

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

ALEXIS SANCHEZ, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

CAVENDER STORES, LTD.,

Defendant.

Case No. 4:22-cv-01016-ALM

Judge Amos L. Mazzant, III

**DECLARATION OF RAINA C. BORRELLI IN SUPPORT OF PLAINTIFF'S MOTION  
TO APPROVE FEES, COSTS, AND SERVICE AWARD**

I, Raina Borrelli, hereby declare as follows:

1. I am over the age of 18, I have personal knowledge of the facts stated in this Declaration and, if called to testify, I could and would testify to the matters stated herein.

2. I am a partner of Turke & Strauss, LLP, and was appointed Settlement Class Counsel for Plaintiff Alexis Sanchez in this litigation against Cavender Stores, Ltd. I submit this declaration in support of Plaintiffs' Motion for Attorneys' Fees, Costs and Expenses, and Service Award (the "Fee Motion") incurred in connection with the prosecution of the above-captioned action. Unless otherwise stated, I have personal knowledge of the following facts and could and would competently testify thereto.

**LITIGATION BACKGROUND AND COUNSEL'S WORK**

3. Plaintiff is a former employee of Cavender's and a data breach victim, having received a Notice of Data Breach letter from Cavender's dated July 20, 2022.

4. In November 2022, Plaintiff sued Cavender's to remediate the harm its breach had caused him, including identity theft, asserting seven counts and demanding Cavender's reimburse his losses. Plaintiff has been impacted the same as all Settlement Class Members and has the same interests as them. Plaintiff has assisted in the investigation of this case, reviewed and approved pleadings, stayed in contact with Settlement Class Counsel, and answered Settlement Class Counsel's many questions. Plaintiff is informed of the risks of continued litigation and the benefits of early resolution.

5. I, along with my local counsel Joe Kendall of Kendall Law Group, PLLC, who is a former federal judge for the Northern District of Texas, spent significant time and effort pursuing this case. Counsel investigated the breach, detailed Mr. Sanchez's claims in his complaint, prepared his case for litigation, engaged in informal discovery in advance of mediation to ensure Class Counsel had sufficient facts and information to make an informed decision about resolution, mediating the dispute, reviewed "confirmatory" discovery, drafted the settlement agreement and exhibits, prepared and submitted the Motion for Preliminary approval (which was ultimately granted), and implemented the parties' settlement by working with Defendant and the claims administrator to effectuate notice.

6. Shortly after filing the Complaint, the Parties agreed to explore mediation. No Rule 12 motions were filed and no formal discovery was conducted.

7. Instead, the Parties engaged early in Federal Rule of Evidence 408 communications and discovery and were able to make significant progress negotiating a term sheet prior to mediation with Mr. Bruce Friedman, an experienced mediator with JAMS.

8. After agreeing to mediate and prior to the mediation, the parties negotiated a number of preliminary terms, including a structure for the settlement. While the negotiations were

always collegial, cordial, and professional, there is no doubt that they were adversarial in nature, with both parties forcefully advocating the position of their respective clients.

9. On March 7, 2023, the Parties mediated with Mr. Bruce Friedman from JAMS, a mediator experienced in resolving data breach cases. Under his guidance, the Parties negotiated at arm's length, communicating their positions through him and evaluating the strengths and weaknesses underlying their claims and defenses.

10. From the start, the Parties agreed they would not negotiate Proposed Class Counsel's attorney fees or Plaintiff's service award until they agreed on the settlement agreement's core terms, thus avoiding conflict between Plaintiff and the Settlement Class. This session with Mr. Friedman resulted in a Settlement. Throughout all negotiations, Settlement Class Counsel and counsel for Cavender's fought hard for the interests of their respective clients.

11. In the weeks that followed, the Parties diligently negotiated and edited drafts of the Settlement, the Notices, a Claim Form, and other exhibits.

### **THE SETTLEMENT**

12. The Settlement Agreement provides significant monetary and remedial relief to the Settlement Class. The Agreement compensates class members for their losses, including lost money and time. Class members can claim up to three hours for "attested" lost time at \$25 per hour. Doc. 13-1 ("Agreement"), ¶2.1.1(c). To recover this benefit, a class member need only affirm the time they spent dealing with the breach, without proving it through documents. For "economic" losses, class members can claim up to \$500 "documented ordinary losses," like money spent on "unreimbursed bank fees." *Id.* ¶¶2.1.1(a), 2.1.3. For "extraordinary" losses like identity theft and fraud, the class can claim up to \$2,500. *Id.* ¶2.1.2. In other words, these terms address the "tangible" losses stemming from the breach. These monetary benefits are uncapped, meaning

Cavender's will pay for all approved claims by the Class. Cavender's also promises to provide the class "credit monitoring services." All class members who enrolled in Cavender's monitoring program following the breach will have their terms extended by one year, while those who did not enroll will have a chance to enroll again for up to two years. *Id.* And the value this term delivers will not affect any other term under the Agreement, as Cavender's agreed to provide it "separate and apart" from other benefit. *Id.* Cavender's will also improve and maintain the security safeguards it implemented following the breach, ensuring that it will protect the PII and PHI it still possesses. *Id.* ¶2.4. Finally, Cavender's will cover the costs to administer the Agreement and Mr. Sanchez's approved fees, costs, and service award. *Id.* ¶7. Cavender's guaranteed these terms "separate and apart" from any other class benefit and thus payment will not affect the monetary benefits the Class can claim. *Id.*

13. Based on my experience litigating class and other complex actions, I endorse the Settlement and believe it benefits and provides relief to the Settlement Class Members. Of the various forms of relief available in national consumer protection class actions (injunctive, declaratory, coupons, gift cards, cash compensation, etc.), the relief obtained by Class Counsel in this case is of the most preferable form: remedial relief plus cash compensation.

14. The result achieved in this Settlement is notable because the Parties were able, through capable and experienced counsel, to reach a negotiated Settlement without involvement of the Court. Class Counsel worked on behalf of the Settlement Class to obtain information from Defendant regarding the Data Incident and used that information (along with their experience and the knowledge gained from other data breach class actions) to negotiate the Settlement.

15. Although I believe that Plaintiff and the Class would ultimately prevail in the litigation on a class-wide basis, data breach class actions are still new and can present novel and

complex issues, making a successful outcome difficult to predict. Also, a successful outcome would ensue, if at all, only after prolonged and arduous litigation with an attendant risk of drawn-out appeals.

16. Additionally, based upon my experience, small class actions such as this (with only 27,000 victims) do not attract the same level of attention that larger data breaches (such as Equifax and the like) do.

17. This case presented substantial risk and uncertainties that could have prevented any recovery whatsoever. Despite the most vigorous and competent of efforts, success in this contingent-fee litigation was never assured.

18. Among national consumer protection class action litigation, data breach cases are some of the most complex and involve a rapidly evolving area of law. As such, these cases are particularly risky for plaintiffs' attorneys. Accordingly, the value of the services received by the Plaintiff and the Settlement Class in this case is commensurate with the attorneys' fees, costs and expenses, and service awards sought here.

19. Finally, Notice of the Settlement has been given in accordance with the terms of the Settlement Agreement. As of this date, no Settlement Class Members have objected to the Settlement, including the requested attorney fees, reimbursement of expenses or the service award/incentive payment to Plaintiff, or opted out of the Settlement.

20. Class Counsel's work is not over and will continue throughout the claims period. Based on experience, each Class Counsel will spend substantial additional hours seeking final approval, defending the Settlement from potential objections (of which there are none to date), and supervising claims administration and the distribution of proceeds.

**CLASS COUNSEL'S REASONABLE EXPENSES**

21. Class Counsel incurred \$8,475.00 in reasonable expenses, the majority of which are attributable to the mediation that ultimately resulted in this Settlement.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on this 7th day of September, 2023.

/s/ Raina C. Borrelli

Raina Borrelli