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| <p><b>4<sup>th</sup> DISTRICT COURT, COUNTY OF EL PASO,<br/>STATE OF COLORADO</b><br/>         Court Address: 270 S Tejon St<br/>         Colorado Springs, Colorado 80903</p> <hr/> <p><b>LENNIE HALL, AGNES COURSEY AND TAMMY<br/>NICHOLS,</b><br/> <b>Individually and On Behalf of All Others Similarly Situated,</b></p> <p><b>Plaintiff, v.</b></p> <p><b>ASPENPOINTE, INC., a Colorado non-profit<br/>Corporation,</b></p> <p><b>Defendant.</b></p> | <p>DATE FILED: October 31, 2022 7:26 AM<br/>         CASE NUMBER: 2020CV32175</p> <p style="text-align: center;">▲ <b>COURT USE</b> ▲<br/> <b>ONLY</b></p> |
|  | <p><b>Consolidated Case<br/>Case Number: 2020CV32175</b></p>   |
| <p style="text-align: center;"><b>AMENDED ORDER GRANTING<br/>FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND VACATING FAIRNESS<br/>HEARING AND FEE HEARING SCHEDULED FOR NOVEMBER 21, 2022</b></p>   |  |

Before the Court are Plaintiffs’ unopposed motions requesting that the Court enter an Order granting final approval of the class action Settlement involving Plaintiffs Lennie Hall, Agnes Coursey, and Tammy Nichols (“Plaintiffs”) and Defendant AspenPointe, Inc. (N.K.A. Diversus Health Inc.) (“Defendant”) as fair, reasonable, and adequate, and grant Plaintiffs’ request for attorneys’ fees, costs, and service awards.

Having reviewed and considered the Settlement Agreement, the Motion for Final Approval of the Settlement, and the Motion for Attorneys’ Fees, Costs, and Service Awards, and having determined a Final Approval Hearing is unnecessary given the record before the Court, the absence of objectors to the Settlement, including the absence of objectors to Plaintiffs’ Unopposed Motion for Attorneys’ Fees, Expenses, and Service Awards, and the absence of intervenors or motions or

other requests to intervene in this proceeding, the Court makes the findings and grants the relief set forth below approving the Settlement upon the terms and conditions set forth in this Final Order and Judgment.

**THE COURT** not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

**THE COURT** being required under Colorado Rule of Civil Procedure 23(e) to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether the Settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

**IT IS ON THIS** 31st day of October, 2022,

**ORDERED** that:

1. The Settlement involves allegations in Plaintiffs' Consolidated Class Action Complaint that Defendant failed to safeguard and protect the personally identifiable information and/or protected health information of Settlement Class Members and that this alleged failure caused injuries to Plaintiffs and the Class.

2. The Settlement does not constitute an admission of liability by Defendant, and the Court expressly does not make any finding of liability or wrongdoing by Defendant.

3. Unless otherwise noted, capitalized terms in this Order have the same meaning as set forth in the Settlement Agreement.

4. On July 14, 2022 the Court entered an Order which among other things: (a) approved the Notice to the Settlement Class, including approval of the form and manner of notice under the Notice Program set forth in the Settlement Agreement; (b) provisionally certified

a class in this matter, including defining the class, appointed Plaintiffs as the Settlement Class Representatives, and appointed Settlement Class Counsel; (c) preliminarily approved the Settlement; (d) set deadlines for opt-outs and objections; (e) approved and appointed the Claims Administrator; and (f) set the date for the Final Approval Hearing.

5. In the Order Granting the Motion for Preliminary Approval of Class Settlement Agreement, pursuant to Colorado Rule of Civil Procedure 23(b)(3) and (e), for settlement purposes only, the Court certified the Settlement Class, defined as follows:

**Settlement Class**

All persons whose full name and other personally identifiable information and/or protected health information was accessed during the Data Breach that occurred between September 12, 2020 and September 22, 2020.

The Settlement Class specifically excludes: (i) Defendant's officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge. The Settlement Class includes approximately 275,000 people.

6. The Court, having reviewed the terms of the Settlement Agreement submitted by the parties, grants final approval of the Settlement Agreement and defines the Settlement Class as defined therein and in the Preliminary Approval Order, and finds that the settlement is fair, reasonable, and adequate and meets the requirements of Colorado Rule of Civil Procedure 23.

7. The Settlement Agreement provides, in part, and subject to a more detailed description of the settlement terms in the Settlement Agreement, for:

- a. A process for Settlement Class Members to submit claims for compensation of up to \$500 per Class Member in Ordinary Expense Reimbursements and Lost Time,

and up to \$4,500 per Class Member in Extraordinary Expense Reimbursements, all of which will be evaluated by the Court-approved Claims Administrator.

- b. A process for Settlement Class Members to submit claims for enrollment in 24-months of credit monitoring services.
- c. Equitable relief in the form of data security enhancements designed to better protect Settlement Class Members' PII and PHI.
- b. Defendant to pay all Notice and Settlement Claims Administration costs.
- c. Defendant to pay a Court-approved amount for attorneys' fees, costs, and expenses of Settlement Class Counsel of \$412,500.
- d. Defendant to pay a Service Award of \$2,500 to each of the three named Class Representatives.

8. The terms of the Settlement Agreement are fair, reasonable, and adequate and are hereby approved, adopted, and incorporated by the Court. The Parties, their respective attorneys, and the Claims Administrator are hereby directed to consummate the Settlement in accordance with this Order and the terms of the Settlement Agreement.

9. Notice of the Final Approval Hearing, the proposed motion for attorneys' fees, costs, and expenses, and the proposed Service Award payment to Plaintiff have been provided to Settlement Class Members as directed by this Court's Orders, and an affidavit or declaration of the Settlement Administrator's compliance with the Notice Program has been filed with the Court.

10. The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Colorado Rule of Civil Procedure 23(e).

11. As of the final date of the Opt-Out Period, 1 potential Settlement Class Member submitted a valid Opt-Out Request to be excluded from the Settlement. The name of that person

is set forth in Exhibit A to this Order. This person is not bound by this Final Order and Judgment, as set forth in the Settlement Agreement.

12. The Court has considered all the documents filed in support of the Settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

13. Pursuant to the Settlement Agreement, Defendants, and the Claims Administrator shall implement the Settlement in the manner and time frame as set forth therein.

14. Pursuant to Settlement Agreement Section XIV and upon the Effective Date, Plaintiffs and Settlement Class Members shall have released all claims against Defendants and all Released Persons, as those persons and entities, Effective Date, and releases are defined in the Settlement Agreement.

15. On the Effective Date and in consideration of the promises and covenants set forth in the Settlement Agreement, (i) Plaintiffs and each Settlement Class Member, and each of their respective spouses and children with claims on behalf of the Settlement Class Member, executors, representatives, guardians, wards, heirs, estates, trustees, successors, predecessors, next friends, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents, and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government in the capacity as *parens patriae* or on behalf of creditors or estates of the releasors), and each of them (collectively and individually, the “Releasing Persons”), and (ii) Settlement Class Counsel and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns will be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, completely, and forever released and discharged the Released Persons from the claims set forth in the Settlement


Agreement, including the Released Class Claims and Plaintiffs' Released Claims consistent with and for the purpose of effectuating the Plaintiffs' Release and the Releases.

16. There being no motions or other request to intervene in this proceeding and no objection from any Settlement Class Member to the Settlement or to Plaintiffs' Unopposed Motion for Attorneys' Fees, Expenses, and Service Awards filed on September 13, 2022, the Fairness Hearing scheduled for November 21, 2022 and the hearing on the Motion for Reasonable Attorney Fees, Expenses and Service Awards also scheduled for November 21, 2022 are not necessary and are hereby vacated.

17. The matter is hereby dismissed with prejudice and without costs except that the Court reserves jurisdiction over the consummation and enforcement of the Settlement.

18. In accordance with Colo. R. Civ. P. 23, this Final Order and Judgment resolves all claims against all parties in this Action and is a final order. There is no just reason to delay the entry of final judgment in this matter, and the Clerk is directed to file this Order as the final judgment in this matter.

Done and ordered this 31st day of October, 2022.

A handwritten signature in black ink that reads "Diana K May". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Diana K May  
District Court Judge

## **EXHIBIT A**

1. Mara Simpson, Angeion ID No. ASP89671