

<p>YVONNE AYALA, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>COMMONWEALTH HEALTH PHYSICIAN NETWORK, et. al,</p> <p style="text-align: center;">Defendants.</p>	<p>MAURI B. KELLY LACKAWANNA COUNTY</p> <p>2024 MAY -7 A 9:52</p> <p>COURT OF COMMON PLEAS OF LACKAWANNA COUNTY</p> <p>CLERK OF JUDICIAL RECORDS CIVIL DIVISION</p> <p>No. 2023-CV-3008</p>
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**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,
CERTIFYING THE SETTLEMENT CLASS,
AND PROVIDING FOR NOTICE TO THE SETTLEMENT CLASS**

The parties to the above-captioned action (the “Action”) filed against Commonwealth Health Physician Network -- dba Great Valley Cardiology—and Scranton Cardiovascular Physician Services, LLC (together “GVC” or “Defendant”) have agreed to settle the Action pursuant to the terms and conditions set forth in the executed Settlement Agreement (the “Settlement”).¹ This Action arose out of a data breach in which an unknown third party allegedly gained access to Defendant’s information systems, which contained protected identifying information (“PII”) and protected health information (“PHI”) belonging to Plaintiff and Settlement Class Members, between February 3, 2023 and April 14, 2023 (the “Data Breach”). The Parties reached the Settlement through arms’ length negotiations with the assistance of an experienced and well-respected mediator, the Honorable Thomas M. Blewitt (Ret.) of the Judicial Arbitration and Mediation Services (“JAMS”).

¹ All capitalized terms in this Order have the same meaning as defined in the Settlement, unless otherwise defined herein.

Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiff and the Settlement Class Members would fully, finally, and forever resolve, discharge and release their claims in exchange for Defendant's creation of a Settlement Fund in the amount of \$2,000,000.0, which will be used to pay Approved Claims of Settlement Class Members, Administrative Expenses, Class Representative Service Awards, and any attorneys' fees and reimbursement of litigation expenses awarded by the Court.

The Settlement Agreement was filed with the Court as an attachment to Plaintiff's Unopposed Motion for Preliminary Approval of Settlement, and for Certification of the Settlement Class. Upon considering Plaintiff's motion; the Settlement and all exhibits thereto; the representations, arguments, and recommendations of counsel; and the requirements of law, the Court finds:

- 1) for settlement purposes only, the proposed Settlement Class meets the requirements of Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709, and should be certified;
- 2) Yvonne Ayala, Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabello and their counsel identified below should be appointed Class Representatives and Class Counsel;
- 3) the Settlement is the result of informed, good-faith, arms' length negotiations between the Parties and their capable and experienced counsel; was reached with the assistance of an experienced, highly qualified mediator; and is not the result of collusion;

- 4) the Settlement is within the range of reasonableness and should be preliminarily approved;
- 5) the proposed Notice Plan and proposed forms of notice satisfy Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action; class certification; the terms of the Settlement; Class Counsel's intent to request an award of attorneys' fees, litigation costs, and expenses and request Service Awards for Class Representatives; and their rights regarding opting-out of the Settlement Class and objecting to the Settlement;
- 6) Postlethwaite & Netterville, APAC should be appointed as the Settlement Administrator;
- 7) good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Pennsylvania Rule of Civil Procedure 1714, to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether to grant Class Counsel's motion for Fee Award and Costs and request for Service Awards for Class Representatives; and
- 8) the other related matters pertinent to the preliminary approval of the Settlement should also be approved.

Based on the foregoing, IT IS HEREBY ORDERED AND ADJUDGED as follows:

Conditional Class Certification and Appointment of Class Representatives and Class Counsel.

1. The Court finds, for settlement purposes only, that the factors delineated in Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709 are present and that certification of

the proposed Settlement Class is appropriate under Rule 1710. The Court, therefore, certifies the following Settlement Class:

All natural persons whose Personal Information was potentially compromised in the Data Breach and who were sent the Notice of Data Privacy Incident on or around June 2023.

Excluded from the Class are:

(1) this Court and members of their immediate families and their staff; (2) GVC, its subsidiaries, parent companies, successors, predecessors, and any entity in which GVC or its parents, have a controlling interest, and its current or former officers and directors; (3) natural 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 natural person.

2. The Court preliminarily concludes that, for the purposes of approving this Settlement only and for no other effect on the Action, the proposed Settlement Class likely meets the requirements for certification under Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709:

- a. the proposed Settlement Class is easily identifiable and so numerous that joinder of all members of the class is impracticable;
- b. there are questions of law and/or fact common to the proposed Settlement Class;
- c. the Class Representatives' claims are typical of the claims of the members of the proposed Settlement Class;
- d. the Class Representatives will fairly and adequately represent the interests of the members of the proposed Settlement Class;
- e. common issues will likely predominate over individual issues; and
- f. Class Counsel are qualified to serve as counsel the proposed Settlement Class.

3. The Court appoints Yvonne Ayala, Mary Allabaugh, Robert Maziarz, Colleen Maziarz, Timothy Ferguson, Mary Counterman, Rita Boccadori, Michelle Jarrow, Robert Schulte, Edward Barth, Nicholas Gabello, and Marie Gabello as Class Representatives for the proposed Settlement Class.

4. The Court appoints the following as Class Counsel:

Jean S. Martin
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Tampa, Florida 33602
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jeanmartin@forthepeople.com

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Preliminary Approval of the Settlement.

5. The Court preliminarily approves the Settlement, together with all exhibits thereto, as fair, reasonable, and adequate. The Court finds the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arms' length negotiations between the Parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator. The Court further finds the Settlement, including the exhibits thereto, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant final approval to the Settlement and enter Final Judgment.

Approval of Notice, Notice Plan, Claim Form, and Direction to Effectuate Notice

6. The Court approves the form and content of Notices and Claim Form, substantially in the forms attached as Exhibits A, C, and D to the Settlement. The Court further finds the Notice Plan is the best practicable under the circumstances. The Notice Plan is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the Settlement, Class Counsel's motion for Fee Award and Costs and request for Service Awards for Class Representatives, and their rights regarding opting-out of the Settlement Class and objecting to the Settlement. The Notice and Notice Plan constitute sufficient notice to all persons entitled to notice. The Notice and Notice Plan satisfy all applicable requirements of law, including, but not limited to, Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements.

7. The Court directs that Postlethwaite & Netterville, APAC act as the Settlement Administrator.

8. The Settlement Administrator shall implement the Notice Plan, as set forth below and in the Settlement, using substantially the form of Notice and Claim Form attached as Exhibits A, C, and D to the Settlement and approved by this Order. Notice shall be provided to the Settlement Class Members pursuant to the Notice Plan, as specified in the Settlement and approved by this Order. The Notice Plan shall include the mailed Summary Notice and the Long Notice posted on the Settlement Website, as set forth in the Settlement and below.

Mailed Notice Plan

9. The Settlement Administrator shall administer the Notice Plan. Within five (5) days from the date the preliminary approval order is entered, Defendant will provide the names, email addresses, last known addresses, and telephone numbers of persons within the Settlement Class to

the Settlement Administrator. Within thirty-five (35) days from the date the preliminary approval order is entered, the Settlement Administrator shall mail the Summary Notice to the postal address provided by Defendant.

10. The Settlement Administrator shall provide Class Counsel and Defendant's counsel an affidavit confirming the Notice Plan was completed in a timely manner. Class Counsel shall file such affidavit with the Court in conjunction with Plaintiff's motion for Final Approval of the Settlement.

Settlement Website and Toll-Free Settlement Line

11. The Settlement Administrator shall establish a Settlement Website as a means for persons in the Settlement Class to obtain notice of, and information about, the Settlement. The Settlement Website shall be established as soon as practicable following Preliminary Approval, but no later than the Notice Date.

12. The Settlement Administrator shall establish and maintain a toll-free telephone line for persons in the Settlement Class to call with Settlement-related inquiries, and to provide information to persons who call with or otherwise communicate such inquiries (except that the Settlement Administrator shall not give, and shall not be expected to give, legal advice).

13. The Settlement Administrator is directed to perform all substantive responsibilities with respect to effectuating the Notice Plan, as set forth in the Settlement Agreement.

Final Approval Hearing, Opt-Outs, and Objections

14. The Court directs that a Final Approval Hearing shall be scheduled for **Tuesday, October 29, 2024 @ 9:00 a.m.**, to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether Class Counsel's motion for Fee Award and Costs and request for Service Awards for Class Representatives should be granted.

15. The Court directs that any person within the Settlement Class definition who wishes to be excluded from the Settlement Class may exercise the right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Notice at any time before the Opt-Out Deadline. To be valid and timely, opt-out requests must be postmarked on or before the Opt-Out Deadline and mailed to the address indicated in the Long Notice. The Opt-Out Deadline shall be 60 days after the Notice Date, and shall be specified in the mailed Summary Notice and Long Notice on the settlement website. All persons within the Settlement Class definition who do not timely and validly opt-out of the Settlement Class shall be bound by the terms of the Settlement.

16. The Court further directs that any person in the Settlement Class who does not timely and validly opt-out of the Settlement Class may object to the Settlement, Class Counsel's motion for Fee Award and Costs and/or the request for Service Awards for the Class Representatives. Objections to the Settlement, Fee Application, and/or request for Service Awards must be submitted in writing to the Settlement Administrator and Class Counsel, as detailed in the Notice. Plaintiff shall file all objections with the Court in connection with the filing of her Motion for Final Approval.

17. For an objection to be considered by the Court, the objection must be postmarked no later than the Objection Deadline, which shall be 60 days after the Notice Date, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the case name *Yvonne Ayala v. Commonwealth Health Physician Network dba Great Valley Cardiology, et al*;
- b. the objector's full name, address, telephone number, and e-mail address (if any);

- c. information identifying the objector as a Settlement Class Member, including proof the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Incident);
- d. a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
- e. the identity of all counsel representing the objector;
- f. a statement whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and
- g. 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); and
- h. a list, by 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 within the last five (5) years.

Further Papers in Support of Settlement and Fee Application.

18. Class Counsel shall file their motion for Fee Award and Costs and request for Service Awards for Class Representatives no later than fourteen (14) days prior to the Opt-Out/Objection Deadline.

19. Plaintiff shall file her Motion for Final Approval of the Settlement no later than fourteen (14) days prior to the Final Approval Hearing.

Effect of Failure to Approve the Settlement.

20. In the event the Settlement is not approved by the Court, the Effective Date fails to occur, or for any reason the Parties fail to obtain a final judgment as contemplated in the

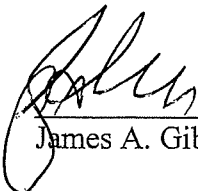
Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- a. All orders and findings entered in connection with the Settlement shall become null and void, and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding.
- b. Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendant or Plaintiff on any point of fact or law.
- c. The certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action based on the Settlement and/or certification of the Settlement Class. Defendant shall not be precluded from challenging class certification in further proceedings in the Action or in any other action. No agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Action or any other action.
- d. Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Notice, court filings, orders, and public statements, may be used as evidence. In addition, neither the fact of, nor any documents relating to, either party's withdrawal from the Settlement, any failure of the Court to approve the Settlement, and/or any objections or interventions may be used as evidence.

21. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing, and the actions that must precede it:

EVENT	DEADLINE
Establish the Settlement Website and toll-free telephone line.	As soon as practicable following the entry of the Preliminary Approval Order and prior to the Notice Date.
Disseminate Summary Notice (“Notice Date”)	June 7, 2024
Objection and Requests for Exclusion (Opt-Out) Deadline.	August 7, 2024
Claims Deadline	September 9, 2024
File Class Counsel’s Motion for Fee Award and Request for Service Awards for Class Representatives	August 21, 2024
File Plaintiff’s Motion for Final Approval of the Settlement	October 15, 2024
FINAL APPROVAL HEARING	OCTOBER 29, 2024 @ 9:00 A.M.

BY THE COURT:


 _____, J.
 James A. Gibbons

Date: May 7, 2024

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