



West Virginia E-Filing Notice

CC-54-2022-C-252

Judge: Michael J. Olejasz

To: Andrew Gordon Meek
andrew@wvalaw.com

NOTICE OF FILING

IN THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA
IN RE: PHYSICIAN'S BUSINESS OFFICE DATA INCIDENT LITIGATION
CC-54-2022-C-252

The following order - motion was FILED on 10/24/2024 11:36:55 AM

Notice Date: 10/24/2024 11:36:55 AM

Celeste Ridgway
CLERK OF THE CIRCUIT COURT
Wood County
Wood County Judicial Building
PARKERSBURG, WV 26102

(304) 424-1700
Celeste.Ridgway@courtsww.gov

In the Circuit Court of Wood County, West Virginia

**Jessica McKinney,
Michael St. Clair,**
Plaintiffs,

v.

Case No. CC-54-2022-C-252
Judge Michael J. Olejasz

Physician's Business Office, Inc.,
Defendant

ORDER APPROVING PRELIMINARY CLASS ACTION SETTLEMENT

WHEREAS, a consolidated class action is pending in this Court entitled *In re Physician's Business Office Data Incident Litigation*, No. CC-54-2022-C-252 (the "Action");

WHEREAS, Plaintiffs JESSICA MCKINNEY, MICHAEL ST. CLAIR, AMANDA MORRIS, TWILA MARTIN, STANLEY HICKMAN, and JONI DAVIS, individually and on behalf of all others similarly situated (collectively "Plaintiffs") and Defendant PHYSICIAN'S BUSINESS OFFICE, INC. ("Defendant") have entered into a Settlement Agreement (the "Settlement Agreement") that settles the above-captioned litigation and provides for a complete dismissal with prejudice of the claims asserted against Defendant in the above-captioned action (the "Action") on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

WHEREAS, Plaintiffs have made an application for an order preliminarily approving the Settlement in accordance with the Settlement Agreement; Certification of the Settlement Class for settlement purposes only; Appointment of Class Counsel as counsel for the Settlement Class; Appointment of Class Representatives as representatives for the Settlement Class; Approval of a form of notice, which includes a notice to be individually mailed to the Settlement Class Members, as well as a detailed long form notice that will be posted on the Settlement Website; and, Appointment of a Settlement Administrator as jointly agreed by the Parties.

WHEREAS, the Court has read and considered: (a) Plaintiffs' motion for preliminary approval of the Settlement, and the papers filed and arguments made in connection therewith; and (b) the Settlement Agreement and exhibits attached thereto; and

WHEREAS, unless otherwise defined herein, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Class Certification for Settlement Purposes Only**. For settlement purposes only, the Court certifies, solely for purposes of effectuating the proposed Settlement, a Settlement Class in this matter defined as follows:

All persons who were sent notification by PBO that their personal information and/or protected health information was or may have been compromised in the Data Incident.

The Settlement Class includes approximately 196,573 people. The Settlement Class specifically excludes: (1) the judges presiding over this Action, and members of their direct families; (2) PBO, its subsidiaries, parent companies, successors, predecessors, and any entity in which PBO or its parents have a controlling interest and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid a Request for Exclusion prior to the Opt-Out Deadline.

2. **Class Findings**: 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 issues of law and fact common to the Settlement Class; (c) the claims of the Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Class Representatives have no interests 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.

3. **Class Representatives and Settlement Class Counsel**: JESSICA MCKINNEY, MICHAEL ST. CLAIR, AMANDA MORRIS, TWILA MARTIN, STANLEY HICKMAN and JONI DAVIS are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Settlement Class Members and therefore typical of the Settlement Class and that they will be an adequate Class Representatives.

The Court finds that the following counsel are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel: (1) William B. Federman of Federman & Sherwood and (2) Christopher D. Jennings of Jennings PLLC.

4. **Preliminary Settlement Approval**. The Court hereby preliminarily approves the Settlement, as embodied in the Settlement Agreement, as being fair, reasonable and adequate to the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described below. The Parties have shown that the Court will likely be able to approve the proposal after the Court considers the following factors in determining whether a proposed settlement is fair, reasonable, and adequate:

- (a) have the class representatives and class counsel adequately represented the class;
- (b) was the proposal negotiated at arm's length;
- (c) is the relief provided for the class adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and
 - (iv) any agreement required to be identified; and
- (d) does the proposal treat class members equitably relative to each other.

For the purposes of preliminary approval, the Court finds: (a) Plaintiffs and Plaintiffs' Counsel have adequately represented the Settlement Class; (b) the Settlement is the result of arm's length negotiations conducted under the auspices of Hon. John W. Thorton (Ret.); (c) the relief provided is adequate when considering (i) the substantial costs, risks, and delay of continued litigation, (ii) the proposed method for processing Settlement Class Members' claims and distributing relief to eligible claimants is standard in data breach class action settlements and has been found to be effective in these types of settlements, and (iii) the conditions under which the Parties may terminate the Settlement is standard and has no negative impact on the fairness of the Settlement; and (d) the Settlement treats Settlement Class Members equitably relative to one another.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held at 1:00 P.M. on January 29, 2024, in the Circuit Court of Wood County, West Virginia, at the Courthouse located at Wood County Judicial Building, 2 Government Square, Room 221, Parkersburg WV 26101-5353, **AND** by videoconference via Microsoft Teams for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate to the Settlement Class; (b) to determine whether a proposed Judgment substantially in the form annexed to the Settlement Agreement as Exhibit E should be entered dismissing the Action with prejudice against Defendant; (c) to determine whether the motion of Settlement Class Counsel for a Fee Award and Costs should be approved; (d) to determine whether the motion of the Class Representatives for Service Award Payment(s) should be approved; and (e) to consider any other matters that may be properly brought before the Court in connection with the Settlement. Notice of the Settlement and the Final Approval Hearing shall be given to the Settlement Class Members as set forth in Paragraph 7 of this Order.

6. The Court may adjourn the Final Approval Hearing without further notice to the

Settlement Class Members, and may approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class Members.

7. **Retention of Claims Administrator and Manner of Giving Notice**. Class Counsel is hereby authorized to retain Simpluris (the “Settlement Administrator”) to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claims as set forth more fully below. Notice of the Settlement and the Final Approval Hearing shall be given as follows:

(a) Within seven (7) days of this Order, Defendant shall provide the Class Member Information List to the Settlement Administrator;

(b) As soon as practicable following entry of this Order, the Settlement Administrator shall establish the Settlement Website and Settlement Toll-Free Number as set forth in the Settlement Agreement;

(c) Within twenty-one (21) days of receiving the Class Member Information, the Settlement Administrator shall crosscheck the Class Member Information against the National Change of Address directory to ensure the most recent and accurate addresses are used to disseminate the Notice. Upon receipt of any notice of address or forwarding address, the Settlement Administrator shall re-mail any Notice so returned with a forwarding address.

(d) Within thirty (30) days of this Order, the Settlement Administrator shall commence the dissemination of the Notice. Notice shall be given by U.S.P.S. first class mail to all Settlement Class Members and postage will be prepaid by PBO. U.S. mail Notice shall consist of a postcard that (1) notifies Settlement Class Members of the Settlement and relevant terms; (2) provides them with the URL to the Settlement Website and a telephone number they can call to obtain additional information about the Settlement; and (3) instructs them on how to make a Claim.

(c) **Approval of Form and Content of Notice**. The Court (a) approves, as to form

and content, the Claim Form, the Summary Notice, and the Long Form Notice, attached to the Settlement Agreement as Exhibits A, B and C, and as modified by the Parties and filed with the Court on August 30, 2024, and (b) finds that the Notice provided to Settlement Class Members as set forth in the Settlement Agreement (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases to be provided thereunder), of Class Counsel's request for Fee Award and Costs, of Class Representatives' request(s) for Service Award Payment(s), of their right to object to the Settlement, Class Counsel's request for Fee Award and Costs, and/or Class Representatives' request(s) for Service Award Payment(s), of their right to exclude themselves from the Settlement Class, and of their right to appear at the Final Approval Hearing; (iii) constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of West Virginia Rule of Civil Procedure 23 and all other applicable law and rules. The date and time of the Final Approval Hearing shall be included in the Notice before it is distributed.

8. **Participation in the Settlement.** 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, and must do so within ninety (90) days after Notice is provided to the Settlement Class Members. If a Final Approval 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 Approval Order and Judgment.

9. **Claims Process and Distribution and Allocation Plan.** 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 claims process described in 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.

10. **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 **60 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 that the individual does not wish to participate in the Settlement at the top of the communication.

Any Settlement Class Member who does not timely and validly exclude himself or herself from the Settlement shall be bound by the terms of the Settlement Agreement. If a Final Approval 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 Approval Order and Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Parties 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.

11. **Objections and Appearances**. 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 filed with the Clerk of the Circuit Court on or before **[60 days from Notice Date]**, and mailed to the Court, PBO's Counsel, and Class Counsel, post-marked no later than **[60 days from Notice Date]** as specified in the Notice and paragraph 45 of the Settlement Agreement. For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 43 of the Settlement Agreement, which is as follows: (a) the objector's full name, address, telephone number (if any), and email address (if any); (b) information identifying the objector as a Settlement Class Member; (c) a written statement of all grounds for the objection, accompanied by any legal support the objector cares to submit; (d) the identity of all lawyers (if any) representing the objector; (e) the identity of all of the objector's lawyers (if any) who will appear at the Final Fairness Hearing; (f) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection; (g) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; and (h) the objector's signature or the signature of the objector's duly authorized lawyer or other duly authorized representative. In addition to the foregoing, objections should also provide the following information: (a) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through a lawyer) has filed an objection to any proposed class action settlement within the last three (3) years and (b) a list, by case number, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative.

12. Any Settlement Class Member who fails to comply with the provisions in Paragraph 11 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 a Final Approval Order and Judgment is entered. If a Final Approval 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 motion for Service Award Payment(s), or the motion for Fee Award and Costs.

13. **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.

14. **Use of Order.** This Order shall be of no force or effect if a Final Approval 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.

15. **Stay of Proceedings and Temporary Injunction.** Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs, and all other members of the Settlement Class, from commencing or prosecuting any and all of the Released

Claims against the Released Entities.

16. **Settlement Administration Fees and Expenses**. All reasonable costs incurred with notifying Settlement Class Members of the Settlement and administering the Settlement shall be paid as set forth in the Settlement Agreement. Notwithstanding the foregoing, such notice and administration costs paid shall not exceed \$158,750.00 without further approval of the Court.

17. **Taxes**. The Settlement Administrator is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Settlement Agreement.

18. **Jurisdiction**. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

19. **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:

Motion for Final Approval: 14 Days before the Final Approval Hearing

Notice Deadline: 30 Days after Preliminary Approval

Motions for Service Award Payment(s) and Attorneys' Fee Award and Costs: 14 days before Opt-Out Deadline and Objection Deadline.

Opt-Out Deadline: 60 Days after Notice Date

Objection Deadline: 60 Days after Notice Date

Claims Deadline: 90 Days after Notice is sent to the Settlement Class

Final Approval Hearing: at least 90 Days after Preliminary Approval

IT IS SO ORDERED this 24 day of October, 2024.

/s/ Michael J. Olejasz
Circuit Court Judge
First Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtsww.gov/e-file/ for more details.