

IN THE CIRCUIT COURT OF SCOTT COUNTY, MISSOURI

**SUSAN GARNER, on behalf of herself and
all others similarly situated,**

Plaintiff,

v.

MISSOURI DELTA MEDICAL CENTER,

Defendant.

Case No. 22SO-CV00138

**ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL
OF CLASS SETTLEMENT AGREEMENT**

This matter came before the Court on Plaintiff's Motion for Preliminary Approval of Class Settlement Agreement. Plaintiff, individually, and on behalf of the proposed Settlement Class, and Defendant have entered into a Settlement Agreement (the "Settlement Agreement") that settles the above-captioned litigation.

Plaintiff Susan Garner ("Plaintiff" or "Settlement Class Representative") brought this class action case against Missouri Delta Medical Center ("MDMC" or "Defendant," and together with Plaintiff, "the Parties"), on February 9, 2022. In the Class Action Complaint ("Complaint"), Plaintiff asserts claims for: (1) negligence; (2) breach of express contract; (3) breach of implied contract; (4) breach of fiduciary duty; (5) intrusion upon seclusion/invasion of privacy; (6) Violation of the Missouri Merchandising Practices Act, RSMo. §§407.010, *et. seq.*; and (7) unjust enrichment

According to the Complaint, MDMC experienced a targeted cyberattack and data breach, which resulted in the potential compromise of patients' personally identifiable information and protected health information. The information potentially compromised consisted of names and other information relating to MDMC patients.

The Parties, through their counsel, have entered into a Settlement Agreement following good faith, arm's-length negotiations and a mediation overseen by Tom Bender, Esq. of Horn Aylward & Bandy, LLC. The Parties have agreed to settle this action, pursuant 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.

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 Plaintiff's 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 Missouri Supreme Court Rule 52.08, the Court provisionally certifies a class in this matter defined as follows:

All persons whose personally identifiable information and/or protected health information was accessed during the Data Incident that occurred on or about August 22, 2021.

The Court provisionally finds, for settlement purposes only, that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the Settlement Class Representative are typical of the claims or defenses of the class; (4) the Settlement Class Representative will fairly and adequately protect the interests of the class; (5) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy; and

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

(6) attorneys for the Settlement Class Representative will adequately represent the interests of the Settlement Class.

2. **Settlement Class Representatives and Settlement Class Counsel.**

Susan Garner is hereby provisionally designated and appointed as the Settlement Class Representative. The Court provisionally finds that the Settlement Class Representative is similarly situated to absent Class Members and therefore typical of the Class and that he will be an adequate Settlement Class Representative.

The Court finds that the following counsel are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel pursuant to Missouri Supreme Court Rule 52.08: Krause & Kinsman; Finkelstein, Blankinship, Frei-Pearson & Garber, LLP; and Keller Postman LLC and their attorneys.

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. Additionally, venue is proper in this Court.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on October 23, 2023 at 1:30 o'clock p.m. in the Circuit Court of Scott County, Missouri, 131 S. Winchester St, Benton, MO 63736, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to Missouri Supreme Court Rule 52.08; (b) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to Missouri Supreme Court Rule 52.08; (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 and expenses (the "Fee Request") should be approved; and (f) the motion of the Settlement Class Representative for a Service Award (the "Service Award Request") should be approved.

Plaintiff's Motion for Service Award Request and Fee Request shall be filed with the Court at least **ten (10) Days prior to the deadline for Settlement Class Members to opt-out or object.**

Plaintiff's Motion for Final Approval of the Settlement shall be filed with the Court at least **ten (10) Days prior to the Final Approval Hearing.**

6. **Administration.** The Court appoints RG/2 Claims Administration 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. Defendant shall pay all costs and expenses associated with providing notice to Settlement Class Members including, but not limited to, the Settlement 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, which are attached to the Settlement Agreement as Exhibits A, B, and C, respectively, satisfy the requirements of Missouri Supreme Court Rule 52.08 and provide the best notice practicable under the circumstances, and are hereby approved. Non-material modifications to these Exhibits may be made without further order of the Court. The Settlement Administrator and MDMC are directed to carry out the Notice Program in conformance with the Settlement Agreement.

Within **thirty (30) days from the date of this Order** (the "Notice Deadline"), the Settlement Administrator and MDMC shall initiate the Notice Program, which shall be completed in the manner set forth in Section 5 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 8 of this Order and 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; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice. The Court concludes that the Notice Program meets all applicable requirements of law, including Missouri Supreme Court Rule 52.08, and the Due Process Clause(s) of the Missouri and United States Constitutions. 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 Settlement Administrator at the address provided in the Notice, postmarked no later than **sixty (60) Days from the Notice Deadline** (the “Opt-Out Period”). The written notification must include the individual’s full name, address, and telephone number; an unequivocal statement that he or she wants to be excluded from the Settlement Class; and the original signature of the individual or a person previously authorized by law, to act on behalf of the individual with respect to the claims asserted in this Action.

The Settlement 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 **ten (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 a 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) electronically filed with the Court by the Objection Date as set forth in the Settlement Agreement; or (b) mailed first-class postage prepaid to the Clerk of Court, Settlement Class Counsel, and Defendant's Counsel at the addresses listed in the Notice, and postmarked by no later than **sixty (60) days from the Notice Deadline**. For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 7.1 of the Settlement Agreement, which is as follows:

- a. The objector's full name, current address, telephone number, and email address (if any);

- b. The Settlement Class Member's original signature;
- c. Information identifying the objector as a Settlement Class Member, including proof that the objector is within the Settlement Class (*e.g.*, copy of Notice or copy of original notice of the Data Incident);
- d. A statement of all grounds for the objection, including any legal support for the objection that the objector believes applicable;
- e. Identification of all counsel representing the objector;
- f. Whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and
- g. The signature of the objector's duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation.

Any Settlement Class Member who fails to comply with the provisions in this Paragraph may waive and forfeit 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 the 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) name,

address, phone number, email address, 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 thirty (30) Days before the Final Approval Hearing.

If the 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 Representative 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 remuneration described in Section 3 of the Settlement Agreement and directs that the Settlement Administrator 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 the 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 of no force or effect if a Final Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, 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 Representative 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:

Notice Deadline: 30 Days after Preliminary Approval

Motion for Final Approval: 10 Days before Final Approval Hearing

Motion for Service Award, Attorneys' Fees and Costs: 10 Days before the deadline for Settlement Class Members to Object to or Opt Out of the Settlement

Opt-Out Deadline: 60 Days after Notice Deadline


Objection Deadline: 60 Days after Notice Deadline

Claim Deadline: 90 Days after the Notice Deadline

Final Approval Hearing: Not less than 120 Days after Preliminary Approval

IT IS SO ORDERED this 27 day of June, 2023.





Hon. David Andrew Dolan
Presiding Judge