

**DLONDON VIRUET,
on behalf of themselves and all others
similarly situated,**

Plaintiff,

v.

COMMUNITY SURGICAL SUPPLY, INC.,

Defendant.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY**

Docket No. OCN L-001215-23

**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,
APPROVING FORMS OF NOTICE AND NOTICE PLAN, AND DIRECTING
IMPLEMENTATION OF THE NOTICE PLAN**

The Court, having considered Plaintiff’s Unopposed Motion for Preliminary Approval of the Class Action Settlement (the “Motion”), the supporting memorandum, the Parties’ Settlement Agreement, dated July 14, 2023¹, the proposed Short Notice, Long Notice, and Claim Form, and being otherwise fully advised in the premises, finds and orders as follows:

PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

1. The Settlement Agreement, attached to the Motion for Preliminary Approval as Exhibit 1, is incorporated fully herein by reference. The definitions used in the Settlement Agreement are adopted in this Order and shall have the same meaning ascribed in the Settlement Agreement.
2. The Court has jurisdiction over the claims at issue in this Litigation, Plaintiff DLondon Viruet FKA Diana Viruet (“Plaintiff”) and Defendant Community Surgical Supply (“CSS” or “Defendants” and together with Plaintiff, the “Parties”).
3. This Order is based on New Jersey Rule 4:32-2.
4. The Court finds that the Parties’ Settlement as set forth in Exhibit 1 to the Motion for Preliminary Approval is fair, reasonable, and adequate, and was entered into after extensive, arm’s-

¹ The capitalized terms used in this [Proposed] Order shall have the same meaning as defined in the Settlement Agreement.

length negotiations, such that it is hereby preliminarily approved and notice of the Settlement should be provided to the Settlement Class Members, pursuant to New Jersey Rule 4:32-2(b)(1).

5. Plaintiff alleged that CSS experienced a targeted cyberattack (the “Data Incident”) on its network that occurred between October 15, 2021 and December 20, 2021. Class Action Complaint (“Complaint”) ¶ 19.² On or about July 29, 2022, CSS began mailing letters to customers whose information was identified by CSS as being impacted by the Data Incident. *Id.* The cyberattack was allegedly caused when a third-party criminal(s) accessed CSS’ systems on October 15, 2021. *Id.* ¶¶ 19, 47. As a result of the Data Incident the personal identifiable information (“PII”) of Plaintiff and Class Members, including but not limited to, full names, addresses, Social Security numbers, driver’s license numbers or other government identification numbers, and passport numbers was compromised. *Id.* ¶ 49. Subsequently, this lawsuit was filed asserting claims for: (1) negligence; (2) negligence *per se*; (3) breach of confidence; (4) intrusion upon seclusion; (5) unjust enrichment; (6) breach of implied contract; (f) unjust enrichment; and (g) violations of New Jersey Consumer Fraud Act, N.J.S.A. § 26:8-2; (the “Litigation”).

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

a. The Settlement provides three separate forms of monetary relief: (1) Claim A- Compensation for lost time; (2) Claim B- Compensation for ordinary losses; and (3) Claim C- Compensation for extraordinary losses.

i. Claim A - Compensation for Lost Time: Settlement Class Members are eligible for compensation eligible for compensation of up to three (3) hours of lost time (at \$20.00 per hour) spent dealing with the Data Incident, provided that the claimant submits an attestation in the Claim Form affirming that the lost time was spent dealing with issues relating to the Data Incident. Payments for lost time are included within the \$500.00 cap for ordinary losses provided under

² Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement Agreement.

Claim B below.

- ii. Claim B - Compensation for Ordinary Losses: Settlement Class Members are eligible for compensation for ordinary losses, as defined below, up to a total of \$500.00 per claimant (minus any payments for lost time), upon submission of a Claim Form and documentation supporting the amount claimed. Ordinary losses include: (i) out-of-pocket expenses incurred as a result of the Data Incident, including unreimbursed bank fees, long distance phone charges, cellphone charges if charged by the minute, data charges if charged based on data usage, postage, or gasoline for local travel; (ii) fees for credit reports, credit monitoring or other identity theft insurance products purchased between October 15, 2021 and the date of preliminary approval of the settlement, provided that the claimant attests under the penalty of perjury that the credit monitoring or other identity theft insurance products were purchased primarily as a result of the Data Incident and were not already paid for or reimbursed by a third party; and (iii) any other expenditure reasonably related to dealing with or mitigating the effects of the Data Incident. The Settlement Class Member must provide documentation that establishes the out-of-pocket expenses and charges claimed were both actually incurred and are fairly and reasonably related to the Data Incident, were not reimbursed by a third party, and which substantiates the full extent of the amount claimed. Failure to provide supporting documentation as requested on the Claim Form will result in denial of a claim. The maximum amount any one claimant may recover under Claim B is \$500.00 (subject to a deduction for any amounts recovered by a claimant under Claim A).
- iii. Claim C - Compensation for Extraordinary Losses: Class Members will be

eligible for compensation for extraordinary losses, as defined below, upon submission of a Claim Form and documentation supporting the amount claimed. Extraordinary losses are losses associated with identity theft, medical fraud, tax fraud, other forms of fraud, and other actual misuse of personal information, provided that: (i) the loss is an actual, documented and unreimbursed monetary loss; (ii) the loss was more likely than not caused by the Data Incident; (iii) the loss is not already covered by one or more of the ordinary loss compensation categories under Claim B; (iv) the claimant made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring or identity monitoring insurance; and (v) the loss occurred between October 15, 2021 and the Claims Deadline.

- b. In addition to the potential monetary benefits, Settlement Class Members will receive an enrollment code for two (2) years of Identity Guard Total Service from Aura upon submission of an approved Claim Form on or before the Claims Deadline. The enrollment codes will be provided within fourteen (14) days after the Effective Date, Class Members will then have a period of ninety-five (95) days after the Effective Date to enroll in and activate the service. Submission of a Claim Form is required to receive a code, and enrollment after the Effective Date is necessary to commence a Settlement Class Member's service. The Identity Guard Total Service from Aura includes, at least, the following, or similar, services: (i) credit monitoring; (ii) dark web monitoring; and (iii) identity theft insurance of up to \$1,000,000.00.
- c. Moreover, CSS has implemented information security enhancements since the Data Incident, and as part of this agreement, CSS will commit to continue with these security enhancements in the future. The enhancements include third party security monitoring,

third party logging, network monitoring, firewall enhancements, email enhancements, and equipment upgrades.

CLASS CERTIFICATION

7. For the purposes of settlement only, and pursuant to New Jersey Rule New Jersey Rule 4:32-2(a), the Court provisionally certifies the class, defined as follows:

All individuals whose full names and other PII was potentially accessed during the Data Incident. Specifically excluded from the Settlement Class are: (i) CSS and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; 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. The Court provisionally finds, pursuant to New Jersey Rule 4:32-1(a), for purposes of this settlement only that: (1) the Settlement Class is so numerous that joinder of all Settlement Class Members is impracticable; (2) there are questions of law and fact common to the Settlement Class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the Settlement Class; (4) the representative parties will fairly and adequately protect the interests of the Settlement Class.

SETTLEMENT CLASS COUNSEL AND THE CLASS PLAINTIFF

9. Plaintiff DLondon Viruet is hereby provisionally designated and appointed as the Class Plaintiff. The Court provisionally finds that the Class Plaintiff is similarly situated to absent Settlement Class Members and has claims typical of the Settlement Class, and, therefore, will be an adequate Class Plaintiff.

10. The Court finds that Vicki J. Maniatis, Gary M. Klinger, David K. Lietz, and Alexandra M. Honeycutt of Milberg Coleman Bryson Phillips Grossman, PLLC and Terence R. Coates, Justin C. Walker, and Jonathan T. Deters of Markovits, Stock & DeMarco, LLC are experienced and adequate counsel and are provisionally designated as Settlement Class Counsel.

NOTICE TO SETTLEMENT CLASS

11. The forms of Notice, including the Short Notice (also known as the Postcard Notice), Long Notice, and Claim Form, attached as Exhibits B, C, and A, respectively, to the Settlement Agreement are constitutionally adequate and are hereby approved. The Notice contains all essential elements required to satisfy state statutory requirements and due process under New Jersey Rule 4:32-2(b)(2), the New Jersey State Constitution, the United States Constitution, and other applicable laws. The Court further finds that the form, content, and method of providing the Settlement Class 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.

12. The Notice program set forth in the Settlement Agreement, and described below, satisfies the requirements of New Jersey Rule 4:32-2(b)(2) provides the best notice practicable under the circumstances, and is hereby approved.

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

EXCLUSIONS AND OBJECTIONS

14. Settlement Class Members who seek to be excluded from the Settlement Class must sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator, set forth in the Notices. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. The notice must be exercised individually by a Settlement Class Member, not as or on behalf of a group, class, or subclass, except that the individual exclusion request may be submitted by a Settlement Class Member's legal representative. The written notice must be postmarked no later than sixty (60) days from the Notice Deadline.

15. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, referred to herein as “Opt-Outs,” will not receive any benefits of and/or be bound by the terms of the Settlement Agreement. A list of Settlement Class Members submitting a timely request for exclusion shall be prepared by the Claims Administrator to be submitted to the Court with the Motion for Final Approval.

16. 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 and the Final Approval Order and Judgment entered thereon, and their claims shall be released. A Settlement Class Member is not entitled to submit both an opt-out request and a Claim Form. If a Settlement Class Member submits both an opt-out request and a Claim Form, the Claims Administrator will send a letter explaining that the Settlement Class Member may not make both of these requests, and asking the Settlement Class Member to make a final decision as to whether to opt out or to submit a Claim Form and to inform the Claims Administrator of that decision within ten (10) days. If the Settlement Class Member does not respond to that communication within fourteen (14) days after it is mailed (or by the Opt-Out Date, whichever is later), the Settlement Class Member will be treated as having opted out of the Class.

17. If, within ten (10) days after the Opt-Out Date, as approved by the Court, more than five hundred (500) Persons have filed Opt-Outs, then CSS may, by notifying Settlement Class Counsel in writing, void the Settlement Agreement. If CSS voids the Settlement Agreement, CSS shall be obligated to pay all settlement expenses already incurred, excluding any attorneys’ fees, costs, and expenses of Settlement Class Counsel, service awards and shall not, at any time, seek recovery of same from any other party to the Litigation.

18. Settlement Class Members may object to the Settlement, the Attorneys’ Fees Request, or the Service Award Request. A Settlement Class Member who seeks to object to the Settlement must submit timely written notice of his or her objection. This Notice shall state: (i) the objector’s full name, address, telephone number, an email address (if any); (ii) information identifying the objector as

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 all counsel representing the objector; (v) a statement whether the objector and/or his or her counsel will appear at the Final Fairness 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 counsel's has filed an objection to any proposed class action settlement within the last three (3) years. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court no later than sixty (60) days after the Notice Deadline, and served concurrently therewith upon Settlement Class Counsel, Gary M. Klinger, Milberg Coleman Bryson Phillips Grossman, PLLC, 227 West Monroe Street, Suite 2100, Chicago, Illinois 60606; and counsel for CSS, Angelo A. Stio III, Troutman Pepper Hamilton Sanders LLP, 301 Carnegie Center, Suite 400, Princeton, New Jersey 08540.

19. Any Settlement Class Member who fails to comply with the requirements for objecting to the Settlement shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement, and the Settlement Class Member shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the means described above. Without limiting the foregoing, any challenge to the Settlement Agreement, the Preliminary Order Approving the Class Action Settlement Agreement, and the Final Approval Order and Judgment shall be pursuant to appeal under the New Jersey Rules of Appellate Procedure and not through a collateral attack.

ADMINISTRATION OF THE SETTLEMENT

20. The Class Plaintiff, Settlement Class Counsel, and CSS have created a process for

assessing the validity of claims and a payment methodology to Settlement Class Members who submit timely, valid Claim Forms. The Court hereby preliminarily approves the Settlement benefits to the Settlement Class, and the plan for distributing Settlement benefits as described in Section 8 of the Settlement Agreement.

21. The Court appoints KCC Class Action Services LLC as the Notice Specialist and Claims Administrator.

22. The Court directs that the Claims Administrator effectuate the distribution of Settlement benefits according to the terms of the Settlement Agreement, should the Settlement be finally approved.

23. Settlement Class Members who qualify for Settlement benefits and who wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice.

24. If the Final Approval Order and Judgment is entered, all Settlement Class Members who fail to submit a claim in accordance with the requirements and procedures specified in the Notice, and who do not timely exclude themselves from the Settlement Class, shall be forever barred from receiving any payments or benefits pursuant to the Settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

25. CSS shall pay the entirety of settlement administration costs and expenses associated with providing Notice to Settlement Class Members, including the costs of claims administration, costs of notice, and costs of dispute resolution.

FINAL FAIRNESS HEARING

26. A Final Fairness Hearing shall be held on August 21, 2023 at 2:00pm to be noticed on the Settlement Website.

27. The Court may require or allow the Parties and any objectors to appear at the Final

Fairness Hearing by telephone or videoconference.

28. At the Final Fairness Hearing, the Court will determine whether (1) this action should be finally certified as a class action for settlement purposes pursuant New Jersey Statutes Ann. New Jersey Rule 4:32-2; (2) the Settlement should be finally approved as fair, reasonable, and adequate; (3) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (4) Settlement Class Members should be bound by the Releases set forth in the Settlement Agreement; (5) Settlement Class Counsel's application for attorneys' fees and expenses should be approved; and (6) the Class Plaintiff's request for a service award should be approved.

29. Plaintiff's Motion for Final Approval shall be filed with the Court no later than (14) days before the Final Fairness Hearing.

30. Plaintiff's Motion for attorneys' fees and expenses shall be filed with Court no later than fourteen (14) days prior to the Opt-Out and Objection Deadline.

TERMINATION

31. This 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 paragraph 10.1 of the Settlement Agreement.

32. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, unless Settlement Class Counsel and CSS' counsel mutually agree in writing to proceed with the Settlement Agreement, and neither the Settlement Agreement, nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

33. This Order shall have no continuing force or effect if Final Approval and Judgment is not entered and shall not be construed or used as an admission, concession, or declaration by or against CSS of any fault, wrongdoing, breach, liability, or the certifiability of any class.

34. If the Settlement is not finally approved by the Court or is terminated in accordance with

paragraph 10.1 of the Settlement Agreement, the Parties shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court, so as to avoid prejudice to any Party or its counsel, and (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 Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

Summary of Deadlines

35. The preliminarily approved Settlement shall be administered according to its terms pending the Final Fairness Hearing. Deadlines arising under the Settlement and this Order include, but are not limited to:

EVENT	DATE
Notice Deadline	No later than 30 days after the entry of the Preliminary Approval Order
Deadline for Class Members to Opt-Out of Settlement	No later than 60 days after Notice Deadline
Deadline for Class Members to Object to Settlement	No later than 60 days after Notice Deadline
Deadline for Class Members to Submit Timely, Valid Claims for Monetary Relief	No later than 75 days after Notice Deadline
Deadline for Plaintiff to File Motion for Final Approval	No later than 14 days prior to Final Fairness Hearing
Deadline for Plaintiff to File Motion for Attorneys' Fees, Expenses, and Service Award for the Class Plaintiff	No later than 14 days prior to Opt-Out and Objection Deadlines
Final Fairness Hearing	Will be held on <u>August 21, 2023</u> , at <u>2:00pm</u>

ORDERED this 4th day of August, 2023.

The Plaintiff's motion to enforce settlement is hereby GRANTED.



HONORABLE VALTER H. MUST, J.S.C.

Opposed
 Unopposed