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Attorneys for Plaintiff

EDWARD GONSHOROWSKI, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

SPENCER GIFTS LLC,

Defendant.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: ATLANTIC
COUNTY

DOCKET NUMBER: ATL-L-000311-22

CIVIL CLASS ACTION

AMENDED ORDER

**ORDER GRANTING STAY OF DEFENDANT'S RESPONSIVE PLEADING DEADLINE
AND PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

THIS MATTER, a putative class action, having been opened to the Court by Class Action Complaint by Chaffin Luhana LLP, attorneys for Plaintiff Edward Gonshorowski, on behalf of himself and all others similarly situated, and arising from an alleged data breach at the business of Defendant Spencer Gifts LLC ("Spencer Gifts" or "Defendant"), hereby submits a Consent Order for Preliminary Approval of Class Action Settlement to conditionally certify the settlement class and to grant preliminary approval of the Settlement Agreement entered into with Spencer

Gifts, and with the consent of Spencer Gifts, through its attorneys, to the form and entry of this Order, and good cause otherwise appearing:

IT IS on this 15th day of September, 2022,

ORDERED AS FOLLOWS:

Defendant's Responsive Pleading Deadline

1. Spencer Gifts accepts service of the summons and complaint for the purpose of appearing in this matter and obtaining settlement approval, but Spencer Gifts' deadline to file a responsive pleading is hereby STAYED in light of the Parties' proposed settlement.

2. Should the Court deny Final Approval of the proposed settlement, Spencer Gifts' deadline to file answer, move, or otherwise plead shall be thirty (30) days from the date of any order denying Final Approval.

Preliminary Approval of Settlement Agreement

3. Unless otherwise defined in this order, all capitalized terms have the meaning ascribed to them in the Settlement Agreement.

4. This Court has jurisdiction over the Litigation, Plaintiff, all Settlement Class Members, Spencer Gifts, and any party to any agreement that is part of or related to the settlement.

5. The Court finds the proposed settlement set forth in the Settlement Agreement is sufficiently fair, reasonable, and adequate such that it is hereby preliminarily approved, and notice of the settlement should be provided to the Settlement Class as defined below and that a hearing should be held.

Class Certification

6. Solely for purposes of the settlement, the Court conditionally certifies the following class pursuant to N.J. Court Rule 4:32-2 (“Settlement Class”): All persons who were sent written notification by Spencer Gifts LLC (“Spencer Gifts”) that their PII was potentially compromised as a result of the unauthorized access to Spencer Gifts network that Spencer Gifts discovered on or about November 25, 2021 (the “Data Incident”).

7. Excluded from the Settlement Class are: Spencer Gifts, the Related Entities, and their officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) Judge Danielle Walcoff and [his/her] 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.

8. Subject to final approval of the settlement, the Court finds and concludes for settlement purposes only that the prerequisites to a class action, set forth in N.J. Court Rules 4:32-1 and 4:32-2, are satisfied in that:

- (a) The Settlement Class “is so numerous that joinder of all members is impracticable”;
- (b) “[T]here are questions of law or fact common to the” Settlement Class;
- (c) Plaintiff and Class Counsel (as defined below) fairly and adequately represent the Settlement Class;
- (d) Plaintiff’s claims are typical of those of Settlement Class Members;
- (e) Common issues predominate over any individual issues affecting the members of the Settlement Class;

(f) Plaintiff will fairly and adequately protect and represent the interests of all members of the Settlement Class, and Plaintiff's interests are aligned with the interests of all other members of the Settlement Class; and

(g) Settlement of the action on a class-action basis is superior to other means of resolving this matter.

9. The Court appoints David K. Lietz of MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN PLLC ("Class Counsel"), having determined that the requirements of N.J. Court Rule 4:32-2(g) are fully satisfied by this appointment.

10. The Court hereby appoints Plaintiff Edward Gonshorowski as the Class Representative for settlement purposes only on behalf of the Settlement Class.

Notice to Settlement Class Members

11. The Court approves the notices of pendency and proposed settlement of class action (the "Settlement Notices"), and finds that the dissemination of the Settlement Notices substantially in the manner and form set forth in Section 3.2 of the Settlement Agreement ("Notice Plan") and attached as Exhibits A–C to the Settlement Agreement complies fully with the requirements of N.J. Court Rule 4:32-2(b)(2) and due process of law, and is the best notice practicable under the circumstances.

12. The notice procedures described in the Notice Plan are hereby found to be the best means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing (as defined below), comply fully with the requirements of N.J. Court Rule 4:32-2(b) and due process of law, and constitute the best notice practicable under the circumstances.

13. No later than forty-five (45) days from the date of this Preliminary Approval

Order, Class Counsel shall cause the Claims Administrator to send the Short Notice to each Settlement Class Member via direct mail; and shall cause to be published the Long Notice available to the rest of the Settlement Class as stated in the proposed Notice Plan. At least fourteen (14) days prior to the Final Approval Hearing, Class Counsel shall file with the Court and serve on Spencer Gifts a verification of compliance with the notice requirements.

14. All costs incurred in disseminating and otherwise in connection with the Settlement Notices shall be paid by Spencer Gifts pursuant to the Settlement Agreement.

15. The Settlement Notices satisfy the requirements of due process and of Rule N.J. Court Rule 4:32-2(b)(2) and thus are approved for dissemination to the Settlement Class. The Claim Form shall be made available to the Settlement Class as set forth on the Notice Plan and shall be made available to any potential Settlement Class Member that requests one.

Responses by Class Members and the Scheduling of a Final Approval Hearing

16. Settlement Class Members may opt-out of the settlement no later than sixty (60) days from the date on which the notice program commences (the “Opt-Out Deadline”).

17. Any member of the Settlement Class who wishes to be excluded (“opt out”) from the Settlement Class must send a written request for exclusion to Class Counsel and counsel for Spencer Gifts on or before the close of the Opt-Out Deadline. Members of the Settlement Class may not exclude themselves by filing requests for exclusion as a group or class but must in each instance individually and personally execute a request for exclusion. All Settlement Class Members that exclude themselves from the Settlement Class will not be eligible to receive any benefits under the settlement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against Spencer Gifts.

18. Any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall, upon entry of a final order and judgment, be bound by all the terms and provisions of the Settlement Agreement, whether or not such Settlement Class Member objected to the settlement and whether or not such Settlement Class Member received consideration under the Settlement Agreement.

19. The Court adopts the following schedule for the remaining events in this case:

Event	Date
Notice program commences.	Within 45 days after entry of Preliminary Approval Order.
Notice program completed.	Within 60 days after entry of Preliminary Approval Order.
Postmark deadline for request for exclusion (Opt-Out) or objections.	60 days after commencement of notice program.
Postmark/filing deadline for filing claims.	90 days after commencement of notice program.
Motion for Attorney Fees, Reimbursement of Expenses, and Incentive Awards filed by Class Counsel.	14 days before the Opt-Out Date and Objection Date.
Motion for Final Approval to be filed by Class Counsel.	14 days before the Final Approval Hearing.
Final Approval Hearing.	

20. A hearing on the settlement (the “Final Approval Hearing”) shall be held before this Court at 1201 Bacharach Blvd, Atlantic City, NJ on Feb. 17, 2023 at 10:00

[a.m./p.m.].

21. At the Final Approval Hearing, the Court will consider (a) the fairness, reasonableness, and adequacy of the proposed class settlement and whether the settlement should be granted final approval by the Court; (b) whether the Settlement Class should be finally certified as a class pursuant to N.J. Court Rule 4:32-2; (c) dismissal with prejudice of the action; (d) entry of an order including the release; (e) entry of the final approval order; and (f) entry of final judgment in this action. Class Counsel's application for award of attorneys' fees and costs, and request for the Court to award an incentive award to the named Plaintiff, shall also be heard at the time of the hearing.

22. The date and time of the Final Approval Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted by the Court. Should the Court adjourn the date for the Final Approval Hearing, which shall not alter the deadlines for mailing and publication of notice, the Opt-Out Deadline, or the deadlines for submissions of settlement objections, claims, and notices of intention to appear at the Final Approval Hearing unless those dates are explicitly changed by subsequent order.

23. Any Settlement Class Member who does not elect to be excluded from the Settlement Class may, but does not need to enter an appearance, either on his or her own or through his or her own attorney, at the Final Approval Hearing. Settlement Class Members who do not timely object to or opt out of the Settlement and who do not have an attorney to enter an appearance on their behalf will be represented by Class Counsel.

24. Any Settlement Class Member who does not elect to be excluded from the Settlement Class may object to the proposed settlement. Any Settlement Class Member may

object to, *inter alia*, (a) the proposed settlement, (b) entry of a final approval order and the judgment approving the settlement, (c) Class Counsel's application for fees and expenses, or (d) named Plaintiff's incentive award request, by serving a written objection upon Class Counsel, Spencer Gifts' counsel, and the Court.

25. Any Settlement Class Member making the objection (an "Objector") must sign the objection personally or through the Objector's counsel. An objection must state why the Objector objects to the proposed settlement and provide the basis to support such position. If an Objector intends to appear at the hearing, personally or through counsel, the Objector must include with the objection a notice of the Objector's intent to appear at the hearing. The objection must also contain a detailed list of any other objections by the Objector and/or by the attorney representing the Objector to any class action settlement submitted to any state or federal court in the United States in the previous three (3) years.

Objections, along with any notices of intent to appear, must be filed with the Court no later than sixty (60) days after the notice program commences pursuant to the Settlement Agreement. If counsel is appearing on behalf of more than one Settlement Class Member, counsel must identify each such Settlement Class Member, all of whom must have complied with the requirements of this Order. The notice of objection shall be sent to (a) Class Counsel, (b) Spencer Gifts' counsel, and (c) the Court. Such objection shall state: (i) the Objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the Objector as a Settlement Class Member, including proof that the Objector is a member of the Settlement Class (*e.g.*, copy of notice, copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the Objector believes applicable; (iv) the identity of any and all counsel representing the Objector in

connection with the objection; (v) a statement whether the Objector and/or his or her counsel will appear at the Final Approval Hearing; (vi) the Objector's signature and the signature of the Objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); 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 (3) years. No Objector may appear at the hearing unless the Objector indicates an intent to appear. These documents must be filed with the Clerk of Court electronically or at the address below and served concurrently with the counsel listed below:

Clerk of Court

Superior Court of New Jersey
Law Division: Atlantic County
1201 Bacharach Blvd
Atlantic City, NJ 08401
Attn: Civil Clerk of Court

Plaintiff's Counsel

David K. Lietz
MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC
5335 Wisconsin Ave., Ste. 4400
Washington, D.C. 20015
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Spencer Gifts' Counsel

Eric R. Fish
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
efish@bakerlaw.com

26. Only Settlement Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Final Approval Hearing. Any Settlement Class Member that does not timely file and serve an objection in writing in accordance with the

procedure set forth in the class notice and mandated in this order shall be deemed to have waived any objection to: (a) the settlement; (b) the release; (c) entry of a final approval order or any judgment; (d) Class Counsel's application for fees, costs, and expenses; and (e) named Plaintiff's incentive award request, whether by appeal, collateral attack, or otherwise.

27. Settlement Class Members need not appear at the hearing or take any other action to indicate their approval.

28. Upon entry of a final order and judgment all members of the Settlement Class who have not personally and timely requested to be excluded from the Settlement Class will be permanently barred and enjoined from proceeding against Spencer Gifts with respect to all of the Released Claims.

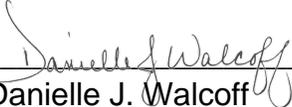
Administration of the Settlement

29. The Court hereby appoints the claims administrator proposed by the Parties, Postlethwaite & Netterville. Responsibilities of the Claims Administrator shall include the following: (a) establishing a post-office box for purposes of communicating with Settlement Class Members; (b) disseminating notice to the class; (c) developing a website to enable Settlement Class Members to access documents and other information; (d) accepting and maintaining documents sent from Settlement Class Members relating to Claims Administration; and (e) distributing settlement checks to Settlement Class Members. Pursuant to the Settlement Agreement, the Claims Administrator and costs of Claims Administration shall be paid by Spencer Gifts.

30. In the event the Settlement Agreement and the proposed settlement are terminated in accordance with the applicable provisions of the Settlement Agreement, the Settlement Agreement, the proposed settlement, and all related proceedings shall, except as

expressly provided to the contrary in the Settlement Agreement, become null and void, shall have no further force and effect, and Settlement Class Members shall retain all of their current rights to assert any and all claims and arguments thereto against Spencer Gifts and any other Released Persons, and Spencer Gifts and any other Released Persons shall retain any and all of their current defenses and arguments thereto (including, but not limited to, arguments that the requirements of N.J. Court Rules 4:32-1 and 4:32-2 are not satisfied for purposes of continued litigation). The Litigation shall thereupon revert forthwith to its respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and all other related orders and papers had not been executed. In such event, 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*.

31. Neither this Order, nor the Settlement Agreement, nor any other settlement-related document, nor anything contained herein or therein or contemplated hereby or thereby, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other settlement-related document, shall constitute, be construed as or be deemed to be evidence of or an admission or concession by Spencer Gifts as to the validity of any claim that has been or could have been asserted against it or as to any liability by it as to any matter set forth in this order, or as to the propriety of class certification for any purposes other than for purposes of the current proposed settlement.



Danielle J. Walcoff, J.S.C.

Having reviewed the above motion, I find it to be meritorious on its face and unopposed. Pursuant to R. 1:6-2, it therefore will be granted essentially for the reasons set forth in the moving papers.

The undersigned Consent to the Form and Entry of this Order:

CHAFFIN LUHANA LLP
and
MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC

BAKER & HOSTETLER LLP
Attorneys for Defendant
Spencer Gifts, LLC

Attorneys for Plaintiff
Edward Gonshorowski,
On behalf of himself and all others
similarly situated

By: /s/Roopal Luhana
Roopal Luhana (ID: 019752001)

By: /s/ Eric R. Fish
Eric R. Fish (ID: 0019001998)

Dated: August 23, 2022

Dated: August 22, 2022