

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

MAGDALYNE HILLIARD, *et al.*

Plaintiffs,

v.

DOMINION DENTAL USA, INC., *et al.*,

Defendants.

Civil Action No. 1:19-cv-01050-LMB-MSN

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF  
PROPOSED CLASS ACTION SETTLEMENT AND FOR ISSUANCE OF NOTICE TO  
SETTLEMENT CLASS**

Representative Plaintiffs Sayed Abubaker and Magdalyne Hilliard (collectively “Representative Plaintiffs”) respectfully submit this motion for an order entering preliminary approval of a proposed class settlement, for issuance of notice to the Proposed Settlement Class pursuant to Federal Rule of Civil Procedure 23(e), and for scheduling of a Final Fairness Hearing. This motion is not opposed by Defendants and their counsel.

In support of this motion, the Representatives Plaintiffs file herewith a memorandum of law and proposed order.

Date: May 18, 2021

Respectfully submitted,

/s/

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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

SAYED ABUBAKER and MAGDALYNE  
HILLIARD, individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

DOMINION DENTAL USA, INC., DOMINION  
DENTAL SERVICES USA, INC., DOMINION  
DENTAL SERVICES, INC., DOMINION  
NATIONAL INSURANCE COMPANY,  
DOMINION DENTAL SERVICES OF NEW  
JERSEY, INC, AVALON INSURANCE  
COMPANY, CAPITAL ADVANTAGE  
INSURANCE, and CAPITAL BLUECROSS,

Defendants.

Civil Action No. 1:19-cv-01050-LMB-  
MSN

**[PROPOSED ORDER] GRANTING PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT AND DIRECTING NOTICE OF PROPOSED SETTLEMENT**

**WHEREAS**, the Settling 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 Settling Parties as of May 18, 2021 (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;

**WHEREAS**, all defined terms used in this Order have the same meanings as set forth in the Settlement Agreement;

**WHEREAS**, Class Counsel have conducted an extensive investigation into the facts and law relating to the matters alleged in the Action;

**WHEREAS**, the Settling Parties reached a settlement as a result of extensive arm's-length negotiations between the Settling Parties and their counsel, occurring over the course of a number of months and beginning with a Fourth Circuit appellate mediation; and

**WHEREAS**, 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; and

**IT IS HEREBY ORDERED** that:

The Settlement Agreement, 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.

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

2. Directive to Issue Notice to Settlement Class. Pursuant to Federal Rule of Civil Procedure 23(e), the Court finds that it has sufficient information to enable it to determine whether to give notice of the proposed settlement to the Settlement Class. The Court further finds that the Proposed Settlement and Notice meets the requirements of Rule 23(e) and that the Court will likely be able to certify the Settlement Class for purposes of judgment on the proposal.

The Court finds that the class representatives and class counsel have adequately represented the class. The Court further finds that the settlement proposal was negotiated at arm's length by informed and experienced counsel. The relief provided to the class under the settlement proposal is adequate. There would be substantial costs, risks and delay associated with proceeding to trial and potential appeal. The method proposed for distributing relief to the class and processing class member claims is adequate and effective. The proposed award of attorneys' fees and costs, including the timing of such payment, is reasonable, subject to the Court's review of a timely filed fee application. The Court further concludes that the settlement is adequate in light of the separately filed agreements. Finally, the Court finds that the proposed settlement treats class

members equitably relative to each other, and that the relief provided to the class is adequate taking into account the costs risk.

For these reasons, the Court finds and determines that it will likely be able to certify the proposed class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure, and that: (a) the Class certified herein numbers approximately three million people, and joinder of all such persons would be impracticable, (b) there are questions of law and fact that are common to the Class, and those questions of law and fact common to the Class predominate over any questions affecting any individual Class Member; (c) the claims of the Plaintiffs are typical of the claims of the Class they seek to represent for purposes of settlement; (d) a class action on behalf of the 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 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 consisting of: All individuals notified by or on behalf of Dominion National regarding the Security Incident. Excluded from the Settlement Class are: (1) the Judge presiding over the above-captioned Action, and members of her family; (2) the Defendants, their subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former officers and directors; (3) 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 Persons.

4. Representative Plaintiffs. For purposes of the Settlement only, the Court finds and determines, pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, that Plaintiffs Abubaker and Hilliard (“Representative Plaintiffs”) will fairly and adequately represent the interests of the Class in enforcing their rights in the Action and appoints them as Representative Plaintiffs. The Court preliminarily finds, for purposes of the Settlement only, that they are similarly situated to absent Class Members and have Article III standing to pursue their claims, and are therefore typical of the Class, and that they will be adequate class representatives.

5. Class Counsel. For purposes of the Settlement, the Court appoints Barrett Vahle of Stueve Siegel Hanson LLP, and Kim D. Stephens and Jason T. Dennett of Tousley Brain Stephens PLLC as Class Counsel to act on behalf of the Class and the Representative Plaintiffs 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 Dominion National Summary Notice, Security Incident Settlement, and Claim Form for Dominion National Incident Benefits submitted by the Settling Parties as Exhibits 4, 5, and 6, respectively, to the Settlement Agreement, are hereby approved. Prior to the dissemination of Class Notice, the Settlement Administrator shall establish a dedicated Settlement Website and shall maintain and update the website through the Claims Period (“Settlement Website”).

8. Notice Date. The Court directs that the Settlement Administrator cause a copy of the Summary Notice either to be mailed or emailed to all members of the Settlement Class who have been identified by Dominion National through its records and are included in the Class Member List, which Dominion National is to provide to the Settlement Administrator within thirty (30) calendar days of entry of this Order. The notice is to be made either by first class United States mail or via email for Class Members for whom Dominion National has an existing email address within sixty (60) days following the entry of this Order. The Settlement Website shall include, and make available for download, copies of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form, in forms available for download.

9. Findings Concerning Notice. The Court finds and determines that mailing and/or emailing 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 requirements of due process, Rule 23(e) 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 simple terminology, and are readily understandable by Class Members. The Court also appoints Angeion Group as Notice Specialist.

10. Deadline to Submit Claim Forms. Class Members will have until 180 calendar days from the Notice Date 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 written notice of such intent to the designated Post Office box established by the Claims Administrator. The written notice must clearly manifest a Person’s intent to be excluded from the Settlement Class. To be effective, the written notice must be postmarked no later than seventy-five (75) days after the date on which the Notice Program commences.

12. Final Fairness Hearing. A hearing will be held by this Court in the Courtroom of The Honorable Leonie M. Brinkema, United States District Court for the Eastern District of Virginia, Albert V. Bryan United States Courthouse, Room \_\_\_\_, 401 Courthouse Square, Alexandria, Virginia 22314 at \_\_\_\_\_.m. on \_\_\_\_\_, 2021 (“Final 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; (c) whether the Representative Plaintiffs’ proposed Settlement Benefits as described in Section II 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 Representative Plaintiffs (“Service Awards”) or an award of attorneys’ fees and litigation expenses (“Fee Award and Costs”); and (e) any other matters that may properly be brought before the Court in connection with the Settlement. The

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

13. Prior to the Final Fairness Hearing, Class Counsel and Defendants shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with the provision of notice as set forth in Paragraphs 3.2 and 3.3 of the Settlement Agreement.

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 Attorneys' Fee Award and Costs, or to appear at the Final 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 Attorneys' 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, and served concurrently on Class Counsel and Defendants' Counsel, the objection, together with any briefs, papers, statements, or other materials the Class Member or other person wishes the Court to consider, within seventy-five (75) calendar days following the Notice Date. Any objection must include: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of settlement notice, copy of original notice of the Security Incident) if available; (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing the objector, if any; (v) the identity of all counsel representing the objector who will appear at the Final Fairness Hearing, if any; (vi) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection, if any; (vii) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness

Hearing; (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation), if any; (ix) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through counsel) has filed an objection to any proposed class action settlement within the last 3 years; (x) a list, by case name, court, and docket number, of all other cases in which the objector's counsel (on behalf of any person or entity) has filed an objection to any proposed class action settlement within the last 3 years; and (xi) a list, by case name, 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. Any Class Member who does not make their objections in the manner and by the date set forth in ¶ 14 of 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 Dominion National's records and who submit within one hundred eighty (180) days of the Notice Date a valid Claim Form approved by the Settlement Administrator may qualify to receive payments for Out-of-Pocket and Extraordinary Losses. Any such Class Member who does not submit a timely Claim Form in accordance with this Order shall not be entitled to receive payments for Out-of-Pocket and Extraordinary Losses, 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 processing does not materially delay distribution of compensation to Class Members. 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 Final Fairness Hearing, the Representative Plaintiffs 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 Persons arising from the Released Claims, and the Representative Plaintiffs and all Class Members conclusively shall be deemed to have fully, finally, and forever released any and all such Released Claims.

17. Final Approval Briefing. All opening briefs and supporting documents in support of a request for final approval of the Settlement and Settlement Benefits must be filed and served at least 10 days prior to the Fairness Hearing. All briefing and supporting documents in support of an application for attorneys' fees and costs and Service Awards must be filed 21 days prior to the Objection Deadline.

18. 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 Agreement, 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 to further the purpose of effectuating the parties' Settlement Agreement.

19. 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.\_\_\_\_.com) regularly for updates and further details regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Fairness Hearing, and/or to extend the deadlines set forth in this Order, without further notice of any kind to the Class.

20. 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.

21. In sum, the Court enters the following deadlines:

ACTION	DATE
Defendants Provide Class Member List	Within 30 days following entry of this Order
Notice Program Shall Commence	Within 45 days following entry of this Order
Mailing of Notice Commenced/Notice Date	Within 60 days following entry of this Order
Proof of Notice Submitted	At least 10 days prior to the Final Fairness Hearing
Motion for Attorneys' Fees, Expenses, and Service Awards to the Plaintiffs	21 days prior to the Objection Deadline
Exclusion / Opt-Out Deadline	75 days after Notice Date
Objection Deadline	75 days after Notice Date
Final Approval Brief and Response to Objections Due	At least 10 days prior to the Final Fairness Hearing
Final Fairness Hearing	(To be scheduled no earlier than 110 days after entry of this Order)
Deadline to Submit Claims	180 days after Notice Date

**IT IS SO ORDERED:**

Date: \_\_\_\_\_

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Leonie M. Brinkema  
United States District Judge