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SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF KING

<p>MICHAEL BERGESON, individually and on behalf of all others similarly situated,</p> <p>Plaintiff(s),</p> <p>v.</p> <p>VIRGINIA MASON MEDICAL CENTER,</p> <p>Defendant.</p>	<p>Case No. 22-2-09089-8 SEA</p> <p>PRELIMINARY APPROVAL ORDER</p> <p><i>Final Approval hearing: 8/9/23 at 1pm (Zoom)</i></p>
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This matter came before the Court on Plaintiff’s Motion for Preliminary Approval of Class Settlement Agreement. Plaintiff Michael Bergeson (“Plaintiff” or “Representative Plaintiff”), individually and on behalf of the proposed Settlement Class, and Defendant Virginia Mason Medical Center (“Defendant”), have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-captioned litigation.

On or about January 16, 2022 through on or about January 20, 2022, Defendant was the victim of a criminal cyberattack in which criminals gained access to Defendant’s network and servers which contained certain personally identifiable information (“PII”) or

1 protected health information (“PHI”) of Plaintiff and the members of the proposed
2 Settlement Class (hereinafter, the “Data Incident”). Defendant promptly responded to and
3 investigated the Data Incident and provided all potentially impacted individuals with notice
4 of the Data Incident. The notification letter detailed Defendant’s investigation and
5 restoration efforts, and provided an offer of a complimentary credit monitoring and identity
6 theft protection services. Defendant also provided notice to applicable regulating entities,
7 including the Department of Health and Human Services Office of Civil Rights in
8 accordance with the Health Insurance Portability and Accountability Act.
9

10 On June 17, 2022, Representative Plaintiff filed his complaint for a putative class
11 action against Defendant in this Court. The complaint (“Complaint”) asserts ten causes of
12 action, all of which allegedly arise from the Data Incident: (1) violation of the Washington
13 State Uniform Healthcare Information Act; (2) violation of the Washington State
14 Consumer Protection Act; (3) negligence; (4) negligence *per se*; (5) breach of express
15 contract; (6) breach of implied contract; (7) breach of the implied covenant of good faith
16 and fair dealing; (8) breach of confidence; (9) unjust enrichment; and (10) breach of
17 fiduciary duty
18

19 Representative Plaintiff and Defendant agreed that an early resolution of the above-
20 captioned litigation (the “Litigation”) was warranted. Through their counsel,
21 Representative Plaintiff and Defendant engaged in extensive discussions regarding
22 potential resolution before ultimately reaching a settlement in principle as to all claims.
23 The Parties have agreed to settle this action, pursuant to the terms of the Settlement
24 Agreement, and subject to the approval and determination of the Court as to the fairness,
25

1 reasonably, and adequacy of the Settlement which, if approved, will result in dismissal
2 of this action with prejudice.

3 Having reviewed the Settlement Agreement, including the exhibits attached
4 thereto, and all prior proceedings herein, and for good cause shown, it is hereby ordered
5 that Plaintiff's Motion for Preliminary Approval is granted as set forth herein.¹
6

7 **1. Class Certification for Settlement Purposes Only.** For settlement
8 purposes only and pursuant to Wash. Sup. Ct. Civ. R. 23(b)(3) and (e), the Court
9 provisionally certifies a Settlement Class in this matter defined as follows:

10 All persons who were sent written notification by VMMC that their personally
11 identifiable information was potentially compromised as a result of the Incident.

12 The Settlement Class includes approximately 1,553 people. The Settlement Class
13 specifically excludes: (i) all Class Members who timely and validly request exclusion from
14 the Settlement Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and
15 (iii) any other person found by a court of competent jurisdiction to be guilty under criminal
16 law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data
17 Incident or who pleads *nolo contendere* to any such charge.
18

19 The Court provisionally finds, for settlement purposes only, that: (a) the Settlement
20 Class is so numerous that joinder of all Settlement Class Members would be impracticable;
21 (b) there are issues of law and fact common to the Settlement Class; (c) the claims of the
22 Settlement Class Representative are typical of and arise from the same operative facts and
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¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in
the Settlement Agreement.

1 seek similar relief as the claims of the Settlement Class Members; (d) the Settlement Class
2 Representative and Settlement Class Counsel will fairly and adequately protect the interests
3 of the Settlement Class as the Settlement Class Representative has no interest antagonistic
4 to or in conflict with the Settlement Class and has retained experienced and competent
5 counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or
6 fact common to Settlement Class Members predominate over any questions affecting only
7 individual members; and (f) a class action and class settlement is superior to other methods
8 available for a fair and efficient resolution of this controversy.
9

10 **2. Settlement Class Representatives and Settlement Class Counsel.**

11 Michael Bergeson is hereby provisionally designated and appointed as the
12 Settlement Class Representative. The Court provisionally finds that the Settlement Class
13 Representative is similarly situated to absent Class Members and therefore typical of the
14 Class and that they will be an adequate Settlement Class Representative.
15

16 The Court finds that the following counsel are experienced and adequate counsel
17 and are hereby provisionally designated as Settlement Class Counsel under Wash. Sup. Ct.
18 Civ. R. 23(a)(4): David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC.
19

20 **3. Preliminary Settlement Approval.** Upon preliminary review, the Court
21 concludes and finds that the proposed Settlement is fair, reasonable, and adequate to
22 warrant providing Notice of the Settlement to the Settlement Class and accordingly is
23 preliminarily approved.

24 **4. Jurisdiction.** The Court concludes that it has subject matter jurisdiction and
25 personal jurisdiction over the Parties before it for the purposes of the Settlement.

1 Additionally, venue is proper in this Court as a substantial portion of the acts and
2 transactions complained of occurred in this county and Defendants conduct substantial
3 business throughout this county.

4 **5. Final Approval Hearing.** A Final Approval Hearing shall be held on
5 August 9, 2023 at 1 am (pm) in the Superior Court of the State of Washington, County of King,
6 Maleng Regional Justice Center, Courtroom 4C, by videoconference to determine, among
7 other things, whether: (a) this matter should be finally certified as a class action for
8 settlement purposes pursuant to Wash Sup. Ct. Civ. R. 23(b)(3) and (e); (b) the Settlement
9 should be finally approved as fair, reasonable, and adequate pursuant to Wash Sup. Ct. Civ.
10 R. 23(e); (c) the action should be dismissed with prejudice pursuant to the terms of the
11 Settlement Agreement; (d) Settlement Class Members should be bound by the releases set
12 forth in the Settlement Agreement; (e) the motion of Settlement Class Counsel for an award
13 of attorneys' fees, costs, and expenses (the "Fee Request") should be approved; and (f) the
14 motion of the Settlement Class Representative for an Service Award (the "Service Award
15 Request") should be approved. Plaintiffs' Motion for Final Approval of the Settlement,
16 Service Award Request, and Fee Request shall be filed with the Court at least 30 Days
17 prior to the Final Approval Hearing. By no later than 14 Days prior to the Final Approval
18 Hearing, the Parties shall file responses, if any, to any objections, and any replies in support
19 of final approval of the Settlement and/or the Service Award Request and Fee Request.
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23 **6. Administration.** The Court appoints Postlethwaite & Netterville as the
24 Settlement Administrator, with responsibility for class notice and claims administration
25 and to fulfill the duties of the Settlement Administrator set forth in the Settlement

1 Agreement. Defendants shall pay all costs and expenses associated with providing notice
2 to Settlement Class Members including, but not limited to, the Settlement Administrator's
3 fees, as well as the costs associated with administration of the Settlement.

4 **7. Notice to the Class.** The proposed Notice Program set forth in the
5 Settlement Agreement, and the Claim Form, Short-Form Notice, and Long-Form Notice
6 attached to the Settlement Agreement as Exhibits A, B, and C satisfy the requirements of
7 Wash. Sup. Ct. Civ. R. 23(c)(2) and (e), provide the best notice practicable under the
8 circumstances, and are hereby approved. Non-material modifications to these Exhibits may
9 be made without further order of the Court. The Settlement Administrator is directed to
10 carry out the Notice Program in conformance with the Settlement Agreement.

11 Within **30 days from the date of this Order** (the "Notice Deadline"), the
12 Settlement Administrator shall complete the Notice Program in the manner set forth in
13 Section 3 of the Settlement Agreement.

14 **8. Findings and Conclusions Concerning Notice.** The Court finds that the
15 form, content, and method of giving notice to the Settlement Class as described in
16 Paragraph 8 of this Order and the Settlement Agreement (including the exhibits thereto):
17 (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably
18 calculated to apprise Settlement Class Members of the pendency of the action, the terms of
19 the proposed Settlement, and their rights under the proposed Settlement, including but not
20 limited to their rights to object to or exclude themselves from the proposed Settlement and
21 other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute
22 due, adequate, and sufficient notice to all Class Members and other persons entitled to
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1 receive notice; and the Court concludes that the Notice Program meets all applicable
2 requirements of law, including Wash. Sup. Ct. Civ. R. 23(c) and (e), and the Due Process
3 Clause(s) of the United States Constitution. The Court further finds that the Notice is
4 written in plain language, uses simple terminology, and is designed to be readily
5 understandable by Class Members.
6

7 **9. Exclusion from Class.** Any Settlement Class Member who wishes to be
8 excluded from the Settlement Class must mail a written notification of the intent to exclude
9 himself or herself from the Settlement Class to the Settlement Administrator at the address
10 provided in the Notice, postmarked no later than **60 Days from the date of this Order**
11 (the “Opt-Out Period”). The written notification must include the individual’s full name,
12 address, and telephone number; an unequivocal statement that he or she wants to be
13 excluded from the Settlement Class; and the original signature of the individual or a person
14 previously authorized by law, to act on behalf of the individual with respect to the claims
15 asserted in this Action.
16

17 The Settlement Administrator shall provide the Parties with copies of all completed
18 opt-out notifications, and a final list of all who have timely and validly excluded themselves
19 from the Settlement Class, which Settlement Class Counsel may move to file with the Court
20 no later than **10 Days prior to the Final Approval Hearing.**
21

22 Any Settlement Class Member who does not timely and validly exclude herself or
23 himself from the Settlement shall be bound by the terms of the Settlement Agreement. If
24 Final Order and Judgment is entered, any Settlement Class Member who has not submitted
25 a timely, valid written notice of exclusion from the Settlement Class shall be bound by all

1 proceedings, orders, and judgments in this matter, including but not limited to the Release
2 set forth in the Final Order and Judgment, including Settlement Class Members who have
3 previously initiated or who subsequently initiate any litigation against any or all of the
4 Released Persons relating to the claims and transactions released in the Settlement
5 Agreement. All Settlement Class Members who submit valid and timely notices of
6 exclusion from the Settlement Class shall not be entitled to receive any benefits of the
7 Settlement.
8 Settlement.

9 **10. Objections and Appearances.** A Settlement Class Member who complies
10 with the requirements of this paragraph may object to the Settlement, the Service Award
11 Request, or the Fee Request.

12 No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or
13 other documents submitted by any Settlement Class Member shall be received and
14 considered by the Court, unless the objection is mailed first-class postage prepaid to the
15 Settlement Administrator, Plaintiff's Counsel and Defendant's Counsel at the addresses
16 listed in the Notice, and postmarked by no later than the Objection Date, as specified in the
17 Notice. For an objection to be considered by the Court, the objection must also include all
18 of the information set forth in Paragraph 45 of the Settlement Agreement, which is as
19 follows:
20 follows:
21

22 (a) the name of the proceedings ("*Bergeson v. Virginia Mason Medical*
23 *Center*");

24 (b) the Settlement Class Member's full name, current mailing address, and
25 telephone number;

1 (c) a statement of the specific grounds for the objection, as well as any
2 documents supporting the objection;

3 (d) the identity of any attorneys representing the objector; and

4 (e) the signature of the Settlement Class Member or the Settlement Class
5 Member's attorney.

6 Any Settlement Class Member who fails to comply with the provisions in this
7 Paragraph may waive and forfeit any and all rights he or she may have to object, and shall
8 be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings,
9 orders, and judgments in this matter, including, but not limited to, the release in the
10 Settlement Agreement if Final Order and Judgment is entered.

11 Any Settlement Class Member, including a Settlement Class Member who serves
12 a written objection, as described above, may appear at the Final Approval Hearing, either
13 in person or through counsel hired at the Settlement Class Member's expense, to object to
14 or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service
15 Award Request, or the Fee Request.

17 If Final Order and Judgment is entered, any Settlement Class Member who fails to
18 object in the manner prescribed herein shall be deemed to have waived his or her objections
19 and shall be forever barred from making any such objections in this action or in any other
20 proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any
21 approval of the Settlement Agreement, the Service Award Request, or the Fee Request.

22
23 **11. Claims Process and Distribution and Allocation Plan.** Settlement Class
24 Representative and Defendant have created a process for assessing and determining the
25 validity and value of claims and a payment methodology to Settlement Class Members who

1 submit a timely, valid Claim Form. The Court preliminarily approves the plan for
2 remuneration described in the Settlement Agreement and directs that the Settlement
3 Administrator effectuate the distribution of Settlement consideration according to the terms
4 of the Settlement Agreement, should the Settlement be finally approved.

5
6 Settlement Class Members who qualify for and wish to submit a Claim Form shall
7 do so in accordance with the requirements and procedures specified in the Notice and the
8 Claim Form. If Final Order and Judgment is entered, all Settlement Class Members who
9 qualify for any benefit under the Settlement but fail to submit a claim in accordance with
10 the requirements and procedures specified in the Notice and the Claim Form shall be
11 forever barred from receiving any such benefit, but will in all other respects be subject to
12 and bound by the provisions in the Settlement Agreement, the Release included in that
13 Settlement Agreement, and the Final Order and Judgment.

14
15 **12. Termination of Settlement.** This Order shall become null and void and
16 shall be without prejudice to the rights of the Parties, all of whom shall be restored to their
17 respective positions existing as of the date of the execution of the Settlement Agreement if
18 the Settlement is not finally approved by the Court or is terminated in accordance with the
19 Settlement Agreement. In such event, the Settlement and Settlement Agreement shall
20 become null and void and be of no further force and effect, and neither the Settlement
21 Agreement nor the Court's orders, including this Order, relating to the Settlement shall be
22 used or referred to for any purpose whatsoever.

23
24 **13. Use of Order.** This Order shall be of no force or effect if Final Order and
25 Judgment is not entered or there is no Effective Date and shall not be construed or used as

1 an admission, concession, or declaration by or against Defendants of any fault,
2 wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be
3 construed or used as an admission, concession, or declaration by or against the Settlement
4 Class Representative or any other Settlement Class Member that his or her claim lacks
5 merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by
6 any Party of any defense or claim he, she, or it may have in this litigation or in any other
7 lawsuit.
8

9 **14. Stay of Proceedings.** Except as necessary to effectuate this Order, all
10 proceedings and deadlines in this matter are stayed and suspended pending the Final
11 Approval Hearing and issuance of the Final Order and Judgment, or until further order of
12 this Court.
13

14 **15. Continuance of Hearing.** The Court reserves the right to adjourn or
15 continue the Final Approval Hearing and related deadlines without further written notice
16 to the Settlement Class. If the Court alters any of those dates or times, the revised dates and
17 times shall be posted on the website maintained by the Settlement Administrator.
18

19 **16. Summary of Deadlines.** The preliminarily approved Settlement shall be
20 administered according to its terms pending the Final Approval Hearing. Deadlines arising
21 under the Settlement Agreement and this Order include but are not limited to:

22 **Notice Completion Deadline:** 30 Days after Preliminary Approval

23 **Motion for Final Approval:** 30 Days before Final Approval Hearing

24 **Motion for Service Awards, Attorneys' Fees and Costs:** 14-Days prior to the
25 Objection Deadline and Opt-Out Deadline

Opt-Out Deadline: 60 Days after Notice Completion

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Objection Deadline: 60 Days after Notice Completion

Replies in Support of Final Approval, Service Awards and Fee Requests: 14 Days before Final Approval Hearing

Claim Deadline: 90 Days after Notice Completion

Final Approval Hearing: at least 110 Days after Preliminary Approval

IT IS SO ORDERED this 7th day of April, 2023.



Judge Maureen McKee

1 Submitted by:

2 *D.W.M.*

3 _____
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