UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LORENZO FLORES and **SIMBA FLORES** on behalf of themselves and all others similarly situated, *Plaintiffs*, v. **TRUSSWAY MANUFACTURING, LLC,** *Defendant*.	§	**Case No. 4:23-cv-02509**

PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

This motion comes before the Court on Plaintiff's Unopposed Motion for Final Approval of a class settlement in this matter. Plaintiffs respectfully move this Court for entry of an Order granting Plaintiffs' Motion for Final Approval. This Motion is based upon: (1) this Motion and the following supporting memorandum; (2) Class Counsel's Declaration; (3) Teresa Y. Sutor of RG/2's Declaration; (4) the Settlement Agreement; (5) the records, pleadings, and papers filed in this Action; and (6) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing.

I. STATEMENT OF ISSUES

1. **Whether the Settlement is fair, reasonable, and adequate?**

   Fed. R. Civ. P. 23(e) and *Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983).

2. **Whether the Court should finally certify the settlement class?**

   Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b).

3. **Whether the notice plan complied with Rule 23 and due process?**

   Fed. R. Civ. P. 23 and *Amchem Prods. v. Windsor*, 521 U.S. 591, 617.

II. INTRODUCTION

Plaintiffs Lorenzo Flores and Simba Flores ("Plaintiffs) move the Court to approve their class action settlement with Trussway Manufacturing LLC ("Trussway" or "Defendant") as "fair, adequate, and reasonable." With this settlement, Plaintiffs achieved what they set out to accomplish with this case. Following Trussway's data breach in March 2023, Plaintiffs demanded that Trussway compensate class members for the losses they suffered, protect them from the losses they may suffer, and improve its data security

practices. If approved, the settlement will deliver just that, securing four benefits for the class.

First, it guarantees Trussway will pay all claims for lost money and time, up to $500 for "ordinary" losses, $75 for lost time, and $2,500 for "extraordinary" losses stemming from the breach. And the settlement secured this relief without capping what Trussway must pay, meaning it will pay every approved claim in full. Second, Trussway offered class members credit and identity monitoring to mitigate their chances for suffering identity theft and fraud. Third, Trussway agreed to improve its cybersecurity, addressing the problems that led to its breach and improving its systems to prevent breaches. And fourth, Trussway paid to administer the Agreement, Plaintiffs' attorney's fees and costs, and service awards to Plaintiffs—all without diminishing the benefits to the class.

Through the parties' notice program, they directly notified 93% of class members about the settlement via U.S. Mail, providing them a chance to claim benefits either online or by mail. In response, **no** class members opted out or objected to the settlement.

As a result, the settlement is "fair, adequate, and reasonable," and the Court should approve it. Indeed, the Court should presume the settlement satisfies Rule 23(e) and the Fifth Circuit's standards for approval because the parties negotiated and administered the settlement at "arm's length." *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 650 (N.D. Tex. 2010) (There is a "strong presumption that an arms-length class action settlement is fair—especially when doing so will result in significant economies of judicial resources"). This is not to mention that the risks in litigating this matter through discovery and trial merit settlement at this stage, as Plaintiffs had the facts needed to evaluate their case's strengths

and weaknesses and the relief that would best benefit the class. In other words, the results achieved under the circumstances here exceed what Rule 23(e) and the Fifth Circuit expect from Plaintiffs and their counsel in approving this settlement.

III. BACKGROUND

A. The Litigation

Trussway is a manufacturer of floor trusses, roof trusses, and pre-assembled door and window openings. Doc. 1 ("Compl."), ¶ 19. As a result, it collects and stores the Private Information of thousands of its current and former employees in its systems. *Id*. ¶ 2, 20. In March 2023, Trussway experienced a ransomware attack where an unauthorized actor viewed and obtained files stored on certain servers in the Trussway network which contained Personal Identifiable Information ("PII) and Personal Health Information ("PHI") (collectively the "Private Information"), of Trussway's current and former employees, including names, addresses, Social Security numbers, dates of birth, health enrollment information, health insurance policy numbers, driver's license information, passport numbers, other government issued identification numbers, financial account information, and the medical information of those who filed a claim for worker's compensation or short-term disability. *Id*. ¶¶ 2, 25, 27. In collecting this data, Plaintiffs alleged Trussway accepted a duty to protect it under Texas law and internal policy. *Id*. ¶ 23. But despite acknowledging its duty, Plaintiffs alleged Trussway breached it by failing to implement the security safeguards needed to fulfill it. *Id*. ¶¶ 25, 33.

For those reasons, Plaintiffs sued Trussway claiming that it failed to protect their Private Information using "reasonable security measures." *Id*. ¶ 33. Their claims alleged

that Trussway violated its duties to protect their data under tort, contract, and statutory principles, entitling Plaintiffs to their losses and an order requiring Trussway to improve its data security. *See generally id.* Plaintiffs alleged those claims under a nationwide class, seeking to represent all victims impacted by the breach. *Id*. ¶ 99.

B. Negotiation and Settlement

Given the risks that litigating this matter posed to both sides, the parties agreed to explore settlement. Doc. 18 ¶ 5. While the arm's length negotiations were always collegial, cordial, and professional, there is no doubt that they were adversarial in nature, with both parties forcefully advocating the position of their respective clients. *Id*. ¶ 6. A term sheet was agreed to on September 7, 2023, and in the weeks that followed, the parties diligently negotiated and circulated drafts of the Settlement Agreement, along with accompanying notices, a Claim Form, and other exhibits, and agreed upon a Claims Administrator. *Id*. ¶¶ 7-8. In October 2023, the parties finalized terms, including the Agreement's notices and the administrator that would notify the class and process claims. *See generally id.* And although the parties negotiated Plaintiffs' service awards and attorney fees during this process, they avoided doing so until after the parties had negotiated the terms benefiting the class. *Id*. ¶ 7.

C. The Settlement

To restate, the Settlement afforded the class four benefits, without capping their relief under any "aggregate cap" sometimes used in data breach settlements. The first benefit category was monetary relief for losses. Doc. 17-1 ("Agreement"), § 2. That included documented "ordinary losses" up to $500, including money spent on credit

reports, credit monitoring, unreimbursed bank fees, data charges, identity theft insurance, and other expenses incurred following the breach. *Id*. § 2.1.1. It also covered "extraordinary losses" up to $2,500, for documented and unreimbursed losses caused by identity theft or fraud. *Id*. § 2.1.2. And last, class members could claim their lost time at $75 per hour for three hours—subject to the $500 "ordinary" losses cap. To claim lost time, class members only need to attest to how they spent the time responding to the breach. *Id*.

Second, all class members could claim one year of credit monitoring and identity theft insurance. *Id*. § 2.3. That benefit included class members who had enrolled in Trussway's one-year credit monitoring program started after the breach, allowing enrolled members to extend their monitoring by one year. *Id*. This Settlement relief saves class members from buying their own monitoring and insurance plans and its cost will not impact any other benefit under the agreement, as Trussway agreed to pay it "separate and apart" from all other benefits. *Id*.

Third, Trussway agreed to implement and maintain security measures meant to address the vulnerabilities that criminals exploited to access or obtain the class's Private Information. *Id* § 2.4. This will protect the employee Private Information Trussway still possesses and guard against attempts to breach Trussway again.

And fourth, Trussway paid to administer the settlement costs and will pay any service awards and attorney fees the Court approves. *Id*. §§ 2.6, 3.2. That includes up to $102,500 for attorney fees, costs, and expenses, as well as $2,100 per Plaintiff (for a total of $4,200) for service awards. *Id*. § 7. All amounts paid under those agreements are, again, "separate and apart" from the benefits afforded to the class, meaning they will not detract

from what the class receives. *Id*. § 7.5. The parties agreed on these terms only after they agreed on the terms benefiting the class, ensuring they had secured the class's core benefits without considering what Plaintiffs and their attorneys would receive. *Id*. Under the agreement, Plaintiffs have petitioned the Court to approve the attorneys' fee's costs, and expenses as well as service award requests, a decision the Court will render at its final approval hearing. Doc. 21.

Last, the Agreement outlined how the parties were to notify the class, specifying how to do so and how to accept claims, opt-outs, and objections. Class members could object within 60 days by notifying RG/2 and the parties' counsel in writing about the bases for their objection, including all the information needed to process it. Agreement § 5.1. To opt-out, class members could notify RG/2 about their choice by "clearly manifesting" their intent to opt out in writing. *Id*. § 4.1. Otherwise, class members could submit claims on the claim form provided.

In exchange for any benefits, class members released Trussway from liability related to its data breach. *Id*. §§ 1.21, 6.1. But the parties tailored that release to *only* those claims arising from the breach, preserving any claims that class members may otherwise have against Trussway. *Id*.

D. Preliminary Approval and Notice

In January 2024, Plaintiffs moved the Court to "preliminarily" approve the Agreement and implement its terms. Doc. 17. After considering the merits underlying the proposal, the Court granted Plaintiffs' motion, ordering the parties to proceed with RG/2 Claims Administration, LLC, as the Claims Administrator and issue notice to the class.

Doc. 20. Since then, the parties have carried out the Agreement's terms, serving settlement notices on class members and collecting their claims.

The Claims Administrator, RG/2, was charged with notifying the class and processing class member claims. *See* Sutor Dec. RG/2 has been administering settlements since 2000, including for consumer class action lawsuits like this case, administering and distributing over $2 billion in settlement proceeds. *Id*. ¶ 3. As the Claims Administrator, RG/2 was required to update contacts for class members, create a settlement website, notify the class by First Class Mail, and process claims, opt-out requests, and objections. *Id*. ¶ 2. As of May 13, 2024, RG/2 has accomplished each task.

In January 2024, RG/2 compiled 5,505 contact records for class members and sorted them through the USPS's NCOA database to ensure accuracy. *Id*. ¶ 4. It also set up the settlement website, www.rg2claims.com/trussway.html, that listed all settlement documents, claim forms, case details, and gave class members the chance to submit their claims online. *Id*. ¶ 5. RG/2 then notified the class by 5,505 mailers, requesting that they complete their claim forms and return them by mail to a designated address, providing members 60 days to opt out or object and 90 days to claim benefits. *Id*. Ex. C.

RG/2 received 881 notices returned as "undeliverable by USPS." *Id*. ¶ 9. This meant that RG/2's program reached around 84% of the class with the first mailer—speaking to the reliability of RG/2's system and the contact information provided by Trussway. *Id*. RG/2 then skip traced addresses for members whose notice was returned, identifying 530 updated addresses. *Id*. Through these efforts, RG/2 directly notified 5,143 class members, or around 93% of the class. *Id*. ¶¶ 10-11.

IV. LEGAL STANDARD

Courts approve settlements under Rule 23(e). Fed. R. Civ. P. 23(e) ("The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval."). At root, the analysis centers on whether the settlement is "fair, reasonable, and adequate" *Id*. And that concept considers four factors under Rule 23(e): (i) "adequacy of representation;" (ii) whether there were "arm's length" negotiations; (iii) "adequacy of relief;" and (iv) equity between class members. *Id*. Within the third factor, "adequacy of relief," the Court considers the case's risks, how the parties propose distributing relief, attorney's fees terms, and any other agreements impacting settlement. *Id*.

These factors overlap with Fifth Circuit precedent governing the approval process. *See Reed v. General Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983) (identifying six factors for approval). The factors consider: (i) whether there was fraud or collusion when negotiating the agreement; (ii) the case's complexity; (iii) the litigation stage and discovery taken; (iv) the risk in litigating the case; (v) the "range of possible recovery;" and (vi) whether the class, class counsel, and plaintiff recommend the settlement.

Because these factors overlap with one another, "courts in this circuit often combine them in analyzing class settlements." *ODonnell v. Harris Cnty., Texas*, No. CV H-16-1414, 22019 U.S. Dist. LEXIS 151159, at *26 (S.D. Tex. Sept. 5, 2019). In so doing, a district court must "keep in mind the strong presumption in favor of finding a settlement fair." *Purdie v. Ace Cash Express, Inc.*, No. 301CV1754L, 2003 U.S. Dist. LEXIS 22547, at *16 (N.D. Tex. Dec. 11, 2003). That analysis does not mandate that plaintiffs maximize their

recovery: "[a] proposed settlement need not obtain the largest conceivable recovery for the class to be worthy of approval; it must simply be fair and adequate considering all the relevant circumstances." *Klein*, 705 F. Supp. 2d at 649. Indeed, requiring a plaintiff to maximize their recovery would defeat the point in settling, as "compromise is the essence of a settlement…the settlement need not accord the plaintiff class every benefit that might have been gained after full trial." *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1214 (5th Cir. 1978).

In other words, barring any fraud or collusion, a district court should hesitate to "substitute [their] own judgment for that of counsel." *Klein*, 705 F. Supp. 2d at 649. The settlement here satisfies that analysis.

V. ARGUMENT

A. The Settlement is fair, reasonable, and adequate

The settlement is fair, reasonable, and adequate under Rule 23(e) and the *Reed* factors because it delivers relief to 5,505 current and former employees impacted by Trussway's breach *now*, rather than risk not obtaining any relief in litigation. Indeed, the settlement secures all the benefits Plaintiffs demanded when they sued Trussway: to pay for the class's losses, mitigate future losses, and eliminate the vulnerabilities leading to the breach. Depriving the class that benefit and all others on the speculative chance they may do better years from now would not serve the class's interests. For these reasons, the settlement satisfies all factors for approval.[1]

[1] Because the *Reed* factors overlap with the factors under Rule 23, Plaintiffs consolidate their analysis below.

i. The Court should presume the settlement is "fair, adequate, and reasonable"

As Plaintiffs explain above, there is a "strong presumption that an arms-length class action settlement is fair—especially when doing so will result in significant economies of judicial resources." *Klein*, 705 F. Supp. 2d 632, 650. Further, in the "absence of any evidence to the contrary," the Court may also presume that "no fraud or collusion occurred between opposing counsel[.]" *Welsh v. Navy Fed. Credit Union*, No. 16-CV-1062, 2018 U.S. Dist. LEXIS 227456, 2018 WL 7283639, at *12 (W.D. Tex. Aug. 20, 2018).

Plaintiffs and their counsel qualify for this enhanced, "strong presumption." While the parties' arm's length negotiations were always collegial, cordial, and professional, there was no doubt that they were adversarial in nature, with both parties forcefully advocating the position of their respective clients. Doc. 18 ¶ 6. Those positions were informed by pre-mediation discovery exchanged under FRE 408, allowing Plaintiffs' counsel to understand the landscape affecting settlement. *See In re Heartland Payment Sys.*, 851 F. Supp. 2d at 1064 (approving settlement because "[t]he parties have shown that they possessed sufficient information to gauge the strengths and weaknesses of the claims and defenses"). And they avoided any collusion when they insisted that the parties agree on the class's benefits before negotiating Plaintiffs' attorney fees or service award. *Id*. ¶ 7.

As a result, the parties fulfilled what Rule 23(e) and caselaw expect under this factor, entitling them to start this analysis with the "presumption of fairness."

ii. Plaintiffs and their attorneys represented the class "adequately"

Plaintiffs and their attorneys satisfy Rule 23(e)(2)(A) because they litigated the class's claims without conflict with the class and have established that they put the class's

interests before their own. *See generally* Doc. 22 (Borrelli Fee Dec.); *In re Heartland Payment Sys.*, 851 F. Supp. 2d at 1055 (adequacy satisfied when class counsel had "extensive experience representing consumers, and other plaintiff classes, in class-action litigation," including "experience representing consumer classes in similar data-breach cases"). There is also no evidence that Plaintiffs' interest conflicted with the class, as they were "typical" class members seeking the same relief as the class and they are guaranteed nothing more than the class will receive.

To reach this result, class counsel investigated the class's claims when litigating them in Court and when exploring settlement with Trussway, insisted on "informal discovery in advance of exploring settlement to ensure Class Counsel had sufficient facts and information to make an informed decision about resolution[.]" Borrelli Fee Dec. ¶ 5. Thus, counsel had a "full understanding of the legal and factual issues surrounding this case" when agreeing to explore settlement. *Manchaca v. Chater*, 927 F. Supp. 962, 967 (E.D. Tex. 1996). And that work preceded counsel's efforts in "mediating the dispute, review[ing] 'confirmatory' discovery, draft[ing] the settlement agreement and exhibits, prepar[ing] and submit[ing] the Motion for Preliminary approval (which was ultimately granted), and implement[ing] the parties' settlement[.]" Borrelli Fee Dec. ¶ 5. For these reasons, Plaintiffs have satisfied the "adequacy" factors.

iii. This case's risks, complexity, and expense justify settlement at this stage

There is "an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex." *Assoc. for Disabled Am., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002). And this case is not only

"complex"—"it lies within an especially risky field of litigation: data breach." *Desue v. 20/20 Eye Care Network*, Inc., No. 21-CIV-61275-RAR, 2023 U.S. Dist. LEXIS 117355, at *24 (S.D. Fla. July 8, 2023). This is why courts favor settling breach cases. *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2010 U.S. Dist. LEXIS 87409, 2010 WL 3341200, at *6 (W.D. Ky. Aug. 23, 2010). "When the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened." *Klein*, 705 F. Supp. 2d at 651 (citing *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004)). Although Plaintiffs believe their claims are strong and that they would have overcome the hurdles of a motion to dismiss, class certification, dispositive motion briefing, and trial, given the challenges faced in any complex litigation (which are even more acute in the developing area of data breach), the risks that justified settling at the stage Plaintiffs did. *See Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004) ("Settling now avoids the risks and burdens of potentially protracted litigation.").

And although the parties have settled this matter without "formal" discovery, that is no bar to settlement. *San Antonio Hispanic Police Officers' Org., Inc. v. City of San Antonio*, 188 F.R.D. 433, 459 (W.D. Tex. 1999) (The "[s]ufficiency of information does not depend on the amount of formal discovery which has been taken because other sources of information may be available to show the settlement may be approved even when little or no formal discovery has been completed."). Again, the settlement achieves what Plaintiffs wanted in their complaint—compensation for the class's losses, protection

against future risk, and a requirement that Trussway improve its security. There is no reason to risk losing recovery entirely by refusing to settle on those terms.

iv. Class counsel recommends the settlement

The Court should consider class's counsel opinion on settlement because "[t]he Fifth Circuit has repeatedly stated that the opinion of class counsel should be accorded great weight" when "evaluating a proposed settlement." *Klein*, 705 F. Supp. at 649 (citing *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1216 (5th Cir. 1978)); *DeHoyos v. Allstate Corp.*, 240 F.R.D. at 292 ("The endorsement of class counsel is entitled to deference."). As class counsel explains by declaration, they understand how data breach cases work and the factors to consider when litigating them. Doc. 18 ¶¶ 9-14. They also understand how the relief secured here exceeds that achieved in other cases. *Id*. ("Of the various forms of relief available in national consumer protection class actions (injunctive, declaratory, coupons, gift cards, cash compensation, etc.), the relief obtained by Class Counsel in this case is of the most preferable form: remedial relief plus cash compensation."). The Court should accept this judgment when weighing the approval. *See Stott v. Capital Fin. Servs., Inc.*, 277 F.R.D. 316, 346 (N.D. Tex. 2011) ("As class counsel tends to be the most familiar with the intricacies of a class action lawsuit and settlement, 'the trial court is entitled to rely upon the judgment of experienced counsel for the parties.'"). As a result, Plaintiffs satisfy this factor.

v. The method for delivering relief supports approval

If the Court approves the settlement, RG/2 will pay verified claims and facilitate enrollment in credit monitoring as requested by the class. Given that RG/2 has experience

in delivering relief like this—including over $2 billion in cash payments to consumers, Plaintiffs trust that the class will receive what they qualify for under the settlement.

vi. The settlement treats class members "equitably"

Plaintiffs satisfy the factor under Rule 23(e)(2)(D) because all class members are treated "equitably." RG/2 notified all class members using the same methods, reaching 93% of them and affording them the same options. And although their recoveries may vary in amount, that does not render the relief "inequitable," as it compensates them for their "relative" losses. *Spegele v. USAA Life Ins. Co.*, No. 5:17-cv-967-OLG, 2021 U.S. Dist. LEXIS 204744, at *30 (W.D. Tex. Aug. 26, 2021) (approving a settlement that award differing recoveries based on a formula that considered class member's "relative" losses). What's more, the relief is "adequate" because there is no cap on what Trussway must pay under the Agreement, meaning Trussway will pay every verified claim in full.

vii. Class members have not objected to the settlement

As RG/2 explains by declaration, no class members opted out or objected to the settlement—speaking to the positive response to it. As a result, the Court should find this factor supports settlement.

A. The Court should finally certify the settlement class

Settlement classes are routinely certified in consumer data breach cases. There is nothing unique about this case that would counsel otherwise. This Court already found when it preliminarily approved the Settlement that it likely would certify the class. The class still meets the requirements of numerosity, commonality, typicality, and adequacy, and because common issues predominate and a class action is the superior means by which

to resolve class member claims, the Court should finally certify the Settlement Class for settlement purposes. Where nothing has changed relative to the Rule 23(a) and pertinent Rule 23(b) factors since preliminary approval, that decision should be made final, for the reasons set forth in the Plaintiffs' Preliminary Approval Motion and Supporting Memorandum. *See* Doc. 20.

B. The Notice Plan Complied with Rule 23 and Due Process

The Court should approve the notice plan because the parties directed "notice in a reasonable manner" under Rule 23. Class members are entitled to the "best notice that is practicable under the circumstances" of any proposed settlement before it is finally approved by the Court. *Id*. "The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means." *Id*. To comply with due process, notice must be "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Windsor*, 521 U.S. 591, 617. Notice must explain: (i) the action; (ii) how the class is defined; (iii) the class claims, issues, or defenses; (iv) that a class member appear through an attorney; (v) that the court will exclude from the class any member who requests it; (vi) the time and manner for requesting exclusion; and (vii) the binding effect that class judgment has on members. Fed. R. Civ. P. 23(c)(2)(B).

Having notified 93% of class members with the details demanded by caselaw, the notice program satisfied this prong. The parties used First Class Mail to alert class members to the settlement, a recognized notice method. *See Stott v. Capital Financial Services*, 277 F.R.D. 316, 342, (N.D. Tex. 2011) (approving notice sent to all class members by first class

mail); *Billittri v. Securities America, Inc.*, Nos. 3:09-cv-01568-F, 3:10-cv-01833-F, 2011 WL 3586217, *9 (N.D. Tex. Aug. 4, 2011) (same). The content of the Notice provided adequately informed class members of the nature of the action, the definition of the class, the claims at issue, the ability of a class member to object or exclude themselves, and/or enter an appearance through and attorney, and the binding effect of final approval and class judgment. The Notice utilized clear and concise language that is easy to understand and organized the Notice in a way that allowed class members to easily find any section that they may be looking for. Thus, it was substantively adequate.

RG/2 also set up a website for class members to review all case documents and review the settlement's details, ensuring they could claim benefits with ease. This effort exceeds what Plaintiffs must show to carry their burden on the due process prong. *See Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 807 F. App'x 752, 764 (10th Cir.), cert. denied sub nom. *Gonzalez v. Elna Sefcovic, LLC*, 141 S. Ct. 851 (2020) ("All that the notice must do is 'fairly apprise ... prospective members of the class of the terms of the proposed settlement' so that class members may come to their own conclusions about whether the settlement serves their interests.") (internal citations omitted).

VI. CONCLUSION

For the reasons above, the Court should enter an order finally approving the parties' settlement, certifying the class for purposes of judgment on the Settlement, and granting Plaintiffs' request for attorneys' fees, costs, and service awards.

Dated: May 15, 2024

Respectfully Submitted,

By: *Raina C. Borrelli*

Raina C. Borrelli (*pro hac vice*)
STRAUSS BORRELLI PLLC
One Magnificent Mile
980 N Michigan Avenue, Suite 1610
Chicago IL, 60611
Telephone: (872) 263-1100
Facsimile: (872) 263-1109

Joe Kendall
KENDALL LAW GROUP PLLC
3811 Turtle Creek Blvd., Suite 1450
Dallas, TX 75219
Telephone: (214) 744-3000
Facsimile: (214) 744-3015
jkendall@kendalllawgroup.com

Attorney for Plaintiff and Proposed Class

CERTIFICATE OF SERVICE

I, Raina C. Borrelli, hereby certify that on May 15, 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 counsel of record, below, via the ECF system.

DATED this 15th day of May, 2024.

STRAUSS BORRELLI PLLC

By: */s/ Raina C. Borrelli*

Raina C. Borrelli
raina@straussborrelli.com
STRAUSS BORRELLI PLLC
One Magnificent Mile
980 N Michigan Avenue, Suite 1610
Chicago IL, 60611
Telephone: (872) 263-1100
Facsimile: (872) 263-1109

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LORENZO FLORES and **SIMBA FLORES** on behalf of themselves and all others similarly situated, *Plaintiffs*, v. **TRUSSWAY MANUFACTURING, LLC,** *Defendant*.	§	**Case No. 4:23-cv-02509**

[PROPOSED] ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Before the Court are Plaintiffs Lorenzo Flores and Simba Flores and Defendant Trussway Manufacturing LLC. ("Trussway," and, together with Plaintiffs, the "Parties") Unopposed Motion for Final Approval of Class Action Settlement ("Motion for Final Approval"). The Motion seeks approval of the Settlement as fair, reasonable, and adequate. Also before the Court is Plaintiffs' Motion for Attorneys' Fees, Costs, and Expenses to Class Counsel, and Service Award to Plaintiffs ("Motion for Attorneys' Fees").

Having reviewed and considered the Settlement Agreement, Motion for Final Approval, and Motion for Attorneys' Fees, and having conducted a Final Fairness Hearing, the Court makes the findings and grants the relief set forth below approving the Settlement upon the terms and conditions set forth in this Order.

WHEREAS, on January 8, 2024, the Court entered an Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order") (Doc. No. 20) which,

among other things: (a) conditionally certified this matter as a class action, including defining the class and class claims, (b) appointed Plaintiffs as the Class Representatives and appointed Raina Borrelli of the law firm Strauss Borrelli PLLC (formerly of TURKE & STRAUSS LLP) as Class Counsel; (c) preliminarily approved the Settlement Agreement; (d) approved the form and manner of Notice to the Settlement Class; (d) set deadlines for opt-outs and objections; (e) approved and appointed the Claims Administrator; and (f) set the date for the Final Fairness Hearing;

WHEREAS, on February 22, 2024, pursuant to the Notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement Agreement, of the right of Settlement Class Members to opt-out, and the right of Settlement Class Members to object to the Settlement Agreement and to be heard at a Final Fairness Hearing;

WHEREAS, on May 29, 2024, the Court held a Final Approval Hearing to determine, inter alia: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this action with prejudice. Prior to the Final Fairness Hearing, a declaration of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice was filed with the Court as required by the Preliminary Approval Order. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right to appear at the Final Fairness Hearing in support of or in opposition to the proposed

Settlement Agreement, the award of attorneys' fees, costs, and expenses to Class Counsel, and the payment of a Service Award to the Class Representatives;

WHEREAS, the Court not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

WHEREAS, the Court being required under Federal Rule of Civil Procedure 23(e) to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether the settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Class Counsel and counsel for Trussway, having reviewed all of the submissions presented with respect to the proposed Settlement Agreement, having determined that the Settlement Agreement is fair, adequate, and reasonable, having considered the application made by Settlement Class Counsel for attorneys' fees, costs, and expenses, and the application for Service Awards to the Representative Plaintiffs, and having reviewed the materials in support thereof, and good cause appearing:

IT IS ORDERED that:

1. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all Parties thereto, including the Settlement Class.

2. The Settlement involves allegations in Plaintiffs' Class Action Complaint against Trussway for failure to implement or maintain adequate data security measures and

safeguards to protect Personal Information, which Plaintiffs allege directly and proximately caused injuries to Plaintiffs and Settlement Class Members.

3. The Settlement does not constitute an admission of liability by Trussway, and the Court expressly does not make any finding of liability or wrongdoing by Trussway.

4. Unless otherwise indicated, words spelled in this Order and Judgment Granting Final Approval of Class Action Settlement ("Final Order and Judgment") with initial capital letters have the same meaning as set forth in the Settlement Agreement.

5. The Court, having reviewed the terms of the Settlement Agreement submitted by the Parties pursuant to Federal Rule of Civil Procedure 23(e)(2), grants final approval of the Settlement Agreement and for purposes of the Settlement Agreement and this Final Order and Judgment only, the Court hereby finally certifies the following Settlement Class:

> All persons residing in the United States who were mailed written notification by Trussway Manufacturing, LLC ("Trussway") that their Private Information was potentially accessed, viewed, and/or obtained as a result of the Data Incident which occurred between March 7, 2023 and April 1, 2023.

Specifically excluded from the Settlement Class are:

> (i) Trussway, the Related Entities, and their 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 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 Data Incident or who pleads *nolo contendere* to any such charge.

6. The Settlement was entered into in good faith following arm's length negotiations and is non-collusive. The Settlement is in the best interests of the Settlement

Class and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays, and uncertainties, including as to the outcome, including on appeal, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the settlement reflected in the Settlement Agreement.

7. The Settlement Agreement provides, in part, and subject to a more detailed description of the settlement terms in the Settlement Agreement, for:

a. Trussway to institute Claims Administration as outlined in the Settlement Agreement whereby Settlement Class Members can submit claims that will be evaluated by a Claims Administrator and/or Claims Referee mutually agreed upon by Class Counsel and Trussway.

b. Trussway to pay all costs of Claims Administration, including the cost of the Claims Administrator, instituting Notice, processing and administering claims, and preparing and mailing checks.

c. Trussway to pay, subject to the approval and award of the Court, the reasonable attorneys' fees, costs, and expenses of Class Counsel and Service Awards to the Class Representatives.

The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Federal Rule of Civil Procedure 23(a) and (b)(3) set forth in the

Preliminary Approval Order and notes that because this certification of the Settlement Class is in connection with the Settlement Agreement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the class proposed in the Settlement Agreement.

8. The terms of the Settlement Agreement are fair, adequate, and reasonable and are hereby approved, adopted, and incorporated by the Court. Notice of the terms of the Settlement, the rights of Settlement Class Members under the Settlement, the Final Fairness Hearing, Plaintiffs' application for attorneys' fees, costs, and expenses, and the Service Awards payment to the Class Representatives have been provided to Settlement Class Members as directed by this Court's Orders, and proof of Notice has been filed with the Court.

9. The Court finds that the notice program, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and their right to object and to appear at the final approval hearing or to exclude themselves from the Settlement Agreement, and satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and other applicable law

10. The Court finds that Trussway has fully complied with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

11. As of the Opt-Out deadline, zero potential Settlement Class Members have requested to be excluded from the Settlement.

12. Zero objections were filed by Settlement Class Members.

13. All Settlement Class Members who have not objected to the Settlement Agreement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

14. The Court has considered all the documents filed in support of the Settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the Final Fairness Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

15. The Parties, their respective attorneys, and the Claims Administrator are hereby directed to consummate the Settlement in accordance with this Final Order and Judgment and the terms of the Settlement Agreement.

16. Pursuant to the Settlement Agreement, Trussway, the Claims Administrator, and Class Counsel shall implement the Settlement in the manner and timeframe as set forth therein.

17. Within the time period set forth in the Settlement Agreement, the relief provided for in the Settlement Agreement shall be made available to the various Settlement Class Members submitting valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

18. Pursuant to and as further described in the Settlement Agreement, Plaintiffs and the Settlement Class Members release claims as follows:

Upon the Effective Date, each Settlement Class Member (who has not timely and validly excluded himself or herself from the Settlement), including Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member (who has not timely and validly excluded himself or herself from the Settlement), including Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

"**Released Claims**" shall collectively mean any and all past, present, and future claims and causes of action including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 *et seq.*, and all similar statutes in effect in any states in the United States; violations of any Texas and similar state consumer protection statutes including but not limited to the California Consumer Privacy Act and California Unfair Competition Law, negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include the right of any Settlement Class Member, Class Counsel, or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

"**Related Entities**" means Trussway Manufacturing LLC. ("Trussway") and its respective past or present parents, subsidiaries, divisions, and related or affiliated entities, including but not limited to Builders FirstSource and each of its and their

respective predecessors, successors, directors, officers, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Action, including covered entities associated with facts arising out of the Data Breach, other than any Person who is 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 Data Breach or who pleads *nolo contendere* to any such charge.

Released Persons" means Trussway and the Related Entities.

"**Unknown Claims**" means any of the Released Claims that any Settlement Class Member, including Plaintiffs, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall have, and each of the other Settlement Class Members intend to and shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.80 *et seq*., Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

> 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.

Settlement Class Members, including Plaintiffs, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Settling

Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

20. In addition, none of the releases in the Settlement Agreement shall preclude any action to enforce the terms of the Settlement Agreement by Plaintiffs, Settlement Class Members, Class Counsel, and/or Trussway.

21. The Court grants final approval to the appointment of Plaintiffs Lorenzo Flores and Simba Flores as Class Representatives. The Court concludes that Class Representatives has fairly and adequately represented the Settlement Class and will continue to do so.

22. Pursuant to the Settlement Agreement, and in recognition of their efforts on behalf of the Settlement Class, the Court approves a payment to each Class Representative in the amount of $2,100.00 (for a total payment of $4,200), as a Service Award. Trussway shall make such payment in accordance with the terms of the Settlement Agreement.

23. The Court grants final approval to the appointment of Raina Borrelli of the law firm Strauss Borrelli PLLC (formerly of TURKE & STRAUSS LLP) as Class Counsel. The Court concludes that Class Counsel has adequately represented the Settlement Class and will continue to do so.

24. The Court, after careful review of the fee petition filed by Class Counsel, and after applying the appropriate standards required by relevant case law, hereby grants Class Counsel's application for combined attorneys' fees, costs, expenses in the amount of $102,500. Payment shall be made pursuant to the terms of the Settlement Agreement.

25. This Final Order and Judgment and the Settlement Agreement, and all acts, statements, documents, or proceedings relating to the Settlement Agreement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Trussway of any claim, any fact alleged in the Litigation, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of Trussway or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the lawsuit. This Final Order and Judgment, the Settlement Agreement, and all acts, statements, documents, or proceedings relating to the Settlement Agreement shall not be offered or received or be admissible in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Plaintiffs, any Settlement Class Member, or any other person has suffered any damage; provided, however, that the Settlement Agreement and this Final Order and Judgment may be filed in any action by Trussway, Class Counsel, or Settlement Class Members seeking to enforce the Settlement Agreement or the Final Order and Judgment (including, but not limited to, enforcing the releases contained herein). The Settlement Agreement and Final Order and Judgment shall not be construed or admissible as an admission by Trussway that Plaintiffs' claims or any similar claims are suitable for class treatment. The Settlement Agreement's terms shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims and other prohibitions set forth in this Final Order and Judgment that are maintained by, or on behalf of, any Settlement Class Member or any other person subject to the provisions of this Final Order and Judgment.

26. If the Effective Date, as defined in the Settlement Agreement, does not occur for any reason, this Final Order and Judgment and the Preliminary Approval Order shall be deemed vacated, and shall have no force and effect whatsoever; the Settlement Agreement shall be considered null and void; all of the Parties' obligations under the Settlement Agreement, the Preliminary Approval Order, and this Final Order and Judgment and 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 Court in accordance with the terms of the Settlement Agreement shall be treated as vacated nunc pro tunc, and the Parties shall be restored to their respective positions in the Litigation, as if the Parties never entered into the Settlement Agreement (without prejudice to any of the Parties' respective positions on the issue of class certification or any other issue). In such event, the Parties will jointly request that all scheduled Litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel. Further, in such event, Trussway will pay amounts already billed or incurred for costs of notice to the Settlement Class, and Claims Administration, and will not, at any time, seek recovery of same from any other Party to the Litigation or from counsel to any other Party to the Litigation.

27. Pursuant to the All Writs Act, 28 U.S.C. § 1651, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court.

28. Without affecting the finality of this Final Order and Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement Agreement for all purposes.

29. This Order resolves all claims against all Parties in this action and is a final order.

30. The matter is hereby dismissed with prejudice and without costs except as provided in the Settlement Agreement.

DONE AND ORDERED this ____ day of _____, 202____.

_____
HONORABLE GEORGE C. HANKS, JR.
UNITED STATES DISTRICT COURT JUDGE