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Attest E. Thorne
Assistant Clerk

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
CIVIL SESSION B

JULIE KESNER and DENNIS O'BRIEN,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

UMASS MEMORIAL HEALTH CARE,
INC.,

Defendant.

Case No. 2185 CV 01210

~~PROPOSED~~ ORDER ALLOWING PRELIMINARILY APPROVAL OF CLASS
ACTION SETTLEMENT AND DIRECTING NOTICE OF PROPOSED SETTLEMENT

The Court, having considered Plaintiffs' Assented to Motion for Preliminary Approval of the Class Action Settlement ("Motion for Preliminary Approval"), the supporting Memorandum, the Parties' Settlement Agreement, dated October 14, 2022, the proposed Postcard Notice (also known as the "Short-Form Notice"), Long-Form Notice, and Claim Form, and being otherwise fully advised in the premises, finds and orders as follows:

PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

1. The Settlement Agreement is incorporated fully herein by reference. The definitions used in the Settlement Agreement are adopted in this Order and shall have the same meaning ascribed in the Settlement Agreement.

2. The Court has jurisdiction over the claims at issue in this Litigation, Plaintiffs Julie Kesner and Dennis O'Brien, (collectively, "Plaintiffs" or "Class Representatives"), individually

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and on behalf of all others similarly situated (the “Settlement Class”), and Defendant UMass Memorial Health Care, Inc. (“UMMHC” and together with Plaintiffs, the “Parties”).

3. The Court finds that the Parties’ Settlement Agreement is fair, reasonable, and adequate and is within the range of possible approval, and was entered into after extensive, arm’s-length negotiations, such that it is hereby preliminarily approved, and that notice of the Settlement should be provided to the Settlement Class Members.

4. Pending the Final Approval Hearing, all proceedings in the Litigation, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are hereby stayed.

Procedural Posture and History of Negotiations

5. This is a putative class action brought by Plaintiffs arising out of a data security incident in which Plaintiffs allege an unauthorized third party illegally accessed Defendant’s computer systems and data during the period of June 24, 2020 to January 7, 2021, allegedly resulting in the exposure of personal information of Plaintiffs and members of the Settlement Class (the “Data Breach”).

6. On November 8, 2021, Plaintiffs filed this putative class action in the Worcester County Superior Court captioned *Kesner v. UMass Memorial Health Care, Inc.*, No. 2185 CV 01210 (the “Litigation”). Plaintiffs allege in their Complaint six causes of action: (1) negligence; (2) negligence *per se*; (3) breach of fiduciary duty; (4) breach of express contract; (5) breach of implied contract; and (6) unjust enrichment.

7. On February 21, 2022, UMMHC filed a Rule 9A package with the Superior Court, containing its fully briefed Motion to Dismiss Plaintiffs’ Complaint pursuant to Mass. R. Civ. P.

12(b)(6). UMMHC argued that Plaintiffs did not sufficiently allege injury or damages to bring the lawsuit, and that Plaintiffs' claims should be dismissed for failure to state a claim for relief.

8. While the motion was pending, the parties decided to mediate the Litigation. On August 2, 2022, counsel for the Parties engaged in a full day mediation before Hon. Bonnie H. MacLeod (Ret.) concerning a possible settlement of the claims asserted in the Litigation. This mediation did not result in a settlement. However, the Parties continued to engage in arm's length negotiations until they were able to reach an agreement in principle. Thereafter, the Parties negotiated the details of the Settlement Agreement and its exhibits. The Settlement Agreement was finalized and executed on October 14, 2022.

Settlement Benefits

9. Settlement Class Members may qualify and submit a Claim Form for the following settlement benefits:

a. Ordinary Losses: Each Settlement Class Member is eligible to submit a claim for up to one hundred fifty dollars (\$150.00) in Ordinary Losses. There are two forms of Ordinary Losses: (1) reimbursement for out-of-pocket expenses; and (2) reimbursement for fees for credit monitoring and insurance:

i. *Out-of-Pocket Expenses*: Settlement Class Members are eligible to submit claims for out-of-pocket expenses incurred as a result of the Data Breach, including documented bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, gasoline for local travel, and bank fees.

ii. *Fees for Credit Monitoring and Insurance:* Settlement Class Members are eligible to submit claims for expenses incurred for credit reports, credit monitoring, or other identity theft insurance products purchased between June 24, 2020, and the date of the close of the Claims Period.

b. Lost Time: Settlement Class Members are eligible to submit claims for lost time that they spent responding to issues raised by the Data Breach. Settlement Class Members may claim up to three (3) hours of lost time at a rate of twenty-five dollars (\$25.00) per hour. All such lost time must be reasonably described and supported by an attestation under penalty of perjury that the time spent was reasonably incurred dealing with the Data Breach.

c. Extraordinary Expenses: Settlement Class Members are eligible to submit claims for up to five thousand dollars (\$5,000.00) in extraordinary expenses for proven monetary loss arising from identity theft or other fraud perpetrated on or against the Settlement Class member if:

- i. The loss is an actual, documented, and unreimbursed monetary loss;
- ii. The loss was more likely than not caused by the Data Breach;
- iii. The loss occurred between June 24, 2020, and the Claims Deadline;
- iv. The loss is not already covered by the “Compensation for Ordinary Losses” category; and
- v. The Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance and other available insurance.

d. Credit Monitoring: Twenty-four (24) months of identity theft monitoring will be provided for those Settlement Class Members who submit valid claims for such monitoring.

The identity theft monitoring will have the following features:

- i. Real time monitoring of the credit file at all three major credit bureaus;
- ii. Identity theft insurance (no deductible) of one million dollars (\$1,000,000); and
- iii. Access to fraud resolution agents to help resolve identity thefts.

e. Cash Compensation: In lieu of the credit monitoring described in Paragraph 9(d), Settlement Class Members may file claims for cash payments that are allocated by proration as described in Paragraph 36 of the Settlement Agreement.

CLASS CERTIFICATION

10. For the purposes of settlement only, and pursuant to Mass. R. Civ. P. 23, the Court provisionally certifies the class, defined as follows: “all persons whose personal information was potentially compromised in the Data Breach, as defined in Paragraph 10(h) of the Settlement Agreement.”

11. The Settlement Class specifically excludes UMMHC and its affiliates, parents, subsidiaries, officers, and directors, as well as the judge(s) presiding over this matter and the clerks of said judge(s). This exclusion does not apply, and should not be read to apply, to those employees of UMMHC and its Related Entities who received notification regarding the Data Breach.

12. The Court provisionally finds, pursuant to Mass. R. Civ. P. 23, that, for purposes of this settlement only, the: (a) the Settlement Class is so numerous that joinder of all Settlement

Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the Class Representatives' claims are typical of the Settlement Class's claims; (4) the Class Representatives will fairly and adequately protect the Settlement Class's interests; and (5) questions of law or fact in this Litigation predominate over any questions affecting only individual members of the Settlement Class, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

SETTLEMENT CLASS COUNSEL AND THE CLASS REPRESENTATIVES

13. Plaintiffs Julie Kesner and Dennis O'Brien 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 are typical of the Settlement Class, and, therefore, they will be adequate Class Representatives.

14. The Court finds that Ben Barnow and Anthony L. Parkhill of Barnow and Associates, P.C., Andrew W. Ferich of Ahdoot & Wolfson PC, and David Pastor of Pastor Law Office, PC are experienced and adequate counsel and are provisionally designated as Class Counsel.

NOTICE TO SETTLEMENT CLASS

15. The forms of the Claim Form, Long-Form Notice, and Postcard Notice, attached as Exhibits A, B, and C, respectively, to the Settlement Agreement (the "Notice"), are constitutionally adequate, and are hereby approved. The Notice contains all essential elements required to satisfy Massachusetts requirements and Due Process. The Court further finds that the form, content, and method of providing notice to the Settlement Class, as described in the Settlement Agreement, including the exhibits thereto: (a) constitute the best practicable notice to

the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the Settlement, their rights under the Settlement, including, but not limited to, their rights to object to Settlement; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members. The Parties, by agreement, may revise the Notice in ways that are appropriate to update the Notice for purposes of accuracy and clarity, and may adjust the layout of those notices for efficient electronic presentation and mailing.

16. The Notice Program set forth in the Settlement Agreement satisfies the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure, provides the best notice practicable under the circumstances, and is hereby approved.

17. The Settlement Administrator is directed to carry out the Notice Program as set forth in the Settlement Agreement.

18. Forty-five (45) days after entry of this Order (the "Notice Date"), the Settlement Administrator shall mail the Postcard Notice to all Settlement Class Members in the manner set forth in the Settlement Agreement. Contemporaneously with the mailing, the Settlement Administrator shall cause copies of the Settlement Agreement, Postcard Notice, Long-Form Notice, and Claim Form, in forms available for download, to be posted on a website developed for the Settlement ("Settlement Website").

CLAIMS AND OBJECTIONS

19. The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, make a claim, or decide whether they would like to object.

20. Settlement Class Members will have ninety (90) Days after the Notice Date to complete and submit a claim to the Settlement Administrator.

21. Settlement Class Members who comply with the requirements of this paragraph may object to the Settlement. A Settlement Class Member who seeks to object to the Settlement must file timely, written notice of his or her objection. This Objection must (i) set forth the Settlement Class Member's full name, current address, telephone number, and email address; (ii) contain the Settlement Class Member's original signature; (iii) contain proof that the Settlement Class Member is a member of the Settlement Class (e.g., copy of settlement notice, copy of original notice of the Data Security Incident); (iv) state that the Settlement Class Member objects to the Settlement, in whole or in part; (v) set forth a statement of the legal and factual basis for the Objection; (vi) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; (vii) identify all counsel representing the Settlement Class Member, if any; (viii) contain the signature of the Settlement Class Member's duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation; and (ix) contain a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past three (3) years.

22. To be timely, Objections must be filed with the Court and served on Class Counsel and Defendant's Counsel no later than sixty (60) Days after the Notice Date (the "Objection Deadline").

23. Class Counsel and Defendant's Counsel may, but need not, respond to the Objections, if any, by means of a memorandum of law served prior to the Final Approval Hearing.

24. An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court (as well as serve the notice on Class Counsel and Defendant's Counsel) by the Objection Deadline.

25. Any Settlement Class Member who fails to timely file and serve an Objection and notice, if applicable, of his or her intent to appear at the Final Approval Hearing in person or through counsel pursuant to the Settlement Agreement, as detailed in the Long-Form Notice, and otherwise as ordered by the Court, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

26. Any Settlement Class Member who does not submit a timely Objection in complete accordance with the Settlement Agreement and the Long-Form Notice, or as otherwise ordered by the Court, shall not be treated as having filed a valid Objection to the Settlement and shall forever be barred from raising any objection to the Settlement.

ADMINISTRATION OF THE SETTLEMENT

27. The Class Representatives, Class Counsel, and UMMHC have created a process for assessing the validity of claims and a payment methodology to Settlement Class Members who submit timely, valid Claim Forms. The Court hereby preliminarily approves the Settlement benefits to the Settlement Class, and the plan for distributing Settlement benefits as described in Sections V-VI of the Settlement Agreement.

28. The Court appoints Angeion Group as the Settlement Administrator.

29. The Court directs the Settlement Administrator to effectuate the distribution of Settlement benefits according to the terms of the Settlement Agreement should the Settlement be finally approved.

30. Settlement Class Members who qualify for Settlement benefits and who wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice.

31. If Final Judgment is entered, all Settlement Class Members who fail to submit a claim in accordance with the requirements and procedures specified in the Notice shall be forever barred from receiving any Settlement benefit and will in all other respects be subject to and bound by the provisions of the Settlement Agreement, including the Releases contained therein, and the Final Approval Order and Judgment.

32. Prior to the Final Approval Hearing, Class Counsel and UMMHC shall cause to be filed with the Court an appropriate affidavit or declaration regarding compliance with the provisions of the Settlement Agreement relating to the Notice Program.

FINAL APPROVAL HEARING

33. A Final Approval Hearing shall be held on May 23, 2022 at 2:00 p.m. at the Worcester County Superior Court, Courtroom 19, located at 225 Main Street, Worcester, Massachusetts 01608, to be noticed on the Settlement Website.

34. The Court may require or allow the Parties and any objectors to appear at the Final Approval Hearing by telephone or videoconference.

35. At the Final Approval Hearing, the Court will determine whether: (1) this Litigation should be finally certified as a class action for settlement purposes pursuant to the Massachusetts

Rules of Civil Procedure; (2) the Settlement should be finally approved as fair, reasonable, and adequate; (3) Class Counsel's application for attorneys' fees, costs, and expenses should be approved; (4) the Class Representatives' requests for service awards should be approved; (5) the Parties, their respective attorneys, and the Settlement Administrator should consummate the Settlement in accordance with the terms of the Settlement Agreement; (6) Settlement Class Members should be bound by the Releases set forth in the Settlement Agreement; and (7) the Litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement.

36. Plaintiffs' application for attorneys' fees, costs, expenses, and service awards and all supporting papers shall be filed with the Court no later than fourteen (14) Days prior to the Objection Deadline.

37. Plaintiffs' Motion for Final Approval of the Class Action Settlement and all supporting papers shall be filed with the Court no later than fourteen (14) Days after the Objection Deadline.

RELEASE

38. Upon entry of the Court's Final Approval Order and Judgement, the Class Representatives and all Settlement 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 UMMHC and the Released Persons arising from the Plaintiffs' Released Claims or Released Class Claims, and the Representative Plaintiffs and Settlement Class Members conclusively shall be deemed to have fully, finally, and forever released any and all such Plaintiffs' Released Claims or Released Class Claims.

TERMINATION

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

SUMMARY OF DEADLINES

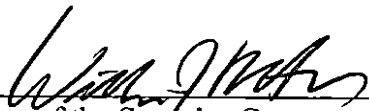
40. The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement and this Order include, but are not limited to:

EVENT	DATE
Defendant to provide class list to Settlement Administrator	15 Days after entry of Preliminary Approval Order
Notice Date	45 Days after the entry of the Preliminary Approval Order
Deadline for Plaintiffs to File Motion for Attorneys' Fees, Costs, Expenses, and Service Awards for Class Representatives	14 Days prior to Objection Deadline
Objection Deadline	60 Days after Notice Date
Deadline for Class Members to Submit Claim Forms	90 Days after Notice Date
Deadline for Plaintiffs to File Motion for Final Approval of Class Action Settlement	14 Days prior to Final Approval Hearing
Final Approval Hearing	COURT TO FILL IN DATE NO EARLIER THAN 130 DAYS AFTER PRELIMINARY APPROVAL

41. 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 Settlement Class. Settlement Class Members must check the Settlement Website regularly for updates and further

detail regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Approval Hearing, and/or to extend the deadlines set forth in this Order, without further notice of any kind to the Settlement Class.

ORDERED this 30 day of November, 2022.



Justice of the Superior Court
(Ritter, J.)