

**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.	:	

ORDER OF COURT

AND NOW, this 22nd day of July, 2021, upon review of Plaintiffs' Unopposed Motion for Class Certification and Preliminary Approval of Proposed Settlement Agreement as between Plaintiffs Barbara Dittman, Gary Douglas, Alice Pastirik, Joann Decolati, Tina Sorrentino, Kirsten Cushman, and Shannon Molyneaux on behalf of themselves and a proposed class, and Defendants UPMC d/b/a The University of Pittsburgh Medical Center, and UPMC McKeesport, it is hereby ORDERED, and DECREED as follows:

1. The Court has reviewed the Parties' Proposed Settlement Agreement and Exhibits attached thereto, Plaintiffs' unopposed motion for preliminary approval, and memorandum in support.
2. To the extent not otherwise defined herein, all capitalized terms shall have the meanings attributed to them in the Agreement.
3. The Court has jurisdiction over the subject matter of this action, and personal jurisdiction over all parties to the litigation, including all Class Members.

Conditional Settlement Class Certification

4. The Court conditionally certifies the following Settlement Class pursuant to Pa. R. Civ. P. 1702, 1708, 1709, 1710 and 1714:

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.

5. The Court finds that all elements of settlement class certification are satisfied and that conditional certification of the class is appropriate based on the following findings:

- a. The named Plaintiffs Barbara Dittman, Gary Douglas, Alice Pastirik, Joann Decolati, Tina Sorrentino, Kirsten Cushman, and Shannon Molyneaux are members of the Settlement Class;
- b. There are approximately 66,000 Settlement Class Members, making joinder of all members impracticable;
- c. There are questions of law and fact common to the Settlement Class, such as whether the 2014 UPMC Data Breach was the result of a breach of duty of care on the part of Defendants;
- d. The claims presented by the named Plaintiffs are typical of the claims presented by the Class;
- e. Due to the large number of Class Members, the risks of separate actions and/or other litigation may be significant in the absence of certification of the class, thereby justifying the maintenance of this suit as one class action;

- f. The named Plaintiffs have to date fairly and adequately asserted and protected the interests of the Settlement Class; their attorneys are experienced in data breach class litigation, the named Plaintiffs have no conflicts of interest in the maintenance of this action; and, because costs are being advanced by Plaintiffs' counsel and there is no question that counsel has adequate resources to maintain this action, there are no problems of adequacy of financial resources on the part of the named Plaintiffs;
- g. A class action is a fair and efficient method for adjudication of this controversy inasmuch as common issues predominate;
- h. Based on the foregoing findings, pursuant to Pa. R. Civ. P. 1702, 1708, and 1709, conditional certification of the Settlement Class, pending final certification and approval, is warranted for settlement purposes as the proposed class meets the requirements of numerosity, commonality, typicality, and fair and adequate representation, and a class action is a fair and efficient method of fully resolving this matter.
- i. Named Plaintiffs Barbara Dittman, Gary Douglas, Alice Pastirik, Joann Decolati, Tina Sorrentino, Kirsten Cushman, and Shannon Molyneaux are designated as Class Representatives.
- j. Plaintiffs' counsel, Gary F. Lynch and Jamisen A. Etzel of Carlson Lynch LLP, are appointed as counsel for the Class.

Reasonableness of the Proposed Settlement

6. The Court further finds that: (i) the proposed Settlement resulted from extensive and good-faith negotiations at arms' length, supervised at the outset by a neutral mediator; (ii) the

proposed Settlement was concluded only after extensive litigation, including appeals, regarding legal questions such as whether Defendants owed Plaintiffs a duty of care, and whether Plaintiffs' negligence claims were foreclosed by Pennsylvania's economic loss doctrine; and (iii) the terms of the proposed Settlement as evidenced by the Agreement appear to be sufficiently fair, reasonable, and adequate in light of the risks, delays, and expenses of further litigation, warranting the sending and website publication of the Notices of Class Action Settlement in the forms attached to the Settlement Agreement as Exhibits 2 and 3, and the scheduling of a final fairness hearing.

7. The Court finds that the Proposed Settlement includes sufficient monetary consideration to provide all Class Members with a financial recovery, and that the Proposed Settlement creates an equitable claims process that will allow Class Members an opportunity to obtain additional reimbursement for certain types of harm they may have suffered as a result of events alleged in the Second Amended Complaint. This consideration appears to be within the range of reasonableness and an adequate exchange for the Settlement Class's release of claims as described in the Agreement.

8. Accordingly, the Court grants preliminary approval of the Settlement, subject to final approval, and authorizes the Parties to conduct their plan for notice as described in the Agreement.

Notice Plan and Form of Notice

9. The Court finds that the form, content, and method of giving notice to the Settlement Class as described in the Settlement and exhibits: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of

Pa. R. Civ. P. 1712 and 1714, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notices are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class Members.

10. The Parties and Settlement Administrator are authorized to make non-material modifications to the notices and claim form, such as proofing and formatting alterations, without further Order from this Court.

11. Epiq Systems, Inc. is approved as the Settlement Administrator. The Settlement Administrator is directed to carry out the notice plan in conformance with the Settlement and to perform all other tasks that the Agreement requires, including the creation of a Qualified Settlement Fund.

12. Within 32 days from the entry of this Order, the Parties and Settlement Administrator shall cause notice to be disseminated to Class Members. The postcard form of the Mail Notice shall be sent to all Settlement Class Members for whom an email address is located by UPMC or the Settlement Administrator prior to the Notice Deadline. The long-form Mail Notice and Claim Form shall be sent to Settlement Class Members for whom no valid email has been identified prior to the Notice Deadline. Email notices shall include the short notice form attached to the Parties' Agreement as Exhibit 3 in the body of the email. Both forms of notice as well as the Claim Form shall be posted on a Settlement Website to be created by the Settlement Administrator. The Settlement Administrator shall also establish a toll-free phone line for Class Members to call in order to receive information about the Settlement.

Exclusions from the Class

13. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself to the Settlement

Administrator, Class Counsel, and UPMC's counsel at the addresses provided in the Notice, postmarked no later than 120 days after the date of this Order (the "Opt-Out Deadline") and sent via first class postage pre-paid United States mail. The written request for exclusion must include the name of this Litigation or a decipherable approximation (*Dittman, et al. v. UPMC, et al.*, Case No. GD 14-003285 (Allegheny Cty. Ct. Com. Pl.)), the full name, address, and telephone number of the Settlement Class Member or the name, address, telephone number, relationship, and signature of any individual who is acting on behalf of a deceased or incapacitated Settlement Class Member; and the words "Request for Exclusion" at the top of the document or a statement in the body of the document requesting exclusion from the Settlement.

14. All Settlement Class Members who submit valid and timely notices of their intent to be excluded from the Settlement shall not receive any benefits of or be bound by the terms of the Settlement. Any Settlement Class Member that does not timely and validly exclude himself or herself from the Settlement shall be bound by the terms of the Settlement. If final judgment is entered, any Settlement Class Member that has not submitted a timely, valid written notice of exclusion from the Settlement (in accordance with the requirements of the Settlement) shall be bound by all subsequent proceedings, orders and judgments in this matter, the Settlement, including but not limited to the releases set forth in the Settlement, and the Final Approval Order and Judgment.

Objections to the Settlement

15. A Settlement Class Member who complies with the requirements of this Order may object to the Settlement, the request of Class Counsel for an award of attorneys' fees, costs, and expenses, and/or the request for Service Awards.

16. No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is (a) filed with the Court by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, Class Counsel, and UPMC's Counsel, at the addresses listed in the Notice, and postmarked by no later than the Objection Deadline, which shall be 120 days after the date of this Order, as specified in the Notice. For the objection to be considered by the Court, the objection shall set forth:

- a. the name of the Litigation: *Dittman, et al. v. UPMC, et al.*, Case No. GD No. 14-003285 (Allegheny Cty. Ct. Com. Pl.), or a decipherable approximation;
- b. the full name of the objector and full name, address, email address, and telephone number of any person acting on the objector's behalf;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. whether the objection applies only to the objector, a specific subset of the Settlement Class, or the entire Settlement Class;
- e. all grounds for the objection stated, with specificity, accompanied by any legal support for the objection;
- f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement, Class Counsel's request for attorney's fees, costs, and expenses, or the application for Service Awards;
- g. the identity of all representatives (including counsel representing the objector) who will appear at the Final Approval Hearing;
- h. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;

- i. if the objector is represented by an attorney who intends to seek fees and expenses from anyone other than the objectors he or she represents, the objection should also include: (i) a description of the attorney's legal background and prior experience in connection with class action litigation; (ii) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (iii) a statement regarding whether the fees being sought are calculated on the basis of a lodestar, contingency, or other method; (iv) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (v) the attorney's hourly rate;
- j. any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between the objector or objector's counsel and any other person or entity;
- k. a description of all evidence to be presented at the Final Approval Hearing in support of the objection, including a list of any witnesses, a summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented;
- l. a statement indicating whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- m. the objector (or the objector's attorney's) signature on the written objection.

17. In addition, any Settlement Class Member who objects to the proposed Settlement must make himself or herself available to be deposed regarding the grounds for the objection and must provide along with the objection the dates when the objector will be available to be deposed during the period from when the objection is filed through the date seven days before the Final Approval Hearing.

18. Any Settlement Class Member who fails to comply with the provisions in this Order will waive and forfeit any and all rights it may have to object and shall be bound by all the terms of the Settlement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the releases in the Settlement, if finally approved. Any Settlement Class Member who

both objects to the Settlement and opts out will be deemed to have opted out and the objection shall be deemed null and void.

Claims Process and Distribution Plan

19. The Settlement establishes a process for assessing and determining the validity and value of two types of claims (Documented Out-of-Pocket Fraud Loss Claims, and Documented Fraud-Related Inconvenience Claims) and a methodology for paying Settlement Class Members that submit a timely, valid Claim Form. The Court preliminarily approves this process.

20. Settlement Class Members that qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If the Settlement is finally approved, all Settlement Class Members who failed to submit a claim in accordance with the requirements and procedures specified in the Notice and Claim Form shall be forever barred from receiving any benefit other than the Unclaimed Distribution payments, and will in all other respects be subject to and bound by the provisions of the Settlement, including the releases included in the Settlement, and the Final Approval Order and Judgment.

Termination of the Settlement and Use of this Order

21. This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is not finally approved by the Court or is terminated in accordance with the terms of the Settlement. In such event, the Settlement shall become null and void and be of no further force and effect, and neither the Settlement (including any Settlement-related filings) nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

22. If the Settlement is not finally approved or there is no Effective Date under the terms of the Settlement, then this Order shall be of no force or effect; shall not be construed or used as an admission, concession, or declaration by or against UPMC of any fault, wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or declaration by or against any Settlement Class Representative or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable; and shall not constitute a waiver by any party of any defense (including without limitation any defense to class certification) or claims it may have in this Litigation or in any other lawsuit.

Stay of Proceedings

23. Except as necessary to effectuate this Order, this matter and any deadlines set by the Court in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order and Judgment, or until further order of this Court.

Continuance of Final Approval Hearing

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

Actions by Settlement Class Members

25. The Court stays and enjoins, pending Final Approval of the Settlement, any actions, lawsuits, or other proceedings brought by Settlement Class Members against UPMC related to the 2014 Data Breach.

Final Approval Hearing

26. A Final Approval Hearing shall take place before the Court on **December 29, 2021 at 9:30 a.m in Courtroom 820** before Judge Philip A. Ignelzi of the Court of Common Pleas of Allegheny County, Pennsylvania, City-County Building, 414 Grant Street, Pittsburgh, PA 15219, to determine, among other things, whether: (a) the proposed Settlement Class should be finally certified for settlement purposes pursuant to the Pennsylvania Rules of Civil Procedure; (b) the Settlement should be finally approved as fair, reasonable and adequate and, in accordance with the Settlement's terms, all claims in the Second Amended Complaint and Litigation should be dismissed with prejudice; (c) Settlement Class Members should be bound by the releases set forth in the Settlement; (d) the proposed Final Approval Order and Judgment should be entered; (e) the application of Class Counsel for an award of attorneys' fees, costs, and expenses should be approved; and (f) the application for Service Awards to the Settlement Class Representatives should be approved. Any other matters the Court deems necessary and appropriate will also be addressed at the hearing.

27. Class Counsel shall submit their application for fees, costs, and expenses and the application for Service Awards at least 14 days before the Opt-out/Objection Deadline. Objectors, if any, shall file any response to Class Counsel's motions no later than 19 days prior to the Final Approval Hearing. By no later than 12 days prior to the Final Approval Hearing, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards shall be filed.

28. Any Settlement Class Member that has not timely and properly excluded himself or herself from the Settlement Class in the manner described below, may appear at the Final

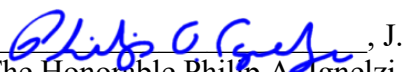
Approval Hearing in person or by counsel and be heard, to the extent allowed by the Court, regarding the proposed Settlement; provided, however, that no Settlement Class Member that has elected to exclude himself or herself from the Settlement Class shall be entitled to object or otherwise appear, and, further provided, that no Settlement Class Member shall be heard in opposition to the Settlement unless the Settlement Class Member complies with the requirements of this Order pertaining to objections, which are described above and in the Notice.

Summary of Deadlines

29. The Settlement, as preliminarily approved in this Order, shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement and this Order include but are not limited to the following:

- Notice Deadline: **August 23, 2021**
- Objection and Opt-Out Deadline: **November 19, 2021**
- Claims Deadline: **November 19, 2021**
- Final Approval Hearing: **December 29, 2021**
- Application for Attorneys' Fees, Expenses and Service Awards ("Fee Application"): **November 5, 2021**
- Motion for Final Approval of the Settlement ("Final Approval Motion"): **November 29, 2021**
- Objectors', if any, Response to Final Approval Motion and Fee Application: **December 10, 2021**
- Replies in Support of Final Approval and Fee Motion: **December 17, 2021**

BY THE COURT:


The Honorable Philip A. Ignelzi, J.