

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

NICOLE TOUSSAINT, *individually
and on behalf of all others similarly situated,*

Plaintiffs,

v.

HANESBRANDS INC.,

Defendant.

1:22CV879

**ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

This matter came before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of a Settlement Agreement between Nicole Toussaint and Veronica Roman ("Plaintiffs" or "Representative Plaintiffs"), individually and on behalf of the proposed Settlement Class, and Defendant Hanesbrands Inc. ("HBI" or "Defendant"), that, upon final approval by this Court, settles the above-captioned litigation.

The Court hereby **GRANTS** preliminary approval of the Parties' Settlement Agreement dated July 25, 2024 ("Settlement Agreement"), the proposed Long Form Notice, Short Form Notice, and Claim Form, and finds as follows:

The Court has jurisdiction over all claims in this Action and all Parties hereto. This Order is based on federal law, including but not limited to Rule 23 of the Federal Rules of Civil Procedure. The Court adopts by reference the Settlement Agreement, attached to Plaintiffs' Unopposed Motion for Preliminary Approval. This Order adopts the definitions

in the Settlement Agreement, and terms used in this Order shall have the same meaning ascribed to them in the Settlement Agreement.

The Court preliminarily FINDS that the Parties' Settlement, as reflected in the Settlement Agreement, is fair, reasonable, and adequate, and that it is in the best interests of the Settlement Class Members. The Parties entered into the Settlement after extensive, arms' length negotiations and two mediations: the first with Hon. Morton Denlow (Ret.) of JAMS and the second with Hon. Wayne Andersen (Ret.) of JAMS. The Court preliminarily approves the Settlement Agreement, provisionally appoints the Settlement Class Representatives, Class Counsel, and Claims Administrator, and ORDERS that the Parties should commence providing notice of the Settlement to Settlement Class Members in accordance with the procedures proposed in the Settlement Agreement.

This class action arises out a sophisticated ransomware attack on HBI discovered by the company in May 2022 (the "Data Incident"). The Data Incident implicated certain personally identifiable information ("PII") of certain individuals. The PII implicated by the Data Incident included certain contract information, date of birth, financial account information, government-issued identification numbers such as driver's license numbers, passport information, and Social Security numbers, and other information related to benefits and employment, including certain limited health information provided for employment-related purposes (the "Private Information").

On October 7, 2022, Plaintiff Ramon filed a class action against HBI. *See Roman v. HanesBrands, Inc.*, No. 2023-cv-00173 (M.D.N.C.). Plaintiff Toussaint subsequently filed a class action on October 13, 2022. *See Toussaint v. HanesBrands, Inc.*, No. 2022-cv-00879 (M.D.N.C.).

On January 16, 2023, Plaintiff Roman also filed a second putative class action lawsuit against HBI in the Middle District of North Carolina, captioned, *Roman v. Hanesbrands, Inc.*, Case No. 1:23-cv-00044 (M.D.N.C. Jan. 16, 2023), but subsequently dismissed that suit without prejudice on January 20, 2022. On March 6, 2023, the Court ordered consolidation of the two remaining, related matters. On April 27, 2023, Plaintiffs filed their Consolidated Amended Class Action Complaint, alleging claims of negligence, negligence *per se*, invasion of privacy, breach of implied contract, unjust enrichment, breach of the implied covenant of good faith and fair dealing, and unfair business practices.

After two separate mediations with two separate neutral mediators, vigorous negotiations by both parties, and a mediator's proposal to close a stalemate reached at the end of the second day of mediation, the Parties reached a Settlement in principle. Plaintiffs summarize the relevant terms of the proposed Settlement as follows:

- a. Settlement Class Members may claim reimbursements for actual, unreimbursed documented out-of-pocket losses more likely than not traceable to the Data Incident and are not otherwise recoverable through insurance. These losses are uncapped at the individual level, but are subject to an aggregate cap of \$100,000;
- b. In addition to reimbursements for documented out-of-pocket losses, Settlement Class Members may choose one of three forms of additional relief, which are not subject to any aggregate caps:
 - i. Credit and Identity Monitoring Services: Settlement Class Members may claim a two-year membership in Experian's IdentityWorks, which provides for credit and identity monitoring services, including up to \$1 million of identity theft insurance; or
 - ii. Hanes Site Credit: Settlement Class Members may claim a Hanes site credit for one-time use (within three years) to purchase products for sale on the www.hanes.com website up to the amount of \$50.00 plus free shipping (valued at \$6.99), for a total value of \$56.99; or

- iii. Alternative Cash Payment: Settlement Class Members may claim an alternative cash payment of \$35.
- c. Defendant has also taken steps, and will take steps to implement equitable relief in the form of additional security measures for a period of two (2) years, to the extent not already implemented, including:
 - i. Defendant will undertake measures to secure, or securely destroy all information that was subject to and subsequently resecured in the Data Incident once it is no longer needed for legitimate business purposes.
 - ii. Defendant will conduct a tabletop exercise.
 - iii. Defendant will review and consider further enhancements to Defendant's incident response process annually.
 - iv. Defendant will continue to provide annual security awareness training for all Defendant employees involved with consumer and employee data sharing and data transfer activities, to cover industry best practices for data security and privacy.
 - v. Defendant will continue to monitor the dark web for indications of fraudulent activity related to the Data Incident.
- d. Defendant to pay all Notice and Administration Costs;
- e. Defendant to pay attorneys' fees in the amount of \$475,000 and litigation costs to Settlement Class Counsel not to exceed \$45,000, subject to the Court's final approval; and
- f. Defendant to pay Service Awards to Representative Plaintiffs of \$1,600 per Plaintiff, subject to the Court's final approval.

The Settlement Agreement is the result of the arm's-length and non-collusive settlement discussions and is intended to memorialize the terms of the Parties' settlement, contingent on this Court's final approval. The Parties have agreed to settle this action, according to the terms of the Settlement Agreement, and subject to the approval and

determination of the Court as to the fairness, reasonableness, and adequacy of the Settlement which, if approved, will result in dismissal of this action with prejudice.

Plaintiffs and Class Counsel, on behalf of the Settlement Class, have concluded based upon their investigation, and taking into account the contested issues involved, the expense and time necessary to prosecute the Action through trial, the risks and costs associated with further prosecution of the Action, the uncertainties of complex litigation, the desired outcome from continued litigation, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with Defendant on the terms set forth herein is fair and reasonable and in the best interest of Plaintiffs and the Settlement Class. Plaintiffs and Class Counsel believe that the Settlement confers substantial benefits upon the Settlement Class and ask the Court to preliminarily approve the Settlement.

Having reviewed the Settlement Agreement, including the exhibits attached thereto, and all prior proceedings herein, and for good cause shown, it is hereby **ORDERED** that Plaintiffs' Unopposed Motion for Preliminary Approval is granted as set forth herein.¹

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only and pursuant to Federal Rule of Civil Procedure Rule 23, the Court provisionally certifies a Settlement Class in this matter, defined as follows:

Settlement Class

All individuals whose PII was compromised in the ransomware attack on HBI, discovered by HBI on May 24, 2022.

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement Agreement.

The Settlement Class specifically excludes: (1) the Judge presiding over this Action, and members of her direct family, (2) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, and directors, and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

The Court provisionally finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable, (b) there are questions of law and fact common to the Settlement Class, (c) the claims and defenses of the Settlement Class Representatives are typical of the claims and defenses of the Settlement Class Members, (d) the Settlement Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Settlement Class Representatives have no interest antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class, (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members, and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

2. Settlement Class Representatives and Settlement Class Counsel.

Plaintiffs Veronica Roman and Nicole Toussaint are hereby provisionally designated and appointed the Settlement Class Representatives. The Court provisionally finds that the Settlement Class Representatives are similarly situated to absent Class Members and therefore typical of the Class and that they will be adequate Settlement Class Representatives.

The Court finds that the following counsel are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel: Gary E. Mason of Mason LLP, located at 5335 Wisconsin Ave., NW, Ste 640, Washington, District of Columbia, 20015; and Scott Cole of Cole & Van Note, located at 555 12th Street, Ste. 2100, Oakland, California 94607.

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court concludes and finds that the proposed Settlement is fair, reasonable, and adequate to warrant providing Notice of the Settlement to the Settlement Class and accordingly is preliminarily approved.

4. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for the purposes of the Settlement.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held at 09:00 a.m. on March 10, 2025, in the United States District Court for the Middle District of North Carolina, Hiram H. Ward Bldg., 251 N. Main Street, Winston-Salem, North Carolina, 27101, in Courtroom No. 4, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to Federal Rule of Civil Procedure 23(b)(3); (b) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23(e); (c) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the motion of Settlement Class Counsel for an award of attorneys' fees, costs, and expenses (the "Fee Request") should be approved; (f) the motion of the Settlement Class Representatives

“Service Award Request”) should be approved; and (g) the class definition in the operative complaint should be deemed amended to match the Settlement Class definition in the approved Settlement. Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Plaintiffs’ Service Award shall be filed at least 14 days prior to Settlement Class Members’ deadline to object or opt-out of the Settlement. Plaintiffs’ Motion for Final Approval of the Settlement, Service Award Request, and Fee Request shall be filed with the Court at least 28 days prior to the Final Approval Hearing. The Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or the Service Award Request and Fee Request in conformance with the Court’s standing order for reply briefs.

6. **Appointment of Settlement Administrator.** The Court appoints Apex Class Action LLC as the Settlement Administrator, with responsibility for class notice and claims administration and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. In accordance with the Settlement Agreement, Defendant shall pay all agreed upon costs and expenses associated with providing notice to Settlement Class Members including, but not limited to, the Claims Administrator’s fees, as well as the costs associated with administration of the Settlement.

7. **Notice to the Class.** The proposed Notice Program set forth in the Settlement Agreement, and the Short-Form Notice, Long-Form Notice, and Claim Form attached to the Settlement Agreement as **Exhibits A-C** satisfy the requirements of Federal Rule of Civil Procedure 23(e), provide the best notice practicable under the circumstances, and are hereby approved. The Parties may make non-material modifications to these Exhibits

without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement.

Within 30 days from the date of this Order (the “Notice Deadline”), the Claims Administrator shall complete the Notice Program in the manner set forth in Section VII of the Settlement Agreement.

8. **Findings and Conclusions Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Settlement Class as described in Paragraph 7 of this Order and Section VII of the Settlement Agreement (including the exhibits thereto): (a) will 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 proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement, (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice, and (d) the Court concludes that the Notice Program meets all applicable requirements of law, including Federal Rule of Civil Procedure Rule 23, and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

9. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Claims Administrator at the address

provided in the Notice, postmarked no later than **30 Days after the Notice Deadline** (the “Opt-Out Deadline”). The written notification must include the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement to the effect of, “I/We hereby request to be excluded from the proposed Settlement Class in *Toussaint et al. v. HanesBrands, Inc.*, Case No. 1:22-cv-00879-LCB-LPA.”.

The Claims Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Settlement Class Counsel may move to file under seal with the Court no later than **10 Days prior to the Final Approval Hearing**.

Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If Final Order and Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Order and Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Persons relating to the claims and transactions released in the Settlement Agreement. All Settlement Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

10. Objections and Appearances. A Settlement Class Member who complies with the requirements of this paragraph may object to the Settlement, the Service Award Request, or the Fee Request.

No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is (a) filed with the Court by the Objection Deadline, or (b) mailed first-class postage and prepaid to Plaintiffs' Counsel and Defendant's Counsel at the addresses listed in the Notice, and postmarked by no later than **30 Days after the Notice Deadline** (the "Objection Deadline"), as specified in the Notice. For an objection to be considered by the Court, the objection must also include all of the information set forth in Section V of the Settlement Agreement, which is as follows:

- (a) the name of the proceeding;
- (b) the Settlement Class Member's full name, current mailing address, and telephone number;
- (c) a statement of the specific grounds for the objection, as well as any documents supporting the objection that the Settlement Class Member desires the Court to consider;
- (d) the identity of any attorneys representing the objector;
- (e) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing;
- (f) a statement identifying all class action settlements objected to by the Settlement Class Member in the previous five (5) years; and
- (g) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

Any Settlement Class Member who fails to comply with the provisions in this Paragraph shall be deemed to have waived and forfeited any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if Final Order and Judgment is entered.

Any Settlement Class Member, including a Settlement Class Member who files and serves a written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Award Request, or the Fee Request. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court (as well as serve on Settlement Class Counsel and Defendant's Counsel) by the Objection Date. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objecting Settlement Class Member who will appear at the Final Approval Hearing and include the attorney(s)' names, addresses, phone numbers, e-mail addresses, state bar(s) to which counsel is admitted, as well as associated state bar numbers, and a list identifying all objections such counsel has filed to class action settlements in the past three (3) years, the results of each objection, any court opinions ruling on the objections, and any sanctions issued by a court in connection with objections filed by such attorney. If the objecting Settlement Class Member intends to request the Court for permission to call witnesses at the Final Approval Hearing, the objecting Settlement Class Member must provide

a list of any such witnesses together with a brief summary of each witness's expected testimony at least sixty (60) Days before the Final Approval Hearing.

If Final Order and Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the Service Award Request, or the Fee Request.

11. Claims Process and Distribution and Allocation Plan. Settlement Class Representatives and Defendant have created a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the plan for Settlement Benefits described in Section IV of the Settlement Agreement and directs that the Settlement Administrator prepare to effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If Final Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Order and Judgment.

12. **Termination of Settlement.** 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 existing as of the date of the execution of the Settlement Agreement if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, 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.

13. **Use of Order.** This Order shall be null and void and of no force or effect if Final Order and Judgment is not entered or there is no Effective Date. In such event, this Order shall not be construed or used as an admission, concession, or declaration by or against Defendant of any negligence, fault, wrongdoing, omission, assertion, fact, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Settlement Class Representatives or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this Litigation or in any other lawsuit.

14. **Stay of Proceedings.** Except as necessary to effectuate this Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Order and Judgment, or until further order of this Court.

15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the

Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

16. Summary of Deadlines. The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

Grant of Preliminary Approval

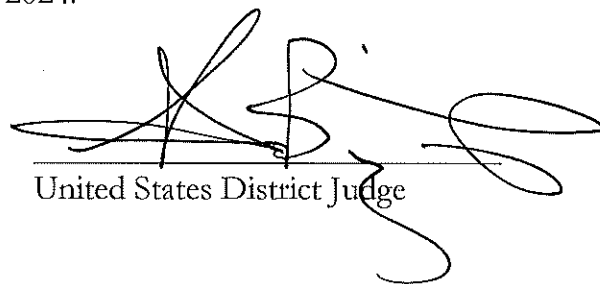
HBI provides list of Settlement Class Members to the Settlement Administrator	+7 days after Preliminary Approval
Long Form and Short Form Notices Posted on the Settlement Website	+30 days after Preliminary Approval
Notice Deadline	+30 days after Preliminary Approval
Class Counsel’s Motion for Attorneys’ Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	-14 days prior to the Objection Deadline and Opt-Out Deadline
Objection Deadline	+30 days after Notice Deadline
Opt-Out Deadline	+30 days after Notice Deadline
Claims Deadline	+30 days after Notice Deadline
Settlement Administrator Provide List of Objections/Exclusions to Counsel	+7 days after deadline for Opt-Out
<u>Final Approval Hearing</u>	+120 days after Preliminary Approval Order, or any date thereafter convenient for the court
Motion for Final Approval	-28 Days before Final Approval Hearing; at least ninety (90) days after the Settlement Administrator notifies the appropriate government officials of this Settlement Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715

Final Approval

Effective Date	+1 day after all conditions met pursuant to ¶ 35 of the Settlement Agreement
Payment of Attorneys' Fees and Expenses Class Representative Service Award	+14 days after Effective Date
Distribution of Settlement Relief	+90 days after the Effective Date, or +90 days after all Claims are resolved, whichever is later
Settlement Website Deactivation	+90 days after the Effective Date

IT IS SO ORDERED.

This, the 4th day of November 2024.



United States District Judge