

THE HONORABLE MAUREEN McKEE
Noted for Hearing: August 9, 2023
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MICHAEL BERGESON, individually and on
behalf of others
similarly situated,

Plaintiff,

v.

VIRGINIA MASON MEDICAL CENTER,

Defendants.

NO. 22-2-09089-8 SEA

~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL AND JUDGMENT

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APPROVAL AND JUDGMENT - 1

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1 Before the Court is Plaintiff's unopposed motion requesting that the Court enter an Order
2 granting final approval of the class action Settlement involving Plaintiff Michael Bergeson
3 ("Plaintiff" or "Representative Plaintiff") and Defendant Virginia Mason Medical Center
4 ("Defendant") as fair, reasonable, and adequate.
5

6 Having reviewed and considered the Settlement Agreement and the motion for final
7 approval of the settlement, and having conducted a Final Approval Hearing, the Court makes the
8 findings and grants the relief set forth below, approving the Settlement upon the terms and
9 conditions set forth in this Final Order and Judgment.

10 **THE COURT** not being required to conduct a trial on the merits of the case or determine
11 with certainty the factual and legal issues in dispute when determining whether to approve a
12 proposed class action settlement; and
13

14 **THE COURT** being required under Wash. Sup. Ct. Civ. R. 23(e) to make the findings and
15 conclusions hereinafter set forth for the limited purpose of determining whether the Settlement
16 should be approved as being fair, reasonable, adequate and in the best interests of the Settlement
17 Class;

18 **IT IS ON THIS** 23rd day of August, 2023,

19 **ORDERED** that:

- 20
- 21 1. The Settlement involves allegations in Plaintiff's Class Action Complaint that Defendant
22 failed to safeguard and protect the personally identifiable information and/or protected
23 health information Settlement Class Members and that this alleged failure caused injuries
24 to Plaintiff and the Class.
 - 25 2. The Settlement does not constitute an admission of liability by Defendant, and the Court
26 expressly does not make any finding of liability or wrongdoing by Defendant.

1 3. Unless otherwise noted, words spelled in this Order with initial capital letters have the same
2 meaning as set forth in the Settlement Agreement.

3 4. On April 7, 2023, the Court entered an Order which among other things: (a) approved the
4 Notice to the Settlement Class, including approval of the form and manner of notice under
5 the Notice Program set forth in the Settlement Agreement; (b) provisionally certified a
6 class in this matter, including defining the class, appointed Plaintiffs as the Settlement
7 Class Representatives, and appointed Settlement Class Counsel; (c) preliminarily approved
8 the Settlement; (d); set deadlines for opt-outs and objections; (e) approved and appointed
9 the Claims Administrator; and (f) set the date for the Final Approval Hearing.

10 5. In the Order Granting the Motion for Preliminary Approval of Class Settlement Agreement,
11 pursuant to Wash. Sup. Ct. Civ. R. 23(b)(3) and 23(e), for settlement purposes only, the
12 Court certified the Settlement Class, defined as follows:
13

14 All persons who were sent written notification by VMMC that their personally identifiable
15 information was potentially compromised as the result of the Data Incident.

16 Excluded from the Settlement Class are: (i) all Class Members who timely and validly
17 request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the fairness of
18 this settlement; and (iii) any other person found by a court of competent jurisdiction to be guilty
19 under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of
20 the Data Incident or who pleads *nolo contendere* to any such charge.
21

22 6. The Court, having reviewed the terms of the Settlement Agreement submitted by the parties
23 pursuant to Wash. Sup. Ct. Civ. R. 23(e), grants final approval of the Settlement Agreement
24 and defines the Settlement Class as defined therein and in the Preliminary Approval Order,
25
26

1 and finds that the settlement is fair, reasonable, and adequate and meets the requirements
2 of Wash. Sup. Ct. Civ. R. 23.

3 7. The Settlement Agreement provides, in part, and subject to a more detailed description of
4 the settlement terms in the Settlement Agreement, for:
5

6 a. A process for Settlement Class Members to submit claims for compensation and
7 credit monitoring and identity theft protection services that will be evaluated by the
8 Settlement Administrator.

9 b. Defendant to pay all Notice and Claims Administration costs.

10 c. Defendant to pay a Court-approved amount for attorneys' fees, costs, and expenses
11 of Settlement Class Counsel of \$100,000.

12 d. Defendant to pay a Service Award of \$1,500 to the Representative Plaintiff.

13
14 8. The terms of the Settlement Agreement are fair, reasonable, and adequate and are hereby
15 approved, adopted, and incorporated by the Court. The Parties, their respective attorneys,
16 and the Claims Administrator are hereby directed to consummate the Settlement in
17 accordance with this Order and the terms of the Settlement Agreement.

18 9. Notice of the Final Approval Hearing, the proposed motion for attorneys' fees, costs, and
19 expenses, and the proposed Service Award payment to Plaintiffs have been provided to
20 Settlement Class Members as directed by this Court's Orders, and an affidavit or
21 declaration of the Settlement Administrator's compliance with the Notice Program has
22 been filed with the Court.

23
24 10. The Court finds that such Notice as therein ordered, constitutes the best possible notice
25 practicable under the circumstances and constitutes valid, due, and sufficient notice to all
26

1 Settlement Class Members in compliance with the requirements of Wash. Sup. Ct. Civ. R.
2 23(c)(2).

3 11. As of the final date of the Opt-Out Period, no potential Settlement Class Members have
4 submitted a valid Opt-Out Request to be excluded from the Settlement.

5 12. The Court has considered all the documents filed in support of the Settlement, and has fully
6 considered all matters raised, all exhibits and affidavits filed, all evidence received at the
7 Final Approval Hearing, all other papers and documents comprising the record herein, and
8 all oral arguments presented to the Court.

9 13. Pursuant to the Settlement Agreement, Defendants, the Claims Administrator, and the
10 Claims Referee shall implement the Settlement in the manner and time frame as set forth
11 therein.

12 14. Pursuant to the Settlement Agreement, Plaintiffs and the Settlement Class Members release
13 claims against Defendants and all Released Persons, as defined in the Settlement
14 Agreement, as follows:

15 any and all claims and causes of action including, without limitation, any causes of action
16 under or relying on the Washington State Uniform Healthcare Information Act; the
17 Washington State Consumer Protection Act; negligence; breach of contract; breach of implied
18 contract; breach of fiduciary duty; breach of confidence; invasion of privacy/intrusion upon
19 seclusion; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment;
20 bailment; wantonness; failure to provide adequate notice pursuant to any breach notification
21 statute or common law duty; and including, but not limited to, any and all claims for damages,
22 injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and
23 expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future
24 damages, statutory damages, punitive damages, special damages, exemplary damages,
25 restitution, the appointment of a receiver, and any other form of relief that either has been
26 asserted, or could have been asserted, by any Settlement Class Member against any of the
Released Persons based on, relating to, concerning or arising out of the Data Incident and
alleged theft of personally identifiable information, protected health information, or other
personal information or the allegations, facts, or circumstances described in the Litigation.
Released Claims shall not include the right of any Settlement Class Member or any of the
Released Persons to enforce the terms of the settlement contained in this Settlement


1 Agreement, and shall not include the claims of Settlement Class Members who have timely
2 excluded themselves from the Settlement Class.

3 15. On the Effective Date and in consideration of the promises and covenants set forth in this
4 Settlement Agreement, each of the Settlement Class Members, including Plaintiff, and each
5 of their respective heirs, executors, trustees, administrators, representatives, agents,
6 partners, successors, attorneys, and assigns (the "Releasing Parties") shall be deemed to
7 have, and by operation of the Order and Final Judgment shall have, fully, finally and
8 forever released, relinquished acquitted, and discharged any and all Released Claims
9 against Released Persons. Further, upon the Effective Date, each Settlement Class
10 Member, including Plaintiff, shall, either directly, indirectly, representatively, as a member
11 of or on behalf of the general public in any capacity, be permanently barred and enjoined
12 from commencing, prosecuting, or participating in any recovery in any action in this or any
13 other form (other than participation in the settlement as provided for herein) in which any
14 of the Released Claims is asserted.
15

16 16. The matter is hereby dismissed with prejudice and without costs except that the Court
17 reserves jurisdiction over the consummation and enforcement of the Settlement.
18

19 17. In accordance with Wash. Sup. Ct. Civ. R. 23, this Final Order and Judgment resolves all
20 claims against all parties in this Action and is a final order. There is no just reason to delay
21 the entry of final judgment in this matter, and the Clerk is directed to file this Order as the
22 final judgment in this matter.

23 IT IS SO ORDERED this 23rd day of August, 2023.
24

25 
26 The Honorable Maureen McKee
King County Superior Court Judge

1 Presented by:

2 **FRANK FREED SUBIT & THOMAS LLP**

3 By: /s/ Michael C. Subit

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