

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**IN RE: 21st CENTURY ONCOLOGY
CUSTOMER DATA SECURITY BREACH
LITIGATION**

MDL No. 2737

Case No: 8:16-md-2737-MSS-AEP

This Document Relates to ALL CASES

ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

THIS CAUSE comes before the Court for consideration of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. (Dkt. 242) Therein, the Parties to the above-described class action ("Action") have applied for an order, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, regarding certain matters in connection with a proposed settlement of the Action, in accordance with a Class Action Settlement Agreement and Release (the "Settlement" or Settlement Agreement") entered into by the Parties as of August 12, 2020 (which, together with its exhibits, is incorporated herein by reference) and dismissing the Action upon the terms and conditions set forth in the Settlement Agreement. The Court has jurisdiction over this litigation, Plaintiffs, 21st Century, and Settlement Class Members, and any party to any agreement that is part of or related to the Settlement. All defined terms used in this Order have the same meanings as set forth in the Settlement. Class Counsel have conducted an extensive investigation into the facts and law relating to the matters alleged in the Action. The Parties reached a settlement as a result of extensive arms' length negotiations between the Parties and

their counsel, occurring over the course of more than two years and three separate, in-person mediation sessions with respected mediators. The Court has carefully reviewed the Settlement Agreement, including the exhibits attached thereto and all files, records, and prior proceedings to date in this matter, and good cause appearing based on the record.

Upon consideration of the foregoing, **IT IS HEREBY ORDERED** as follows:

Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, (Dkt. 242), is **GRANTED**. The Settlement, including the exhibits attached thereto, are preliminarily approved as fair, reasonable, and adequate, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, pending a final hearing on the Settlement as provided herein, subject to documentation of expenses and costs to support representative expenses and consideration of the propriety of the requested compensation at the Fairness Hearing.

1. Stay of the Action. Pending the Fairness Hearing, all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are hereby **STAYED**.

2. Provisional Class Certification for Settlement Purposes Only. For purposes of the Settlement only, the Court finds and determines that the Action may proceed as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure, and that: (a) the Settlement Class certified herein is sufficiently numerous, as it include approximately 2.2 million people, and joinder of all such persons would be impracticable, (b) there are questions of law and fact that are common to the Settlement Class, and those questions of law and fact common to the Settlement Class predominate over any questions affecting

any individual Settlement Class Member; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class they seek to represent for purposes of settlement; (d) a class action on behalf of the Settlement Class is superior to other available means of adjudicating this dispute; and (e) as set forth below, Plaintiffs and Class Counsel are adequate representatives of the Settlement Class. Defendants retain all rights to assert that this action may not be certified as a class action, other than for settlement purposes.

3. Class Definition. The Court hereby certifies, for settlement purposes only, a Class defined as “All persons to whom 21st Century sent notification that their personally identifiable information and/or protected health information may have been disclosed in the Data Breach (as defined in Plaintiffs’ Amended Consolidated Class Action Complaint, ECF No. 191), excluding (1) any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff; (2) the Defendants, any entity in which the Defendants have a controlling interest, and the Defendants’ officers, directors, legal representatives, successors, subsidiaries, and assigns; (3) any individual who timely and validly requests to be excluded from the Settlement Class; and (4) the successors or assigns of any such excluded Persons.”

4. Class Representatives. For purposes of the Settlement only, the Court finds and determines, pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, that Plaintiffs¹ (“Class Representatives”) will fairly and adequately represent the interests of the Class in enforcing their rights in the Action and appoints them as Class Representatives. The Court preliminarily finds that they are similarly situated to absent Class Members and

¹ Plaintiffs include the Estate of Robert Russell, Valerie Corbel, Roxanne Haatvedt, Veneta Delucchi, Carl Schmitt, Matthew Benzion, Kathleen LaBarge, Stacey Schwartz, Timothy Meulenberg, Stephen Wilbur, Judy Cabrera, Jackie Griffith, Sharon MacDermid, and Steven Brehio.

therefore typical of the Class, and that they will be adequate class representatives.

5. Class Counsel. For purposes of the Settlement, the Court appoints Cari Campen Laufenberg of Keller Rohrback L.L.P. and Daniel S. Robinson of Robinson Calcagnie, Inc. as Class Counsel to act on behalf of the Class and the Class Representatives with respect to the Settlement. The Court authorizes Class Counsel to enter into the Settlement on behalf of the Class Representatives and the Class, and to bind them all to the duties and obligations contained therein, subject to final approval by the Court of the Settlement.

6. Administration. The firm of Angeion Group is appointed as Settlement Administrator to administer the notice procedure and the processing of claims, under the supervision of Class Counsel.

7. Class Notice. The form and content of the proposed Notice of 21st Century Data Breach Class Action Settlement (“Long Form Notice”), Summary Notice (“Summary Notice”), and Claim Form for 21st Century Data Breach Benefits (“Claim Form”) submitted by the Parties as Exhibits A, C, and E, respectively, to the Settlement Agreement, are hereby approved.

8. Notice Date. The Court directs that the Settlement Administrator cause a copy of the Summary Notice be mailed to all members of the Class who have been identified by Defendants through their records. The mailing is to be made by United States mail, postage prepaid, within sixty (60) calendar days of receiving the Settlement Class List, which Defendants are to provide to the Settlement Administrator within seven (7) calendar days of entry of this Order. Contemporaneously with the mailing, the Settlement Administrator shall cause copies of the Settlement Agreement, Long Form Notice,

Summary Notice, and Claim Form, in forms available for download, to be posted on a website developed for the Settlement (“Settlement Website”).

9. Findings Concerning Notice. The Court finds and determines that mailing the Summary Notice and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, all pursuant to this Order, constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Court further finds that all of the notices are written in plain language and are readily understandable by Class Members.

10. Deadline to Submit Claim Forms. Class Members will have up to and including **May 10, 2021** to submit their Claim Forms (“Claims Deadline”), which is due, adequate, and sufficient time.

11. Exclusion from Class. Any person falling within the definition of the Class may, upon request, be excluded or “opt out” from the Class. Any such person who desires to request exclusion from the Class must submit a fully completed Request for Exclusion. To be valid, the Request for Exclusion must be postmarked or received by the Settlement Administrator on or before the end of the Opt-Out Period, which shall expire sixty (60) days following the Notice Date. Any Request for Exclusion must be in writing and must identify the case name *In Re: 21st Century Oncology Customer Data Security Breach Litigation*, Case No. 8:16-md-2737-MSS-AEP; state the name, address, and telephone number of the Settlement Class Members seeking exclusion; be physically signed by the

Person(s) seeking exclusion; and must also contain a statement to the effect that “I/We hereby request to be excluded from the proposed Settlement Class in *In Re: 21st Century Oncology Customer Data Security Breach Litigation*, Case No. 8:16-md-2737-MSSAEP.”

All persons and entities who submit valid and timely Requests For Exclusion as set forth in this Order and the Notice shall have no rights under the Settlement, shall not share in the distribution of the Settlement Fund, and shall not be bound by the Settlement or any final judgment entered in this Action.

12. Final Fairness Hearing. A hearing will be held by this Court in the Courtroom of The Honorable Mary S. Scriven, United States District Court for the Middle District of Florida, United States Courthouse, 801 North Florida Avenue, Courtroom 7A, Tampa, Florida 33602 at **9:30 a.m. on Tuesday, June 15, 2021** (“Fairness Hearing”), to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Class; (b) whether the Final Approval Order should be entered in substance materially the same as Exhibit B to the Settlement Agreement; (c) whether the Class Representative’s proposed Settlement Benefits as described IV.E. of the Settlement Agreement should be approved as fair, reasonable, and adequate to the Class; (d) whether to approve the application for service awards for the Class Representatives (“Service Awards”) or an award of attorneys’ fees and litigation expenses (“Fee Award and Costs”)²; and (e) any other matters that may properly be brought before the Court in connection with the Settlement. The Fairness Hearing is subject to continuation or adjournment by the Court without further notice to the Class. The Court

² The Parties shall be prepared to document costs and expenses of the Representative Plaintiffs or otherwise discuss at the final fairness hearing the propriety of the Service Awards in light of the Eleventh Circuit’s recent decision in *Johnson v. NPAS Sols., LLC*, No. 18-12344, 2020 WL 5553312 (11th Cir. Sept. 17, 2020) (pending petition for rehearing en banc).

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

13. At least seven (7) calendar days prior to the Fairness Hearing, Class Counsel shall cause an affidavit or declaration to be filed with the Court certifying that the Summary Notice has been provided and the Settlement Agreement, Long Form Notice, and Claim Form have been published on the Settlement Website.

14. Objections and Appearances. Any Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If a Class Member does not enter an appearance, they will be represented by Class Counsel. Any Class Member who wishes to object to the Settlement, the Settlement Benefits, Service Awards, and/or the Fee Award and Costs, or to appear at the Fairness Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the Class, why a final judgment should not be entered thereon, why the Settlement Benefits should not be approved, or why the Service Awards and/or the Fee Award and Costs should not be granted, may do so, but must proceed as set forth in this paragraph. No Class Member or other person will be heard on such matters unless they have filed in this Action the objection, together with any briefs, papers, statements, or other materials the Class Member or other person wishes the Court to consider, within sixty (60) calendar days following the Notice Date. Any objection must include: (i) the Settlement Class Member's full name, current mailing address, and telephone number; (ii) a signed statement that he or she believes himself or herself to be a member of the Settlement Class; (iii) the specific grounds for the objection; (iv) all documents or writings that the Settlement Class Member desires the Court to consider; and (v) a statement

regarding whether they (or counsel of their choosing) intend to appear at the Fairness Hearing. A copy of the objection must also be mailed to the following four addresses, postmarked within sixty (60) days of the Notice Date.

Court	Class Counsel	Defendants' Counsel
Clerk of the Court United States District Court Middle District of Florida 801 North Florida Avenue Tampa, Florida 33602	Cari C. Laufenberg c/o 21st Century Data Breach Settlement KELLER ROHRBACK L.L.P. 1201 Third Avenue Suite 3200 Seattle, Washington 98101 Daniel S. Robinson c/o 21st Century Data Breach Settlement ROBINSON CALCAGNIE, INC. P.O. Box 2350 Newport Beach, CA 92658- 8962	Casie D. Collignon BAKER & HOSTETLER LLP 1801 California Street Suite 4400 Denver, Colorado 80202

Any Class Member who does not make their objections in the manner and by the date set forth in this Order shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

15. Claimants. Class Members who have been identified from Defendants' records and who submit on or before **May 10, 2021** a valid Claim Form approved by the Settlement Administrator may qualify to receive Credit Monitoring and Insurance Services, a Default Time Payment, a Documented Time Payment, and/or a payment for Fraud/Out-of-Pocket Costs. Any such Class Member who does not submit a timely Claim Form in accordance with this Order shall not be entitled to receive Credit Monitoring and

Insurance Services, a Default Time Payment, a Documented Time Payment, or a payment for Fraud/Out-of-Pocket Costs, but shall nevertheless be bound by any final judgment entered by the Court. Class Counsel shall have the discretion, but not the obligation, to accept late-submitted claims for processing by the Settlement Administrator, so long as distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby. No person shall have any claim against Class Counsel or the Settlement Administrator by reason of the decision to exercise discretion whether to accept late-submitted claims.

16. Release. Upon the entry of the Court's order for final judgment after the Fairness Hearing, the Class Representative and all Class Members, whether or not they have filed a Claim Form within the time provided, shall be permanently enjoined and barred from asserting any claims (except through the Claim Form procedures) against Defendants and the Released Parties arising from the Released Claims, and the Class Representative and all Class Members conclusively shall be deemed to have fully, finally, and forever released any and all such Released Claims.

17. Funds Held by Settlement Administrator. All funds held by the Settlement Administrator shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant to the Settlement or further order of the Court.

18. Final Approval Briefing. All opening briefs and documents in support of a request for final approval of the Settlement, the Settlement Benefits, the Service Award, and the Fee Award and Cost must be filed and served on or before **February 10, 2021**. Any reply papers must be filed and served on or before **June 1, 2021**.

19. Reasonable Procedures. Class Counsel and Defense Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement, including making, without further approval of the Court, minor changes to the form or content of the Long Form Notice, Summary Notice, and other exhibits that they jointly agree are reasonable or necessary.

20. Extension of Deadlines. Upon application of the Parties and good cause shown, the deadlines set forth in this Order may be extended by order of the Court, without further notice to the Class. Class Members must check the Settlement Website (www.21COSettlement.com) regularly for updates and further details regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Fairness Hearing, and/or to extend the deadlines set forth in this Order, without further notice of any kind to the Class.


21. If Effective Date Does Not Occur. In the event that the Effective Date does not occur, certification shall be automatically vacated and this Preliminary Approval, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

The Court approves the following schedule:

EVENT	DATE
Notice Date	January 8, 2021
Plaintiffs to File Motion for Final Approval	February 10, 2021
Plaintiffs to File Motion for Attorneys' Fees, Costs, and Incentive Awards	February 10, 2021
Opt-Out Deadline	March 9, 2021
Objection Deadline	March 9, 2021

Claim Submission Deadline	May 10, 2021
Plaintiffs to File Reply in Support of Motion for Final Approval	June 1, 2021
Plaintiffs to File Reply in Support of Attorneys' Fees, Costs, Incentive Awards	June 1, 2021
Final Approval Hearing	June 15, 2021

DONE and **ORDERED** in Tampa, Florida, this 2nd day of November, 2020.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person