 2024CH000205 (Ill. Cir. Ct. DuPage Cnty.); (b) contain the Settlement Class Member's full name and current address, (c) include the Settlement Class Member's personal and original signature (or the personal and original signature of a Person previously authorized by law to act on behalf of the Settlement Class Member with respect to the

claims asserted in the Action); and (d) include the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement.

24. All Settlement Class Members who submit timely and valid opt-out requests shall: (a) receive no benefits or compensation under the Settlement Agreement; (b) shall gain no rights from the Settlement Agreement; (c) shall not be bound by the Settlement Agreement; and (d) shall have no right to object to the Settlement or proposed Settlement Agreement or to participate at the Final Approval Hearing. All Settlement Class Members who do not request to be excluded from the Settlement Class shall be bound by the terms of the Settlement Agreement, including the Release contained therein, and the Final Order and Judgment thereon, regardless of whether he or she files a Claim Form or receives any benefits from the settlement.

25. An opt-out request or other request for exclusion that does not fully comply with the requirements set forth above, or that is not timely submitted or postmarked, or that is sent to an address other than that set forth in the Notice, shall be invalid, and the person submitting such request shall be treated as a Settlement Class Member and be bound by the Settlement Agreement, including the Release contained therein, and the Final Approval Order entered thereon.

26. No person shall purport to exercise any exclusion rights of any other person, or purport: (a) to opt-out Settlement Class Members as a group, in the aggregate, or as a class involving more than one Settlement Class Member; or (b) to opt-out more than one Settlement Class Member on a single paper, or as an agent or representative. Any such purported opt-out requests shall be void, and the Settlement Class Member(s) who is or are the subject of any such purported opt-out requests shall be treated as a Settlement Class Member and be bound by the Settlement Agreement, including the Release contained herein, and by all proceedings, orders, and

judgments in the Action, including the Final Approval Order, unless he or she submits a valid and timely opt-out request.

### *Objections*

27. Any Settlement Class Member who wishes to object to the Settlement Agreement must submit a timely, written notice of his or her Objection by no later than sixty (60) days from the Notice Commencement Deadline (the “Objection Deadline”).

28. To object to the settlement, a Settlement Class Member must file a timely, written notice of his or her Objection in the appropriate form with the Clerk of the Court. The Objection must also be delivered or mailed to Settlement Class Counsel and Defendants’ Counsel. The deadline for filing Objections shall be included in the Notice.

29. Such notice shall: (i) state the name of these proceedings, *Carla Plowman v. Ty, Inc* Case No. 2024CH000205 (Ill. Cir. Ct. DuPage Cnty.); (ii) state the Settlement Class Member’s full name and current mailing address; (iii) contain a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) state the identity of any attorney(s) representing the objector; (v) include a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vi) include a statement identifying all class action settlements objected to by the Settlement Class Member and/or the Settlement Class Member’s attorney in the previous three years; and (vii) include the signature of the Settlement Class Member or the Settlement Class Member’s attorney.

30. Any Settlement Class Member who fails to comply in full with the requirements for objecting set forth in this Settlement Agreement, the Notice, and any applicable orders of this Court shall forever waive and forfeit any and all rights he or she may have to raise any objection to the Settlement Agreement, shall not be permitted to object to the approval of the settlement at

the Final Approval Hearing, shall be foreclosed from seeking any review of the settlement or the terms of the Settlement Agreement by appeal or other means, and shall be shall be bound by the Settlement Agreement, including the Release contained therein, and by all proceedings, orders, and judgments in the Action, including the Final Order and Judgment.

31. The exclusive means for any challenge to the Settlement Agreement is through the provisions set forth in the Settlement Agreement. Any challenge to the Settlement Agreement, the Final Approval Order, or any judgment to be entered upon final approval, shall be pursuant to appeal and not through a collateral attack. Any objecting Settlement Class Member who appeals final approval of the Settlement Agreement will be required to post an appeal bond.

#### **APPOINTMENTS**

32. For settlement purposes only, the Court hereby approves the conditional appointment of Plaintiff Carla Plowman as Class Representative for the Settlement Class.

33. For settlement purposes only, the Court hereby approves the conditional appointment of Raina C. Borrelli and Cassandra P. Miller of Strauss Borrelli PLLC as Settlement Class Counsel and finds that they are competent and capable of exercising the responsibilities of Settlement Class Counsel.

#### **TERMINATION**

34. 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, if the settlement is not finally approved by the Court or is terminated in accordance with the terms of the Settlement Agreement.

35. If the Settlement Agreement is terminated or not approved, or if the Effective Date does not occur for any reason, then: (i) the Settlement Agreement and all orders entered in connection with the Settlement Agreement shall be rendered null and void; (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 Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Courts in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*; (iii) the parties shall equally be responsible for all Notice and Claims Administration Costs incurred prior to the termination or disapproval; (iv) all Parties shall be deemed to have reverted to their respective positions and status in the Litigation as of the date the Settlement Agreement was executed and shall jointly request that a new case schedule be entered by the Courts in the Litigation; and (v) Defendant shall have no payment, reimbursement, or other financial obligation of any kind as a result of this Settlement Agreement, other than as stated in Sub-Part (iii) above.

#### **FINAL APPROVAL HEARING**

36. No later than 14 days prior to the Objection and Opt-Out Deadlines, Plaintiff must file her papers in support of Settlement Class Counsel's application for fees, costs, and expenses and Service Awards. And no later than X/X, 2024, Plaintiff must file her papers in support of final approval of the Settlement Agreement.

37. A Final Approval Hearing shall be held before the Court on X/X, 2024, at x:00 p.m. by Zoom (Meeting ID XXXXX Password XXXXXX) for the following purposes:

- a. to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met, and that the Settlement Class Representatives and Settlement Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;
- b. to determine whether the settlement is fair, reasonable, and adequate, and should be approved by the Court;

- c. to determine that Notice (1) was implemented pursuant to the Settlement Agreement and Preliminary Approval Order, (2) constitutes the best practicable notice under the circumstances, (3) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Classes of the pendency of the Litigation and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing, (4) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and (5) fulfills the requirements of the Illinois Code of Civil Procedure, the Due Process Clause of the both the United States and Illinois Constitutions, and the rules of the Court;
- d. to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;
- e. to consider the application for an award of attorneys' fees, costs, and expenses;
- f. to consider the application for Service Awards to the Settlement Class Representatives;
- g. to consider all payments to be made pursuant to the Settlement Agreement;
- h. to dismiss the action with prejudice; and
- i. to rule upon such other matters as the Court may deem appropriate.

38. All proceedings in the Litigation other than those related to approval of the Settlement Agreement pending entry of the Final Approval Order are stayed.

39. No Settlement Class Member may prosecute, institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Persons and any such actions are enjoined or stayed.

**SUMMARY OF DEADLINES**

40. The preliminary approval of the Settlement Agreement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Preliminary Approval Order, include, but are not limited to:

<b><u>Event</u></b>	<b><u>Deadline</u></b>
<b>Class Member Information Deadline</b>	Within 15 days of Preliminary Approval Order, Defendants will provide Settlement Administrator with Class Member Information
<b>Notice Commencement Deadline</b>	Within 45 days of entry of Preliminary Approval Order, Settlement Administrator shall send Notice by mail to all Settlement Class Members
<b>Motion for Attorneys' Fees, Costs, Expenses, and Service Awards</b>	Within 45 after the Notice Commencement Deadline
<b>Deadline to Opt-Out/Object From Settlement</b>	Within 60 days after the Notice Commencement Deadline
<b>Claims Deadline</b>	90 days after the Notice Commencement Deadline
<b>Motion for Final Approval of Class Action Settlement</b>	XX, 2024
<b>Final Approval Hearing</b>	XX, 2024 at 2:00 p.m.

**IT IS ORDERED.**

Dated: \_\_\_\_\_

THE HONORABLE XXX

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CIRCUIT COURT JUDGE



**— EXHIBIT E —**

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS**

**CARLA PLOWMAN**, on behalf of herself and  
all others similarly situated,

Plaintiff,

v.

**TY INC.**,

Defendant.

Case No.: 2024CH000205

WHEREAS, the Court, having (i) considered the Settlement Agreement filed on \_\_\_\_\_, 2024 (the “Settlement”) between and among Carla Plowman (“Plaintiff” or “Settlement Class Representative”), individually and on behalf of the Settlement Class (defined below) and Ty Inc. (“Defendant” or “Ty”), (ii) considered the Court’s \_\_\_\_\_, 2024 Order Granting Preliminary Approval of Class Action Settlement Agreement and Conditionally Certifying Settlement Class for Settlement Purposes Only (“Preliminary Approval Order”), (iii) held a Final Approval Hearing on \_\_\_\_\_, 2024, (iv) considered all of the submissions and arguments with respect to the Settlement, and (v) being fully informed, and good cause appearing,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

1. Plaintiff’s Motion for Final Approval of Class Action Settlement Agreement and Award of Attorneys’ Fees, Costs, and Expenses, and Class Representative Service Awards is GRANTED.

2. This Order and Judgment incorporates herein and makes a part hereof, the Settlement (including its exhibits) and the Preliminary Approval Order. Unless otherwise provided herein, the terms defined in the Settlement and Preliminary Approval Order shall have the same meanings for purposes of this Order and Judgment.

3. The Court has personal jurisdiction over the Plaintiff, the Settlement Class Members, and Defendant for purposes of this settlement, and has subject matter jurisdiction over this matter including, without limitation, jurisdiction to approve the Settlement, confirm certification of the Settlement Class for settlement purposes only, to settle and release all claims released in the Settlement, and to dismiss the Action with prejudice.

#### **I. CERTIFICATION OF THE SETTLEMENT CLASS**

4. Based on its review of the record, including the Settlement, all submissions in support of the Settlement, and all prior proceedings in the Action, pursuant to 735 ILCS 5/2-801 and 2-802, the Court finally certifies, for settlement purposes only, the following Nationwide Class (the “Settlement Class”) for settlement purposes only:

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.

5. 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.

6. Also excluded from the Settlement Class are those persons identified in Exhibit A hereto, each of whom submitted a timely and valid Request for Exclusion from the Settlement Class prior to the Opt-Out Deadline. Such persons shall not receive the benefits of the Settlement and shall not be bound by this Order and Judgment.

7. For settlement purposes only, with respect to the Settlement Class, the Court confirms that the prerequisites for a class action pursuant to 735 ILCS 5/2-801 have been met, in

that: (1) the Settlement Class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the Settlement Class, which common questions predominate over any questions affecting only individual members; (3) the Class Representative will fairly and adequately protect the interest of the Settlement Class; and (4) the class action is an appropriate method for the fair and efficient adjudication of this controversy. Any objections to the Settlement have been considered and are hereby overruled.

## **II. NOTICE TO THE SETTLEMENT CLASS**

8. The Court finds that Notice has been given to the Settlement Class in the manner directed by the Court in the Preliminary Approval Order. The Court has determined that the Notice given to the Settlement Class Members, in accordance with the Preliminary Approval Order, fully and accurately informed Settlement Class Members of all material elements of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the U.S. Constitution and Illinois Constitution.

## **III. FINAL APPROVAL OF THE SETTLEMENT**

9. The Court finds that the Settlement resulted from arm's-length negotiations between Class Counsel and Defendant.

10. The Court hereby finally approves in all respects the Settlement as fair, reasonable, and adequate, and in the best interest of the Settlement Class.

11. The Court finds that Plaintiff and Class Counsel fairly and adequately represented the interests of Settlement Class Members in connection with the Settlement.

12. The Settling Parties shall consummate the Settlement in accordance with the terms thereof. The Settlement, and each and every term and provision thereof, including its Releases, shall

be deemed incorporated herein as if explicitly set forth herein and shall have the full force and effect of an order of this Court.

#### **IV. DISMISSAL OF CLAIMS AND RELEASE**

13. The Action is hereby dismissed with prejudice as to all Parties including the Settlement Class and without cost to any party, except as otherwise provided herein or in the Settlement.

14. Upon the Effective Date, and in consideration of the benefits set forth in the Settlement, the Plaintiff, each of the Participating Settlement Class Members, and each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them (“Releasing Parties”), shall be deemed to fully, finally, and forever release, acquit, and forever discharge Defendant 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, as well as covered entities associated with the Security Incident (“Released Parties”) from all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the Security Incident, and conduct that was alleged or could have been alleged in the Litigation, including, without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of the Data Incident (the “Released Claims”), provided

that nothing in this Release is intended to, does or shall be deemed to release any claims not arising out of, based upon, resulting from, or related to the Security Incident.

**V. ATTORNEYS' FEES, COSTS, AND EXPENSES AND REPRESENTATIVE PLAINTIFF'S SERVICE AWARD**

15. The Court awards attorneys' fees, litigation costs and expenses of \$159,000.00 and payment of a service award in the amount of \$5,000.00 to the Settlement Class Representative. The Court directs the Settlement Administrator to pay such amounts in accordance with the terms of the Settlement. Settlement Class Counsel, in their sole discretion to be exercised reasonably, shall allocate and distribute the attorneys' fees, costs, and expenses awarded by the Court among Plaintiff's counsel of record in the Action.

**VI. OTHER PROVISIONS**

16. Without affecting the finality of this Final Approval Order and Judgment in any way, the Court retains continuing and exclusive jurisdiction over the settling Parties and the Settlement Class for the purpose of consummating, implementing, administering, and enforcing all terms of the Settlement.

17. Nothing in this Final Approval Order and Judgment, the Settlement, or any documents or statements relating thereto, is or shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Defendant.

18. In the event the Effective Date does not occur, this Final Approval Order and Judgment shall be rendered null and void and shall be vacated and, in such event, as provided in the Settlement, this Order and Judgment and all orders entered in connection herewith shall be vacated and null and void, the Parties shall be restored to their respective positions in the Action, all of the Parties' respective pre-Settlement claims and defenses will be preserved, and the terms and provisions of the Settlement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or

order entered by the Court in accordance with the terms of the Settlement shall be treated as vacated,  
*nunc pro tunc*.

**IT IS SO ORDERED.**

Dated:

By: \_\_\_\_\_  
Honorable Judge