

IN THE FORTY-FIFTH DISTRICT OF PENNSYLVANIA
LACKAWANNA COUNTY COURT OF COMMON PLEAS—CIVIL TRIAL DIVISION

MAURIT B. KELLY
LACKAWANNA COUNTY

YVONNE AYALA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

COMMONWEALTH HEALTH
PHYSICIAN NETWORK, et. al,

Defendants.

2024 OCT 29 A 10:10

CLERK OF JUDICIAL
RECORDS CIVIL DIVISION

COURT OF COMMON PLEAS
LACKAWANNA COUNTY, PA

No. 2023-cv-3008

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

This matter came before the Court on Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and entry of final judgment ("Motion").

On May 7, 2024, the Court entered an Order preliminarily approving the proposed Settlement pursuant to the terms of the Parties' Settlement Agreement and directing that notice be given to the Settlement Class.

On June 7, 2024, pursuant to the notice requirements set forth in the Settlement Agreement and the Order Preliminarily Approving the Settlement and Directing Notice to the Settlement Class, the Settlement Class was notified of the terms of the proposed Settlement Agreement, of the right of Settlement Class Members to opt-out, and the right of Settlement Class Members to object to the Settlement Agreement and to be heard at a Final Approval Hearing.

On October 29, 2024, the Court held a Final Approval Hearing to determine, inter alia: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this action with prejudice. Prior to the Final Approval Hearing, a

declaration of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice was filed with the Court as required by the Preliminary Approval Order. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right to appear at the final approval hearing in support of or in opposition to the proposed Settlement Agreement, the award of attorneys' fees and costs to Class Counsel, and the payment of Service Awards to the Class Representatives;

Having given an opportunity to be heard to all requesting persons in accordance with the Order Preliminarily Approving the Settlement and Directing Notice to the Settlement Class, having heard the presentation of Class Counsel and counsel for Defendant, having reviewed all of the submissions presented with respect to the proposed Settlement Agreement, having determined that the Settlement Agreement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys' fees and costs and expenses, and the application for Service Awards to the Class Representatives, and having reviewed the materials in support thereof, and good cause appearing:

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The Court finds, for settlement purposes only, that the factors delineated in Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709 are present and that certification of the proposed Settlement Class¹ is appropriate under Rule 1710. The Court, therefore, certifies the following Settlement Class:

All natural persons whose Personal Information was potentially compromised in the Data Breach and who were sent the Notice of Data Privacy Incident on or around June 2023.

¹ The capitalized terms used in this Final Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be indicated.

Excluded from the Class are 1) this Court and members of their immediate families and their staff; (2) GVC, its subsidiaries, parent companies, successors, predecessors, and any entity in which GVC or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

2. The Court finds, for settlement purposes only, that the Settlement Class meets the requirements for certification under Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709:

- a. the proposed Settlement Class is easily identifiable and so numerous that joinder of all members of the class is impracticable;
- b. there are questions of law and/or fact common to the proposed Settlement Class;
- c. the Class Representatives' claims are typical of the claims of the members of the proposed Settlement Class;
- d. the Class Representatives will fairly and adequately represent the interests of the members of the proposed Settlement Class;
- e. common issues will likely predominate over individual issues; and
- f. Class Counsel are qualified to serve as counsel the proposed Settlement Class.

3. The Court appoints Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabello as Class Representatives for the proposed Settlement Class. The Court finds that the Class Representatives are similarly situated to absent Class Members and therefore typical of the Class and will be adequate Settlement Class Representatives.

4. The Court finds that the following counsel are experienced and adequate counsel and are hereby designated as Class Counsel:

Jean S. Martin
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201 N. Franklin Street, 7th Floor
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5. The Court approves the Settlement as fair, reasonable, and adequate and accordingly the Settlement is finally approved. The Court finds the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arms' length negotiations between the Parties and their capable and experienced counsel and was reached with the assistance of a well-qualified and experienced mediator.

6. The Parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

7. The Court has considered all objections to the Settlement, including the objection of one class member. The Court finds this objection does not counsel against Settlement approval, and the objection is hereby overruled in all respects. All persons who have not made their objections to the Settlement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

8. The Settlement Class, which is bound by this Final Approval Order and Judgment, includes all members of the Settlement Class who did not submit timely and valid requests to be excluded from the Settlement Class. A list of those putative Settlement Class Members who have timely elected to opt out of the Settlement and the Settlement Class, and who therefore are not

bound by the Settlement, this Order and the Judgment to be entered hereon, has been submitted to the Court in the Declaration of Brandon Schwartz, filed in advance of the Final Approval hearing.

9. All Settlement Class Members (as permanently certified below) shall be subject to all of the provisions of the Settlement, this Order and the Final Judgment to be entered hereon. Upon the Effective Date, members of the Settlement Class who did not validly and timely exclude themselves from the Settlement Class shall, by operation of this Final Approval Order, have fully, finally, forever, and irrevocably released, relinquished and discharged Defendant from all claims that were or could have been asserted in the Action, as specified in the Settlement Agreement. All such Settlement Class Members shall be bound by the terms of the Settlement Agreement upon entry of this final approval order.

10. Notwithstanding the certification of the foregoing Settlement Class and appointment of the Class Representatives for purposes of effecting the Settlement, if this Order is reversed on appeal or the Settlement is terminated or is not consummated for any reason, the foregoing certification of the Settlement Class and appointment of the Class Representatives shall be void and of no further effect, and the parties to the proposed Settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement might have asserted but for the Settlement.

11. The Court finds that the form, content, and method of giving notice to the Settlement Class as described in the Settlement Agreement (including the exhibits thereto): (a) was the best practicable notice to the Settlement Class; (b) was 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) was reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) met all applicable requirements of

law, including, but not limited to, Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements.

12. 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.

13. Upon the Effective Date, Class Representatives and Settlement Class Members shall be hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement and this Order, or seeking any award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Litigation and/or as a result of or in addition to those provided by the Settlement Agreement. In addition, Plaintiff and each Settlement Class Member are hereby enjoined from asserting as a defense, including as a setoff or for any other purpose, any argument that if raised as an independent claim would be a Released Claim.

14. 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 Class Representatives, 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.

15. Upon the Effective Date, Defendant shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Class

Plaintiff, each and all of the Settlement Class Members, Settlement Class Counsel, of all claims based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation, except for enforcement of the Settlement Agreement. Any other claims or defenses Defendant 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 are specifically preserved and shall not be affected by the preceding sentence.

16. The terms of the Settlement Agreement, this Final Approval Order and the Judgment to be entered hereon shall have maximum res judicata, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorney's fees, costs, interest or expenses which were or could have been asserted in the Litigation or are in any way related to the Data Breach at issue in the Litigation.

17. This Final Approval Order and Judgment, the Settlement Agreement, the Settlement which it reflects and all acts, statements, documents or proceedings relating to the Settlement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendant of any fault, wrongdoing, or liability on the part of Defendant or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the Litigation. This Order and Judgment, the Settlement or any such communications shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Plaintiff, any Settlement Class Member, or any other person has suffered any damage; *provided, however,* that the Settlement, this Order and Judgment may be filed in any action by Defendant or Settlement Class Members seeking to enforce the Settlement or the Judgment by injunctive or

other relief, or to assert defenses including, but not limited to, res judicata, collateral estoppel, release, good faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18. The Settlement's terms shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to released claims and other prohibitions set forth in this Order that are maintained by, or on behalf of, the Settlement Class Members or any other person subject to the provisions of this Order.

19. This case is hereby dismissed in its entirety with prejudice. Except as otherwise provided in this Court's orders, the parties shall bear their own costs and attorney's fees. Without affecting the finality of this Final Approval Order and Judgment in any way, the Court reserves jurisdiction over all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Order and Settlement.

IT IS SO ORDERED this 29th day of October, 2024.


