

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

CARLA PLOWMAN

Plaintiff

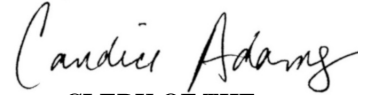
-VS-

TY INC

Defendant

2024CH000205
CASE NUMBER**FILED**

25 Feb 03 AM 11: 01



CLERK OF THE

18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

ORDER

**[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:

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,[1] the Long Form Notice,[2] and the Claim Form,[3] 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.

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.

[1] Attached as Exhibit A to the Settlement Agreement.

[2] Attached as Exhibit B to the Settlement Agreement.

[3] Attached as Exhibit C to the Settlement Agreement.

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 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 May 27, 2025, 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 June 10, 2025, at 9:00 a.m.. by Zoom (hearing information to be available and posted one business day prior on the Court's website) 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:

Class Member Information Deadline

Within 15 days of Preliminary Approval Order, Defendants will provide Settlement Administrator with Class Member Information

Notice Commencement Deadline

Within 45 days of entry of Preliminary Approval Order, Settlement Administrator shall send Notice by mail to all Settlement Class Members

Motion for Attorneys' Fees, Costs, Expenses, and Service Awards

Within 45 after the Notice Commencement Deadline

Deadline to Opt-Out/Object From Settlement

Within 60 days after the Notice Commencement Deadline

Claims Deadline

90 days after the Notice Commencement Deadline

Motion for Final Approval of Class Action Settlement

Plaintiff to file by May 27, 2025

Final Approval Hearing

June 10, 2025 at 9:00 a.m. by Zoom.

IT IS ORDERED.

Submitted by: SAMUEL J. STRAUSS
Attorney Firm: STRAUSS BORRELLI PLLC
DuPage Attorney Number: 382570
Attorney for: CARLA PLOWMAN
Address: 980 N MICHIGAN AVENUE SUITE 1610
City/State/Zip: CHICAGO, IL, 60611
Phone number: 872-263-1100
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Entered:

 File Date: 02/03/2025

JUDGE JENNIFER BARRON

Validation ID : DP-02032025-1101-03635

Date: 02/03/2025