

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT**

JESSE MARTINEZ, KYRA NIETO,
MICHAEL O. GARCIA, and JUAN
GONZALES, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

PRESBYTERIAN HEALTHCARE
SERVICES,

Defendant.

Case No. D-202-CV-2020-01578

Consolidated with Case Nos:

1:20-cv-00191-SMV-JFR

D-202-CV-2020-02651

FINAL APPROVAL ORDER

(Assigned to the Hon. Beatrice J.
Brickhouse)

This matter is before the Court on a motion pursuant to Rule 1-023(E) of the New Mexico Rules of Civil Procedure for the District Courts for final approval of the class action Settlement Agreement (the “Settlement”) between Plaintiffs, individually and on behalf of all others similarly situated, and Defendant Presbyterian Healthcare Services (“PHS”). The Court, being duly advised, now finds that the motion should be, and hereby is, GRANTED.

ACCORDINGLY, THE COURT HEREBY FINDS AND ORDERS:

1. Terms capitalized in this Order and not otherwise defined shall have the meanings set forth in the Settlement.
2. This Court has jurisdiction over the subject matter and parties to this action.
3. The Court previously entered a Preliminary Approval Order, which granted preliminary approval to the Settlement; approved the form, manner, and method for

providing notice of the Settlement to the proposed Settlement Class; set dates for Settlement Class Members to object to, or exclude themselves from, the Settlement; and scheduled a final approval hearing to consider whether to grant final approval to the Settlement.

4. A declaration from the Settlement Administrator has been submitted to the Court showing that notice was given to the Settlement Class in the form, manner, and method prescribed by the Court. The Court finds that the notice complied with the requirements of Rule 1-023(C) of the New Mexico Rules of Civil Procedure of the District Courts and with the requirements of Due Process.

5. The deadline for Settlement Class Members to object to, or exclude themselves from, the Settlement has passed.

6. As of the final date of the Opt-Out Period, seventy-five (75) potential Settlement Class Members have submitted timely and valid Opt-Out Requests to be excluded from the Settlement. The names of those persons are set forth in Exhibit A to the Supplemental Settlement Administrator's Declaration in Support of the Final Approval Motion. These persons are not bound by this Judgment, as set forth in the Settlement Agreement.

7. One Settlement Class Member submitted a timely objection to the Settlement. The objection was briefed by the Plaintiffs and the objector, with the Court hearing argument from the parties and the objector at the Final Approval Hearing. In

considering the objection, the briefs, and the argument presented at the hearing, the Court overruled the objection for the reasons stated on the record at the Final Approval Hearing.

8. The Court reaffirms its certification of the Settlement Class for purposes of entering judgment on the Settlement and defined as:

The individuals to whom PHS sent letters notifying those individuals that information relating to them may have been compromised as a result of the Data Incident.

The Settlement Class specifically excludes: (i) officers and directors of PHS and/or the Related Entities; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the members of the judiciary who have presided or are president over this matter and their families and staff; 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.

9. As set forth in the Preliminary Approval Order, the Court finds that the Settlement Class meets the requirements for class certification under Rules 1-023(A) and (B)(3) of the New Mexico Rules of Civil Procedure for the District Courts.

10. The Court likewise reaffirms its appointment of Jesse Martinez, Kyra Nieto, Michael O. Garcia, and Juan Gonzales as Class Representatives and reaffirms the appointment of J. Gerard Stranch IV of Stranch, Jennings & Garvey, PLLC, Lynn A. Toops of Cohen & Malad, LLP, and David K. Lietz of Millberg Coleman Bryson Phillips Grossman LLP, as Class Counsel.

11. The Court finds that the Settlement represents a fair, adequate, and reasonable compromise of the claims, particularly considering: (a) the Settlement was negotiated at arm's-length by experienced counsel and through the use of a third-party

neutral mediator; (b) the value of the Settlement compares favorably to the risks, uncertainties, and delays of continued litigation; (c) the response of the Settlement Class to the proposal has been overwhelmingly favorable; and (d) attorneys' fees and service awards were not negotiated until after the parties had reached agreement on the materials terms of the Settlement for the benefit of the Settlement Class. The Court therefore grants final approval to the Settlement.

12. The Court orders and directs the parties to implement the terms and benefits provided for by the Settlement.

13. Upon the Effective Date, each Settlement Class Member, including Plaintiffs, shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims and Unknown Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement) in which any of the Released Claims is asserted.

14. As outlined in the Settlement, all payments made to Settlement Class Members pursuant to the Settlement that are not cashed within ninety (90) days are void. If a check becomes void, the Settlement Class Member shall have until six (6) months after the Effective Date to request re-issuance. If no request for re-issuance is made within this

period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and PHS shall have no obligation to make payments to the Settlement Class Member for expense and reimbursement under ¶ 2.1 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

15. For the reasons stated in the Plaintiffs' Motion for an award of attorneys' fees, expenses and class member service awards and in the reply in response to the objection, the Court grants the motion for attorney's fees, expenses and incentive awards for the class representatives. Payment shall be made pursuant to the terms of the Settlement Agreement.

16. The matter is hereby dismissed with prejudice and without costs, except as to those costs and fees provided in the Settlement and approved by the Court. This is a final order, and judgment is entered upon the Settlement; this Order resolves all claims as to all parties, notwithstanding the Court's continuing jurisdiction over the implementation of the Settlement.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED.

DONE and ORDERED this 17th day of June 2024.


BEATRICE J. BRICKHOUSE
DISTRICT COURT JUDGE

Respectfully submitted,

O'STEEN & HARRISON, PLC



Lincoln Combs, No.153434
300 W. Clarendon Ave., Suite 400
Phoenix, AZ 85013-3424
T: (602) 252-8888 F: (602) 274-1209
lcombs@vanosteen.com

Lynn A. Toops (*pro hac vice* forthcoming)
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
T: (317) 636-6481 F: (317) 636-2593
ltoops@cohenandmalad.com

Gerard Stranch, IV (*pro hac vice*)
STRANCH, JENNINGS & GARVEY, PLLC
223 Rosa L. Parks Ave. Ste. 200
Nashville, TN 37203
T: (615) 254-8801 F: (615) 255-5419
gstranch@stranchlaw.com

Christopher D. Jennings (*pro hac vice* forthcoming)
JENNINGS, PLLC
P.O. Box 25972
Little Rock, Arkansas 72221
T: (501) 247-6267
e-mail: chris@jenningspllc.com

David K. Lietz (*pro hac vice*)
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**

5335 Wisconsin Avenue NW, Ste 440
Washington, D.C. 20015-2052
T: 866-252-0878 F: 202-686-2877
dlietz@milberg.com

Christopher M. Moody
MOODY & STANFORD P.C.
4169 Montgomery Blvd., NE
Albuquerque, NM 87109
T: (505) 944-0033
moody@nmlaborlaw.com

Counsel for Class Representatives and the Proposed Settlement Class

Approved as to Form this 11th day of June 2024:

Kenneth L. Chernof
Stephanna F. Szotkowski
ARNOLD & PORTER KAYE et al
601 Massachusetts Ave., NW
Washington DC 20011
Ken.Chernof@arnoldporter.com
Stephanna.Szotkowski@arnoldporter.com

Daniel E. Raymond
ARNOLD & PORTER
70 West Madison Street, Ste 4200
Chicago, IL 60602
Washington DC 20011
Daniel.Raymond@arnoldporter.com

Charles K. Purcell
Noell Sauer Huffmyer
RODEY, DICKASON, SLOAN et al
Post Office Box 1888
Albuquerque, NM 87103-1888
kpurcell@rodey.com
nhuffmyer@rodey.com

*Attorneys for Defendant Presbyterian Healthcare
Services*