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Attorneys for Plaintiff and the Proposed Class

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 No. ATL-L-000311-22

**ORDER AND JUDGMENT GRANTING FINAL
APPROVAL OF CLASS ACTION SETTLEMENT**

Before the Court is Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement ("Motion for Final Approval"), requesting that the Court enter an Order granting final approval of the class action Settlement involving Plaintiff Edward Gonshorowski ("Plaintiff" or "Class Representative") and Defendant Spencer Gifts LLC ("Defendant" or "Spencer Gifts," and,

together with Plaintiff, the “Parties”), as fair, reasonable, and adequate pursuant to N.J. Ct. R. 4:32-2.

Having reviewed and considered the Settlement Agreement and the Motion for Final Approval, and having conducted a Final Approval 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 and Judgment Granting Final Approval of Class Action Settlement (“Final Order and Judgment”).

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

THE COURT being required under N.J. Ct. R. 4:32-2(e) to make the findings and conclusions hereinafter sets 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;

IT IS ON THIS ____ day of _____, 2023,

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 Plaintiff’s Class Action Complaint against Spencer Gifts for failure to implement or maintain adequate data security measures for the personally identifiable information of employees and their family members, which Plaintiff alleges directly and proximately caused injuries to Plaintiff and Settlement Class Members.

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

4. Unless otherwise noted, words spelled in this Final Order and Judgment with initial capital letters have the same meaning as set forth in the Settlement Agreement.

5. On September 15 2022 the Court entered an Amended Order Granting Stay of Defendant's Responsive Pleading Deadline and Preliminary Approval of Class Action Settlement ("Amended Preliminary Approval Order") which among other things: (a) provisionally certified a class in this matter, including defining the class; (b) approved the Notice to the Class, including approval of the form and manner of notice under the notice program set forth in the Settlement Agreement, (c) appointing Plaintiff as the Class Representative and David. K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC as Class Counsel; (d) preliminarily approved the Settlement; (d) set deadlines for opt-outs and objections; (e) approved and appointed Postlethwaite & Netterville APAC as the Claims Administrator; and (f) set the date for the Final Approval Hearing.

6. The Court, having reviewed the terms of the Settlement Agreement, for purposes of the Settlement Agreement and this Final Order and Judgment Only, hereby finally certifies the following Settlement Class, pursuant to New Jersey Court Rule 4:32-1(a) and (b)(3)(A)-(D), defined as follows:

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").

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.

7. The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of New Jersey Court Rule 4:32-1(a) and (b)(3)(A)-(D) set forth in the Amended Preliminary Approval Order.

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

- A. A process for Settlement Class Members to submit claims for compensation that will be evaluated by a Claims Administrator (or a claims referee, if applicable), mutually agreed upon by Settlement Class Counsel and Spencer Gifts.
- B. Spencer Gifts agreed to pay all Costs of Notice and Claims Administration, including the cost of the Claims Administrator, claims referee (if applicable), instituting Notice, processing and administering claims, and preparing and mailing checks.
- C. Spencer Gifts agreed to pay, subject to Court approval, in an amount not to exceed \$195,000.00 in attorneys' fees and reasonable litigation expenses of Class Counsel and a \$2,500.00 Service Award to the Class Representative.

9. The Court, having reviewed the Settlement Agreement, finds that the terms of the Settlement Agreement are fair, reasonable, and adequate pursuant to N.J. Ct. R. 43-2(e) and are hereby approved, adopted, and incorporated by the Court. 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.

10. The Court, having reviewed the terms of the Settlement Agreement submitted by the parties, pursuant to New Jersey Court Rule 4:32-2, grants final approval of the Settlement Agreement and finds that the Settlement is fair, reasonable, and adequate and meets the requirements of New Jersey Court Rule 4:32-2.

10. Notice of the Final Approval Hearing and the Unopposed Motion for Attorneys' Fees, Expenses, and Service Award for Class Representative have been provided to Settlement Class Members as directed by this Court's Orders, and an affidavit or declaration of the Claims Administrator's compliance with the Notice Program has been filed with the Court.

11. The Court finds that the Notice issued to the Settlement Class, as ordered in the Amended Preliminary Approval Order, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with New Jersey Court Rules 4:32-2(b)(2) and (e)(1)(B) and due process.

12. As of the final date of the Opt-Out Period, one (1) potential Settlement Class Member has submitted a valid Opt-Out Request to be excluded from the Settlement. The name of that person is set forth in **Exhibit A** to this Final Order and Judgment. That person is not bound by this Final Order and Judgment, as set forth in the Settlement Agreement.

13. 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 Approval Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

14. Pursuant to the Settlement Agreement, the Parties, their respective attorneys, and the Settlement Administrator are directed to consummate the Settlement in accordance with this Final Order and Judgment and the terms of the Settlement Agreement in the manner and timeframe as set forth therein.

15. Pursuant to the Settlement Agreement, Spencer Gifts, the Claims Administrator, and Class Counsel shall implement the settlement in the manner and timeframe as set forth therein.

16. 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.

17. The Court finally appoints Edward Gonshorowski as Class Representative and finds that he has fairly and adequately represented the interests of the Settlement Class.

18. Pursuant to the Settlement Agreement, the Court approves a payment to Class Representative in the amount of \$2,500.00 as a Service Award for his efforts on behalf of the Settlement Class. Spencer Gifts and Class Counsel shall make such payment in accordance with the terms of the Settlement Agreement.

19. The Court affirms the appointment of David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC as Class Counsel and finds that Class Counsel has fairly and adequately represented the interests of the Settlement Class pursuant to N.J. Ct. Rule 4:32-2(g).

20. The Court, after careful review of the Motion for Attorneys' Fees 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 and reasonable litigation expenses in the amount of \$195,000.00. Payment shall be made pursuant to the terms of the Settlement Agreement.

21. Pursuant to the Settlement Agreement, Plaintiff and the Class Members release “Released Claims” against Spencer Gifts and all Released Persons, defined in the Settlement Agreement, as follows:

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 the New Jersey 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 or any of the Released Persons to enforce the terms of the Settlement contained in the Settlement Agreement and shall not include the claims of the person identified in **Exhibit A** to this Order, who has timely excluded herself from the Settlement Class.

22. Pursuant to the Settlement Agreement, “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including Plaintiff, 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, Plaintiff intends 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 Plaintiff, 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 Plaintiff 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.

23. Upon the Effective Date, each Settlement Class Member, including Plaintiff, 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, including Plaintiff, 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.

24. Upon the Effective Date, Spencer Gifts shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Plaintiff, each and all of the Settlement Class Members, Class Counsel and Plaintiff's Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses Spencer Gifts may have against such Persons including, without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

25. Notwithstanding any term herein, neither Spencer Gifts nor their Related Parties, shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Plaintiff, each and all of the Settlement Class Members, Class Counsel and Plaintiff's Counsel.

26. The Court reserves jurisdiction over the consummation and enforcement of the Settlement.

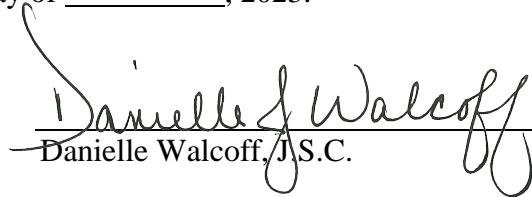
27. Without affecting the finality of this Final Order and Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation, implementation, consummation, and enforcement of the Settlement Agreement and Settlement for all purposes.

28. There is no just reason to delay the entry of this Final Order and Judgment in this matter, and the Clerk is directed to file this Order as the final judgment in this matter.

29. This Final Order and Judgment 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 3rd day of March, 2023.



Danielle Walcoff, J.S.C.

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 P. Luhana
Roopal P. Luhana (ID: 019752001)

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

DATED: March 3, 2023

DATED: March 3, 2023

EXHIBIT A

Sharon Bodden

