

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WILLIAM RIGGS,

Plaintiff,

v.

KROTO, INC., D/B/A ICANVAS,

Defendant.

Case No. 1:20-cv-05822

Hon. Thomas M. Durkin

FINAL JUDGMENT

A Final Approval Hearing was held before this Court on October 29, 2021, to consider, among other things, whether the Class Settlement Agreement and Release executed on June 1, 2021, including the exhibits attached thereto (“Class Settlement Agreement”) between Representative Plaintiff William Riggs, individually and on behalf of the Settlement Class, and Defendant Kroto, Inc. d/b/a iCanvas (“iCanvas” or “Defendant”), represents a fair, reasonable and adequate settlement of the Litigation.¹ The Court reviewed (a) the Motion for Final Approval (the “Motion”) and all supporting materials, including but not limited to the Class Settlement Agreement; (b) any objections filed with or presented to the Court; and (c) the Parties’ responses to any objections. The Court also considered the oral argument of counsel and any objectors who appeared.

Based on the Class Settlement Agreement, the Plaintiff’s Motion for Final Approval, the submissions of the Settling Parties in support of final approval of the settlement and all prior proceedings herein and good cause appearing based on the record, the Court **ORDERS,**

¹ Capitalized terms used in this Final Judgment shall have the same meanings as defined in the Class Settlement Agreement unless otherwise expressly stated.

ADJUDGES, AND DECREES as follows:

1. The Court incorporates the paragraphs of its Final Approval Order, as if each paragraph was set forth below.

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

3. The Class Settlement Agreement is fair, reasonable, adequate and in the best interests of Settlement Class Members and satisfies the requirements of Federal Rule of Civil Procedure 23. The Class Settlement Agreement was negotiated at arm's-length, in good faith and without collusion, by capable and experienced counsel, with full knowledge of the facts, the law, and the risks inherent in litigating the Litigation, and with the active involvement of the Settling Parties. Moreover, the Class Settlement Agreement confers substantial benefits on the Settlement Class Members, is not contrary to the public interest, and will provide the Settling Parties with repose from the Litigation. The Settling Parties faced significant risks, expense, and/or uncertainty from continued litigation of this matter, which further supports the Court's conclusion that the Class Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class Members.

4. On July 8, 2021, the Court entered a Preliminary Approval Order preliminarily certifying a Settlement Class, preliminarily approving the Class Settlement Agreement and directing Notice to the Settlement Class, and set a Final Approval Hearing to consider the final approval of the Class Settlement Agreement.

5. In the Preliminary Approval Order, the Court approved the Notice Program, the Long and Summary Notices, and Claim Form, and found that the form, content and method of giving notice to the Settlement Class satisfied the requirements of due process and Rule 23 of the

Federal Rules of Civil Procedure and provided the best notice practicable under the circumstances. The Class Notice and Notice Program were reasonably calculated to apprise Settlement Class Members of the nature of this Litigation, the scope of the Settlement Class, the terms of the Class Settlement Agreement, the right of Settlement Class Members to object to the Class Settlement Agreement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing. The Court finds that the distribution of the Notices has been achieved pursuant to the Preliminary Approval Order and the Class Settlement Agreement.

6. Based on the evidence and information supplied to the Court in connection with the Final Approval Hearing held on October 29, 2021, the Court finds that the Notice Program, set forth in the Class Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide due and sufficient notice to the Settlement Class regarding the existence and nature of the Litigation, certification of the Settlement Class for settlement purposes only, the existence and terms of the Class Settlement Agreement, and the rights of Settlement Class Members to exclude themselves from the Class Settlement Agreement, to object and appear at the Final Approval Hearing, and to receive benefits under the Class Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

7. The Court finds that Defendant has complied with the requirements of 28 U.S.C. § 1715.

8. For purposes of the Class Settlement Agreement and pursuant to the Class Settlement Agreement, the Court certifies the following Settlement Class:

All individuals residing in the United States who were sent an Incident Notice in or about June 26, 2020, concerning the Data Incident that occurred between May 10,

2020 and May 28, 2020, and any Person asserting a right to a Released Claim through that individual.

9. Excluded from the Settlement Class is any judge presiding over this matter and any members of their first degree relatives, judicial staff, the officers and directors of Defendant, Settlement Class Counsel and their first degree relatives, and persons who timely and validly submitted Requests for Exclusion from the Settlement Class.

10. The Court incorporates its preliminary conclusions in the Preliminary Approval Order and Final Approval Order regarding the satisfaction of Federal Rules of Civil Procedure 23(a) and 23(b). Because the Settlement Class is certified solely for purposes of settlement, the Court need not address any issues of manageability for litigation purposes.

11. The Court approves the settlement of the Litigation as set forth in the Class Settlement Agreement. The Court finds that the Class Settlement Agreement is fair, reasonable, adequate and in the best interests of Settlement Class Members and satisfies the requirements of Federal Rule of Civil Procedure 23. The Class Settlement Agreement was negotiated at arm's-length, in good faith and without collusion, by capable and experienced counsel, with full knowledge of the facts, the law, and the risks inherent in litigating the Litigation, and with the active involvement of the Settling Parties. Moreover, the Class Settlement Agreement confers substantial benefits on the Settlement Class Members, is not contrary to the public interest, and will provide the Settling Parties with repose from the Litigation. The Settling Parties faced significant risks, expense, and/or uncertainty from continued litigation of this matter, which further supports the Court's conclusion that the Class Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class Members.

12. The Court has reviewed Settlement Class Counsel's motion for an award of attorneys' fees, costs, and expenses and for a Service Award for Representative Plaintiff, and the

exhibits, memoranda of law, and other materials submitted in support of that motion. Defendant has not opposed the motion for a service award of \$5,000.00 to be paid consistent with the Class Settlement Agreement and the application for an award of attorneys' fees in the amount of \$_____ and unreimbursed litigation expenses in the amount of \$_____ to be paid consistent with the Class Settlement Agreement. The Court finds that Settlement Class Counsel's request for attorneys' fees and expenses is fair, reasonable, and appropriate and hereby awards to Settlement Class Counsel attorneys' fees in the amount of \$_____ and expenses in the amount of \$_____, and approves payment of a service award to the Representative Plaintiff in the amount of \$_____, to be paid out of the Settlement Fund in accordance with the terms of the Class Settlement Agreement.

13. The Court approves the Settlement Consideration described in, and pursuant to, the Class Settlement Agreement. The Court directs Defendant to fund a Settlement Fund, consisting of Three Hundred and Eighty-Three Thousand Six-Hundred Dollars and no cents (\$383,600.00) in the manner described in Paragraph 2.2 of the Class Settlement Agreement, which shall be used to pay all Settlement Costs as described in Paragraph 1.42 of the Class Settlement Agreement.

14. If any money remains in the Settlement Fund after the payment of all Settlement Costs, the Settling Parties shall return to the Court seeking direction as to the disposition of these funds, including the selection of a *cy pres* recipient, pursuant to Paragraph 7.9 of the Class Settlement Agreement.

15. For purposes of Injunctive Relief, the Court adopts and incorporates the definitions and meanings of the defined terms set forth in the Class Settlement Agreement. The terms of this Injunctive Relief section reflect Paragraph 2.7 of the Class Settlement Agreement and shall not be construed to impose any obligations or requirements in addition to those set forth in the Class

Settlement Agreement. Specifically, Defendant shall, within ninety (90) days of the Effective Date, if it has not already done so, further develop, implement, and maintain a comprehensive information security program that is reasonably designed to protect the security, integrity, and confidentiality of Personal Information that Defendant collects or obtains from Consumers (collectively, the “ISP”). The Defendant’s ISP shall be written and shall contain administrative, technical, and physical safeguards appropriate to: (i) the size and complexity of Defendant’s operations; (ii) the nature and scope of Defendant’s activities; and (iii) the sensitivity of the Personal Information that Defendant maintains. Defendant may satisfy the requirement to implement and maintain the ISP through review, maintenance, and, as necessary, updating of an existing information security program or existing safeguards to ensure that the ISP is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of Personal Information; and upgrading information safeguards as necessary to limit risks.

Defendant will implement, if it has not already done so, the following as part of its ISP:

- (a) Defendant shall employ an executive or officer with appropriate credentials, background, and expertise in information security who shall be responsible for overseeing the implementation and maintenance of the ISP;
- (b) Defendant shall provide security awareness and privacy training to all of Defendant’s personnel whose jobs involve access to Defendant’s network or responsibility for Personal Information appropriate to the personnel’s job responsibilities and functions;
- (c) Defendant’s ISP shall be reasonably designed and implemented for the appropriate handling and investigation of Security Events involving Personal Information collected from Consumers;

- (d) Defendant shall comply with Payment Card Industry Data Security Standards (PCI DSS) and must provide proof to Settlement Class Counsel within 90 days of the Effective Date of the Class Settlement Agreement, that PCI annual assessment was completed;
- (e) Defendant shall maintain an appropriate system to collect logs and monitor network activity to ensure that Security Events are reviewed and that appropriate follow-up and remediation are taken with respect to Security Events;
- (f) Defendant shall, to the extent technically feasible, implement reasonable controls to manage the access of any device attempting to connect to Defendant's environment through hardware or software tools such as firewalls, authentication credentials, or other such access-restricting mechanism;
- (g) Defendant shall require two-factor authentication both for Defendant's system administrator accounts and for remote access to Defendant's network; and
- (h) Defendant shall implement and maintain a risk-based penetration testing program reasonably designed to identify, assess, and remediate potential security vulnerabilities within Defendant's environment. Such testing shall occur on at least an annual basis.

16. There were no objections to the Class Settlement Agreement. All persons who did not object to the Settlement in the manner set forth in the Class Settlement Agreement are deemed to have waived any objections, including but not limited to by appeal, collateral attack, or

otherwise.

17. The Opt-Out Member who made valid and timely Requests for Exclusion is excluded from the Class Settlement Agreement and the Settlement Class. The Opt-Out Member is not bound by the Class Settlement Agreement, the Final Approval Order, or this Final Judgment and shall not be entitled to any of the benefits afforded to Settlement Class Members under the Class Settlement Agreement.

18. Each Settlement Class Member, including Representative Plaintiff, are: (1) deemed to have completely and unconditionally released, forever discharged and acquitted Defendant and the Released Parties from all claims arising out of or asserted in the Litigation and all Released Claims released under the Class Settlement Agreement (including Unknown Claims); and (2) barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these claims. The full terms of the release described in this paragraph are set forth in Paragraphs 1.33-1.34 and 8.1-8.2 of the Class Settlement Agreement and are specifically approved and incorporated herein by this reference (the “Releases”). In addition, Representative Plaintiff and Settlement Class Members are deemed to have waived: (i) the provisions, rights, and benefits conferred by California Civil Code § 1542, which provides that 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; and (ii) any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542.

19. The Class Settlement Agreement, the Final Approval Order, and this Final Judgment apply to all claims or causes of action settled under the Class Settlement Agreement,

and binds Representative Plaintiff and all Settlement Class Members who did not properly request exclusion. The Class Settlement Agreement and this Final Judgment shall have maximum *res judicata*, collateral estoppel, and all other preclusive effect in any and all causes of action, claims for relief, suits, demands, petitions, or any other challenges or allegations that arise out of or relate to the subject matter of the Litigation and/or the Complaint.

20. This Final Judgment shall not be: (1) construed as an admission or concession by Defendant of the truth of any of the allegations in the Litigation, or of any liability, fault or wrongdoing of any kind; or (2) construed as an admission or concession by Representative Plaintiff or the Settlement Class as to any lack of merit of the claims or the Litigation.

21. The Class Settlement Agreement shall not constitute, and will not under any circumstances be deemed to constitute, an admission of wrongdoing or liability by any Settling Party, such wrongdoing and liability being expressly denied and no final adjudication having been made. The Settling Parties have entered into the Class Settlement Agreement solely as a compromise of all claims for the purpose of concluding the disputes between them, and the Class Settlement Agreement may not be used by any third party against any party. Pursuant to Federal Rule of Evidence 408, the entering into and carrying out of the Class Settlement Agreement, and any negotiations or proceedings related to it, shall not be construed as, or deemed evidence of, an admission or concession by any of the Settling Parties or a waiver of any applicable statute of limitations, and shall not be offered or received into evidence in any action or proceeding against any Settling Party in any court, administrative agency, or other tribunal for any purpose whatsoever.

22. This Final Judgment shall constitute a judgment for purposes of Rule 58 of the Federal Rules of Civil Procedure.

23. The Class Settlement Agreement, Final Approval Order, and this Final Judgment and all documents, supporting materials, representations, statements and proceedings relating to the Settlement shall not be offered or received into evidence, and are not admissible into evidence, in any action or proceeding, except that the Class Settlement Agreement, the Final Approval Order, and Final Judgment may be filed in any action by Defendant or the Settlement Class Members seeking to enforce the Class Settlement Agreement, the Final Approval Order, and the Final Judgment.

24. Consistent with Paragraph 10.3 of the Settlement Agreement, if the Effective Date does not occur, the following will occur: (a) the Settling Parties shall be restored to their respective positions in the Litigation, and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or litigant, which extension shall be subject to the decision of the Court; and (b) the terms and provisions of the Class Settlement Agreement shall have no further force and effect with respect to the Settling 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 Class Settlement Agreement, including certification of the Settlement Class for settlement purposes only, shall be treated as vacated, *nunc pro tunc*.

25. Without in any way affecting the finality of this Final Judgment, the Court hereby retains jurisdiction over this Litigation and the Parties with respect to all matters relating to the interpretation, administration, consummation, implementation and enforcement of the Class Settlement Agreement and this Final Judgment for all purposes.

26. The Court hereby dismisses the Litigation in its entirety with prejudice, and without fees or costs except as otherwise provided for herein.

NOW, THEREFORE, the Court hereby enters judgment in this matter pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: October 29, 2021



HON. THOMAS M. DURKIN
UNITED STATES DISTRICT COURT JUDGE