

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA**

BARBARA A. DITTMAN, GARY R. :  
DOUGLAS, ALICE PASTIRIK, : CIVIL DIVISION  
JOANN DECOLATI, TINA :  
SORRENTINO, KRISTEN : CASE NO. GD-14-003285  
CUSHMAN, and SHANNON :  
MOLYNEAUX, individually and on :  
behalf of all others similarly situated, :

Plaintiffs, :

v. :

UPMC d/b/a THE UNIVERSITY OF :  
PITTSBURGH MEDICAL CENTER, :  
and UPMC MCKEESPORT, :

Defendants.

DEPT. OF COURT RECORDS  
CIVIL/FAMILY DIVISION  
ALLEGHENY COUNTY PA

2021 DEC 29 AM 10:21

FILED

**FINAL APPROVAL ORDER AND JUDGMENT**

On July 22, 2021, this Court entered an order granting preliminary approval (the “Preliminary Approval Order”) of the Settlement between the Plaintiffs, on their own behalf and on behalf of the Settlement Class, and the Defendants UPMC d/b/a The University of Pittsburgh Medical Center, and UPMC McKeesport (collectively, “Defendants” or “UPMC”), as memorialized in the attachment to Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement;<sup>1</sup>

Beginning on August 23, 2021, pursuant to the notice requirements set forth in the Settlement and in the Preliminary Approval Order, the Settlement Class was apprised of the nature and pendency of the Litigation, the terms of the Settlement, and their rights to request exclusion, file claims, object, and/or appear at the final approval hearing;

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<sup>1</sup> The capitalized terms used in this Final Approval Order and Judgment shall be construed according to their meaning as defined in the Settlement except as may otherwise be indicated.

On November 29, 2021, Plaintiffs filed their Motion for Final Approval of the Class Action Settlement (“Final Approval Motion”) and accompanying Memorandum of Law and supporting exhibits, and on November 5, 2021, Class Counsel filed their Application for Attorneys’ Fees, Expenses and Service Awards and accompanying Memorandum of Law and supporting exhibits (“Fee Application”);

On December 29, 2021, the Court held a final approval hearing to determine, inter alia: (1) whether the Settlement is fair, reasonable, and adequate; and (2) whether judgment should be entered dismissing all claims in the Second Amended Complaint with prejudice. Prior to the final approval hearing, Class Counsel filed a declaration from the Settlement Administrator confirming that the Notice Program was completed in accordance with the Parties’ instructions and the Preliminary Approval Order. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right to appear at the final approval hearing in support of or in opposition to the proposed Settlement, the award of attorneys’ fees, costs, and expenses, and the payment of Service Awards.

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Class Counsel and counsel for UPMC, having reviewed all of the submissions presented with respect to the proposed Settlement, having determined that the Settlement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys’ fees, costs, and expenses, and the application for Service Awards, and having reviewed the materials in support thereof, and good cause appearing in the record and Plaintiffs’ Final Approval Motion is **GRANTED**, and Class Counsel’s Fee Application is **GRANTED**, and:

**IT IS HEREBY ORDERED THAT:**

1. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all Parties thereto, including the Settlement Class. The Court also has personal jurisdiction over the Parties and the Settlement Class Members.

2. The Settlement was entered into in good faith following arm's length negotiations and is non-collusive.

3. The Settlement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Settlement Class, and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays and uncertainties, including as to the outcome, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement is fair, reasonable, adequate and in the best interests of the Settlement Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the Settlement.

4. This Court grants final approval of the Settlement, including but not limited to the releases in the Settlement and the plans for distribution of the settlement relief. The Court finds that the Settlement is in all respects fair, reasonable, and in the best interest of the Settlement Class. Therefore, all Settlement Class Members who have not opted out are bound by the Settlement and this Final Approval Order and Judgment.

5. The Settlement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force of an Order of this Court.

6. The Parties shall effectuate the Settlement in accordance with its terms.

#### **OBJECTIONS AND OPT-OUTS**

7. No objections were filed by Settlement Class Members. The Court has considered all objections and finds the objections do not counsel against Settlement approval, and the objections are hereby overruled in all respects.

8. All persons who have not objected to the Settlement in the manner provided in the Settlement are deemed to have waived any objections to the Settlement, including but not limited to by appeal, collateral attack, or otherwise.

9. A list of those putative Settlement Class Members who have timely and validly elected to opt out of the Settlement and the Settlement Class in accordance with the requirements in the Settlement (the "Opt-Out Members") has been submitted to the Court in the Declaration of Orlando Castillejos, filed in advance of the final approval hearing. That list is attached as Exhibit A to this Order. The persons and/or entities listed in Exhibit A are not bound by the Settlement, this Final Approval Order and Judgment, and are not entitled to any of the benefits under the Settlement. Opt-Out Members listed in Exhibit A shall be deemed not to be Releasing Parties.

#### **CLASS CERTIFICATION**

10. For purposes of the Settlement and this Final Approval Order and Judgment, the Court hereby finally certifies for settlement purposes only the following Settlement Class:

All persons who were employed by a UPMC entity and whose Personally Identifying Information was contained in or on the UPMC computer system and was potentially accessed, stolen, or compromised as a result of the Data Breach first announced by UPMC in February 2014.

Excluded from the class are the Court, any immediate family members of the Court; and individuals who timely and validly request exclusion from the Settlement Class.

11. The Court determines that for settlement purposes the Settlement Class meets all the requirements of Pa. R. Civ. P. 1702, 1708, and 1709, namely that the class is so numerous that joinder of all members is impractical; that there are common issues of law and fact; that the claims of the class representatives are typical of absent class members; that the class representatives will fairly and adequately protect the interests of the class, as they have no interests antagonistic to or in conflict with the class and have retained experienced and competent counsel to prosecute this matter; and that a class action is a fair and efficient method for adjudicating this controversy.

12. The Court grants final approval to the appointment of Barbara Dittman, Gary Douglas, Alice Pastirik, Joann Decolati, Tina Sorrentino, Kirsten Cushman, and Shannon Molyneaux are designated as Settlement Class Representatives. The Court concludes that the Settlement Class Representatives have fairly and adequately represented the Settlement Class and will continue to do so.

13. The Court grants final approval to the appointment of Gary F. Lynch and Jamisen A. Etzel of Lynch Carpenter, LLP as Class Counsel. The Court concludes that Class Counsel have adequately represented the Settlement Class and will continue to do so.

#### **NOTICE TO THE SETTLEMENT CLASS**

14. The Court finds that the Notice Program, set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, satisfied Pa. R. Civ. P. 1712 and 1714, the constitutional requirement of due process, and any other legal requirements, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Litigation, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement, their right to exclude themselves, their right to object to the Settlement and to appear at the Final Approval Hearing, and satisfied the other requirements of the Pennsylvania Rules of Civil Procedure and all other applicable laws.

#### **AWARD OF ATTORNEYS' FEES AND SERVICE AWARDS**

15. The Court has considered Class Counsel's Motion for attorneys' fees, costs, and expenses, and for Service Awards.

16. Pursuant to Rule 1717 and applicable caselaw, the Court awards Class Counsel \$750,000 as an award of reasonable attorneys' fees and reimbursement of reasonable expenses in accordance with the Settlement. The Court finds this amount of fees, costs, and expenses to be fair

and reasonable in light of: 1) the time and effort reasonably expended by Class Counsel in the litigation; the quality of the services rendered; the results achieved and benefits conferred upon the Settlement Class; the magnitude, complexity, and uniqueness of the litigation, and the fact that Class Counsel provided their services on a contingency fee basis. This award of attorneys' fees, costs, and expenses, shall be paid by UPMC in accordance with the Settlement. This award of attorneys' fees, costs, and expenses is independent of the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement.

17. The Court grants Class Counsel's request for Service Awards and awards \$3,000 to each named Plaintiff: Barbara Dittman, Gary Douglas, Alice Pastirik, Joann Decolati, Tina Sorrentino, Kirsten Cushman, and Shannon Molyneaux.

18. The Court finds that this payment is justified by their service to the Settlement Class. These Service Awards shall be paid by UPMC in accordance with the Settlement.

#### **OTHER PROVISIONS**

19. The Parties to the Settlement shall carry out their respective obligations thereunder.

20. Within the time period set forth in the Settlement, the relief provided for in the Settlement shall be made available to the Settlement Class Members submitting valid Claim Forms or receiving Unclaimed Distribution payments, pursuant to the terms and conditions of the Settlement.

21. As of the Effective Date, the Releasing Parties, each on behalf of themselves and any assigns, estates, or heirs, and any other entity purporting to claim through or on behalf of them directly or indirectly, shall automatically be deemed to have fully, completely, finally, irrevocably, and forever released and discharged Defendants' Released Persons of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown (including Unknown Claims), existing or

potential, suspected or unsuspected, liquidated or unliquidated, legal, administrative, statutory, or equitable, that are, were or could have been asserted in the Litigation or the Complaint, including claims that result from, arise out of, are based upon, or relate to the Data Breach, including any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of: (a) UPMC's information security policies and practices around or before the time of the Data Breach announced by UPMC in February 2014; (b) the allegations, facts, and/or circumstances described in the Litigation and/or Complaint; (c) UPMC's response to and notices about the Data Breach; (d) the fraudulent use of any PII accessed, compromised, or stolen as a result of the Data Breach; and (e) any expenses incurred investigating, responding to, or mitigating potential damage from the theft or illegal use of PII accessed, compromised, or stolen during Data Breach (the "Released Claims").

22. Settlement Class Members are deemed to have waived the provisions, rights, and benefits conferred by Cal. Civ. Code §1542 to the extent applicable, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, Montana Code Ann. §28-1-1602; North Dakota Cent. Code §9-13-02; and South Dakota Codified Laws §20-7-11), which is similar, comparable, or equivalent to Cal. Civ. Code §1542, which provides:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

23. As of the Effective Date, Defendants' Released Persons will be deemed to have completely released and forever discharged the Releasing Parties and Plaintiffs' Released Persons from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands of any kind whatsoever, whether known or unknown, existing or potential, or

suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the Litigation, except for claims relating to the enforcement of the Settlement or the Parties' Agreement, and for the submission of false or fraudulent claims for Settlement benefits. For the avoidance of doubt, Defendants' Released Persons release, as set forth in this Paragraph, does not include entities that do not meet the definition of either Releasing Parties or Plaintiffs' Released Persons.

24. The Settlement Class Representatives and Settlement Class Members are enjoined from prosecuting any Released Claims in any proceeding against any of the Defendants' Released Persons or prosecuting any claim based on any actions taken by any of the Defendants' Released Persons that are authorized or required by this Settlement or by the Final Approval Order and Judgment. It is further agreed that the Settlement and/or this Final Approval Order and Judgment may be pleaded as a complete defense to any proceeding subject to this section.

25. This Final Approval Order and Judgment and the Settlement, and all acts, statements, documents, and proceedings relating to the Settlement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against UPMC of any claim, any fact alleged in the Litigation, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of UPMC or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the Litigation.

26. This Final Approval Order and Judgment, the Settlement, and all acts, statements, documents, and proceedings relating to the Settlement shall not be offered, received, or admissible in evidence in any action or proceeding, or be used in any way as an admission, concession or evidence of any liability or wrongdoing of any nature or that Plaintiffs, any Settlement Class Member, or any other person has suffered any damage; *provided, however*, that nothing in the



foregoing, the Settlement, or this Final Approval Order and Judgment shall be interpreted to prohibit the use of the Settlement or this Final Approval Order and Judgment in a proceeding to consummate or enforce the Settlement or this Final Approval Order and Judgment (including all releases in the Settlement and Final Approval Order and Judgment), or to defend against the assertion of any Released Claims in any other proceeding, or as otherwise required by law.

27. The Settlement's terms shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims (and other prohibitions set forth in this Final Approval Order and Judgment) that are brought, initiated, or maintained by, or on behalf of, any Settlement Class Member who is not an Opt-Out Member or any other person subject to the provisions of this Final Approval Order and Judgment.


28. The Court hereby dismisses the Litigation and Complaint and all claims therein on the merits and with prejudice, without fees or costs to any Party except as provided in this Final Approval Order and Judgment.

29. Consistent with the Settlement, if the Effective Date, as defined in the Settlement Agreement, does not occur for any reason, this Final Approval Order and Judgment and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever; the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement, the Preliminary Approval Order, and this Final Approval Order and Judgment shall cease to be of any force and effect, and the Parties shall return to the status quo ante in the Litigation as if the Parties had not entered into the Settlement. In such an event, the Parties shall be restored to their respective positions in the Litigation as if the Settlement Agreement had never been entered into (and without prejudice to any of the Parties' respective positions on the issue of class certification or any other issue).

30. Without affecting the finality of this Final Approval Order and Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement for all purposes, including enforcement of its terms at the request of any party and resolution of any disputes that may arise relating in any way to, arising from, the implementation of the Settlement or the implementation of this Final Order and Judgment.

**ENTERED:**

DATED: December 29, 2021

  
The Honorable Philip A. Ignelzi