

**STATE OF NEW MEXICO  
COUNTY OF SAN JUAN  
ELEVENTH JUDICIAL DISTRICT**

FILED  
11th JUDICIAL DISTRICT COURT  
San Juan County  
10/13/2022 4:37 PM  
JODIE SCHWEBEL  
CLERK OF THE COURT  
Frances Slavey

JEREMY HENDERSON AND BENITA  
SIMPSON-BUTSUI, *on behalf*  
*of themselves and a class of similarly*  
*situated individuals,*

PLAINTIFFS,

v.

Case No. D-1116-CV-2021-01043

SAN JUAN REGIONAL  
MEDICAL CENTER,

DEFENDANT.

**ORDER GRANTING PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

This matter came before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement Agreement (the "Motion"). Plaintiffs, individually and on behalf of the proposed Settlement Class and Subclass, and Defendant San Juan Regional Medical Center ("Defendant" or "SJPMC") have entered into a Settlement Agreement and Release (the "Settlement Agreement") that settles the above-captioned litigation.

On January 19, 2022, Plaintiff Jeremy Henderson and Benita Simpson-Butsui (collectively, "Plaintiffs") filed an Amended Class Action Complaint in the Eleventh Judicial District, San Juan County, for the State of New Mexico, against SJPMC. The Amended Complaint alleges that SJPMC was the target of a cyberattack and data breach perpetrated by an unauthorized third-party threat actor who gained access to SJPMC's computer network between September 7 and 8, 2020. This cyberattack was in the form of an email "phishing attack" that resulted in the exposure of

SJPMC's patients' personally identifiable information ("PII") and protected health information<sup>1</sup> ("PHI"), which SJPMC discovered on September 8, 2020 (the "Cyberattack"). *See Amended Class Action Complaint* ("Comp." or "Amended Complaint"), ¶¶ 1, 35-40. The PII and PHI allegedly compromised in the Cyberattack included patient names, dates of birth, Social Security numbers, driver's license numbers, passport information, financial account numbers, health insurance information, and medical information (diagnosis, treatment, medical record number, patient account number). *See id.* ¶¶ 5-6, 42.

In the Amended Complaint, Plaintiffs allege six causes of action: (1) Negligence; (2) Negligence *Per Se*; (3) Breach of Implied Contract; (4) Breach of Fiduciary Duty; (5) Unjust Enrichment; and (6) violation of the New Mexico Unfair Practices Act, NMSA 1998 §§ 57-12-2 *et seq.* *See Comp.* ¶¶ 155-245. Plaintiffs allege that SJPMC failed to safeguard its patients' PII and PHI. *See id.* ¶ 217. Plaintiffs also allege that, as a result of the Cyberattack, Plaintiffs and Settlement Class Members suffered ascertainable losses, including (without limitation) the loss of the benefit of their bargain, out-of-pocket expenses, the value of their time reasonably incurred to remedy or mitigate the effects of the unauthorized access and exfiltration of their sensitive and highly personal information, and diminished value of their PII and PHI. *See id.* ¶ 3. Plaintiffs and the putative class seek monetary and equitable relief.

Defendant denies the allegations in the Lawsuit.

After prolonged and serious arm's-length settlement negotiations, the Parties reached a Settlement Agreement and Release (the "Settlement Agreement") that they consider fair, reasonable, and adequate, and in the best interests of all the Settlement Class Members.

---

<sup>1</sup> "PHI" is as defined by the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d *et seq.* ("HIPAA").

WHEREAS, Plaintiffs, on behalf of the proposed Settlement Class Members, having made a motion, pursuant to New Mexico Rules of Civil Procedure for the District Courts 1-023(D) (“Rule 1-023 NMRA”), for an order preliminarily approving a settlement in accordance with the Settlement Agreement filed on September 30, 2022 as Exhibit 2 to the Motion, which, together with the Exhibits attached thereto, set forth the terms and conditions for a proposed settlement; and the Court having read and considered the Settlement Agreement and the exhibits attached thereto; and

WHEREAS, unless otherwise defined, all terms used herein have the same meanings as set forth in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has reviewed the Settlement Agreement and does hereby preliminarily approve the settlement set forth therein as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing described below.

2. Pursuant to Rules 1-023(A)(1)-(4) and 1-023(B)(3) NMRA, and for purposes of this Settlement only, the Court grants provisional certification to the following Settlement Class and Settlement Subclass:

**The Settlement Class:** All persons whose personally identifiable information or protected health information was compromised as a result of the cyberattack that San Juan Regional Medical Center learned of on or about September 8, 2020 (the “Cyberattack”).

**The Settlement Subclass:** All persons who were notified by San Juan Regional Medical Center that their Social Security, financial account, driver’s license, or passport numbers were potentially compromised as a result of the Cyberattack.

Excluded from the Settlement Class and Subclass (together, the “Settlement Classes”) are: (a) Defendant’s officers and directors; (b) any entity in which Defendant has a controlling interest;

and (c) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Defendant. Also excluded from the Settlement Classes are members of the judiciary to whom this case is assigned, their families and members of their staff. The Settlement Class may include as many as 382,000 individuals—each, a “Settlement Class Member.”<sup>2</sup> The Settlement Subclass is estimated to include approximately 85,000 individuals—each, a “Settlement Subclass Member.” For avoidance of doubt, Settlement Subclass Members are also Settlement Class Members, and references herein to the Settlement Class therefore include the Settlement Subclass.

3. The Court finds, for the purposes of the settlement only, that the prerequisites for a class action under Rules 1-023(A)(1)-(4) and 1-023(B)(3) NMRA of the have been satisfied in that: (1) the number of Settlement Class Members is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the Settlement Classes; (3) the claims of Plaintiffs are typical of the claims of the Settlement Classes they seek to represent; (4) Plaintiffs and Class Counsel have and will fairly and adequately represent the interests of the Settlement Classes; (5) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting only individual Settlement Class Members; and (6) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. Pursuant to Rule 1-023 NMRA, and for the purposes of the settlement only, Plaintiffs Jeremy Henderson and Benita Simpson-Butsui are preliminarily certified as the Class Representatives and Milberg Coleman Bryson Phillips Grossman, PLLC is preliminarily appointed as Class Counsel.

---

<sup>2</sup> SJRMC has contact information for and has been able to identify approximately 220,000 of those individuals. It therefore reasonably anticipates that the total number of potential Settlement Class Members is materially less than 382,000, and likely is closer to 220,000 than 382,000, due to probable overlap and duplication between the groups for which SJRMC has and lacks contact information.

5. The Court preliminarily finds that the proposed settlement should be approved as: (i) the result of serious and extensive arm's-length and non-collusive negotiations; (ii) falling within a range of reasonableness warranting final approval; (iii) having no obvious deficiencies; and (iv) warranting notice of the proposed settlement to Settlement Class Members and further consideration of the settlement at the Final Approval Hearing described below.

6. The Final Approval Hearing shall be held before this Court on **FEBRUARY 22, 2023 at 1:30 p.m.**, at the Eleventh District Court for the County of San Juan, 207 W. Hill Ave. 2nd Floor Room 200, Gallup, NM 87301 by videoconference or telephone conference. At this hearing, the Court will determine (a) whether the proposed settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate to the Settlement Classes and should be approved by the Court; (b) whether the [Proposed] Final Judgment and Order as provided under the Settlement Agreement should be entered; (c) whether the Settlement Classes should be finally certified for purposes of the settlement; (d) whether Plaintiffs and Class Counsel should be finally appointed as Class Representatives and Class Counsel; (e) the amount of attorneys' fees, costs, and expenses that should be awarded to Class Counsel; and (f) any Service Awards to the Class Representatives. The Court will also hear any objections by Settlement Class Members to (a) the settlement; (b) the award of attorneys' fees and costs to Class Counsel; (c) service awards to the Class Representatives; and the Court will consider such other matters the Court deems appropriate.

7. The Court approves, as to form and content, the use of the Class Claim Form and Subclass Claim Form, in the forms substantially similar to those attached as Exhibits A and B, respectively, to the Settlement Agreement;

8. The Court approves as to form and content, the Short Form Notices (Postcard Notices) to be mailed to Settlement Class Members and Settlement Subclass Members, in forms substantially similar to those attached as Exhibits C-1 and C-2, respectively, to the Settlement Agreement.

9. The Court approves as to form and content the Long Form Notice to be posted on the Settlement Website, in a form substantially similar to the one attached as Exhibit D to the Settlement Agreement.

10. The Court finds that the mailing and distribution of the Class Notice substantially in the manner and form set forth in the Settlement Agreement, attached as Exhibit 2 to Motion: (a) constitute the best notice to Settlement Class Members practicable under the circumstances; (b) are reasonably calculated, under the circumstances, to describe the terms and effect of the Settlement Agreement and of the settlement and to apprise Settlement Class Members of their right to object to the proposed settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive such notice; and (d) satisfy all applicable requirements of the Rules 1-023(B)-(E) NMRA, the Due Process Clauses under the United States Constitution and the New Mexico Constitution, the Rules of this Court, and other applicable law.

11. The firm Angeion Group ("Claims Administrator") is hereby appointed as Claims Administrator to supervise and administer the notice procedure, as well as the processing of claims as more fully set forth below.

12. No later than 30 days after entry of the Preliminary Approval Order (the "Notice Completion Deadline"), the Claims Administrator will notify Settlement Class Members and Settlement Subclass Members of the settlement with the Short Form Notices (Postcard Notices), substantially in the forms attached to the Settlement Agreement as Exhibits C-1 and C-2, by U.S.

mail to all Settlement Class Members to whom SJRMC previously mailed notice of the cybersecurity incident (as described in footnote 3, *supra*) and/or by targeted media postings. The Claims Administrator will establish and maintain a Settlement Website throughout the Claims Period, which will contain the Short Form Notices, the Long Form Notice, and the Claims Forms to either submit online or download and mail to the Claims Administrator before the Claims Deadline. The Claims Administrator will also maintain a toll-free telephone number and P.O. Box by which Settlement Class Members can seek additional information regarding the Settlement.

13. Settlement Class Members who wish to submit a claim in the settlement shall complete and submit Claim Forms in accordance with the instructions contained therein. Any such claim must be postmarked or submitted electronically no later than 90 days from the date that the Class Notice is sent to submit a claim—the “Claims Deadline.”

14. The Claim Forms submitted by each Settlement Class Member must: (a) be properly completed, signed, and submitted in a timely manner in accordance with the preceding paragraph; (b) be accompanied by adequate supporting documentation, as required by and as specified in the Settlement Agreement; and (c) be complete and contain no deletions or modifications of any of the printed matter contained therein.

15. Any Settlement Class Member who files a Claim Form shall reasonably cooperate with the Claims Administrator and the claims referee, if applicable, including by promptly responding to any inquiry made by the Claims Administrator and the claims referee, if applicable. Any Settlement Class Member who does not timely submit a Claim Form within the time provided in the Settlement Agreement (except those Settlement Class Members who opt-out) are barred from receiving any benefits under the Settlement Agreement and shall be bound by the Settlement

Agreement, the Final Judgment and Order, and the Releases therein, unless otherwise ordered by the Court.

16. Settlement Class Members will have no later than 60 days from the date the Class Notice is issued to decide whether exclude themselves from the Settlement. Any Class Member wishing to opt out of the Settlement Class shall individually sign and timely submit written notice of such intent to Claims Administrator at the address provided in the Class Notice. A written opt-out notice must include an individual signature and state the name, address, and phone number of the person seeking exclusion. A written opt-out notice must also clearly manifest a Person's intent to be excluded from the Settlement Class. To be effective, a written opt-out notice must be postmarked no later than 60 days from the date the Class Notice is issued, or any other date set by the Court. Settlement Class Members who exclude themselves from the Settlement shall not be eligible to receive any benefits (except for the new practice changes) of and/or be bound by the terms of the Settlement Agreement.

17. Any Settlement Class Member may appear in person or through counsel, at his or her own expense, at the Final Approval Hearing to object to the Settlement. No Settlement Class Member will be heard, and no papers submitted by any Settlement Class Member will be considered, unless, no later than 60 days from the date the Class Notice is issued, the Settlement Class Member files with the Court and mails to Class Counsel and SJRMC's counsel written objections that include: (a) the title of the case; (b) the objector's name, address, and telephone number; (c) all legal and factual bases for any objection; and (d) copies of any documents that the objector wants the Court to consider. Should the objector wish to appear at the Final Approval Hearing, he or she must so state, and must identify any documents or witnesses he or she intends to call on his or her behalf. Any Settlement Class Member who fails to object in this manner will



be deemed to have waived and forfeited any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and the Settlement Class Member shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Lawsuit.

18. All opening briefs and documents in support of any application by Plaintiffs for the Class Counsel Payment or Service Awards to Class Representatives shall be filed and served by no later than 14 days prior to the deadline for Settlement Class Members to object or exclude themselves from the Settlement Agreement. Plaintiffs shall file a Motion for Final Approval of the Class Action Settlement no later than 14 days prior to the Final Approval Hearing.

19. At or after the Final Approval Hearing, the Court shall determine whether any application for the Class Counsel Payment or Service Awards should be approved. The Court reserves the right to enter a Final Judgment and Order approving the settlement regardless of whether it has awarded the Class Counsel Payment or Service Awards.

20. All reasonable expenses incurred in identifying and notifying Settlement Class Members, as well as administering the settlement, shall be the responsibility of SJRMC and shall be paid as set forth in the Settlement Agreement.

21. Neither this Order, the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by SJRMC of the truth of any of the allegations in the Lawsuit, or of any liability, fault, or wrongdoing of any kind.

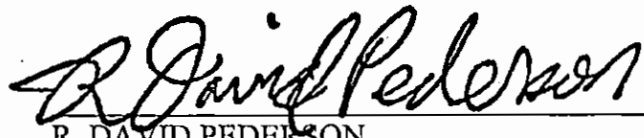
22. The Court reserves the right to adjourn the date of the Final Approval Hearing without further notice to the Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. The Court may

approve the settlement, with such modifications as may be agreed to by the Parties to the Settlement Agreement, if appropriate, without further notice to the Settlement Classes.

23. If the Settlement Agreement and the settlement set forth therein is not approved or consummated for any reason whatsoever, the Settlement Agreement and settlement and all proceedings had in connection therewith shall be without prejudice to the rights of the parties to the Settlement Agreement *status quo ante*.

24. Until otherwise ordered by the Court, the Court shall continue to stay all proceedings in the Lawsuit other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement.

IT IS SO ORDERED this 13<sup>th</sup> day of October, 2022.

  
R. DAVID PEDERSON  
DISTRICT COURT JUDGE

**Presented by:**

**MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN, PLLC**

David K. Lietz  
David K. Lietz

5335 Wisconsin Avenue NW  
Suite 440  
Washington, D.C. 20015-2052  
Telephone: (866) 252-0878  
Facsimile: (202) 686-2877  
Email: [dlietz@milberg.com](mailto:dlietz@milberg.com)

*Counsel for Plaintiff and the Settlement Class*

**[additional signature on next page]**

Approved by Email on 9/30/22:

MCDONALD HOPKINS LLC



---

Christopher G. Dean  
600 Superior Avenue, Suite 2100  
Cleveland, Ohio 44114  
Tel: (216) 430-2045  
Email: [cdean@mcdonaldhopkins.com](mailto:cdean@mcdonaldhopkins.com)

*Counsel for Defendant San Juan Regional  
Medical Center*