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6 UNITED STATES DISTRICT COURT
7 FOR THE WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 In re MCG Health Data Security Issue
10 Litigation

NO. 2:22-CV-00849-RSM-DWC

11 **ORDER GRANTING PLAINTIFFS'**
12 **UNOPPOSED MOTION FOR**
13 **PRELIMINARY APPROVAL OF**
14 **CLASS ACTION SETTLEMENT**

15 This matter is before the Court on Plaintiffs' Unopposed Motion for Preliminary
16 Approval of Class Action Settlement (the "Motion") for consideration of whether the Court
17 should grant preliminary approval of the proposed Settlement Agreement reached by the Parties
18 (the "proposed Settlement"), preliminarily certify the proposed Settlement Class, and approve
19 the proposed plan for notifying the Potential Settlement Class.¹

20 Having reviewed the proposed Settlement, together with its exhibits, and based upon the
21 relevant papers and all prior proceedings in this matter, the Court determines that the proposed
22 Settlement satisfies the criteria for preliminary approval, the proposed Settlement Class is
23 preliminarily certified, and the proposed Notice Program is approved. Accordingly, good cause

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26 ¹ Unless otherwise indicated, all capitalized terms used herein have the same meaning as those used in the
Settlement Agreement (Exhibit 1 to the Declaration of Jason T. Dennett).

1 appearing in the record, Plaintiffs' Motion is **GRANTED**, and **IT IS HEREBY ORDERED**

2 **THAT:**

3 1. Stay of the Action. Pending the Final Approval Hearing, all proceedings in the
4 Action, other than proceedings necessary to carry out or enforce the terms and conditions of the
5 Settlement Agreement and this Order, are hereby stayed.

6 2. Jurisdiction. The Court has jurisdiction over the Parties, the subject matter of the
7 dispute, and all Settlement Class Members.

8 3. Preliminary Class Findings. The Court preliminarily finds, for the purposes of
9 settlement only, that this action meets all prerequisites of Rule 23 of the Federal Rules of Civil
10 Procedure. The Court determines that for settlement purposes, the proposed Settlement Class
11 meets all the requirements of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure,
12 namely that the class is so numerous that joinder of all members is impractical; there are common
13 issues of law and fact; the claims of the Plaintiffs are typical of absent class members; Plaintiffs
14 will fairly and adequately protect the interests of the class, and have no interests antagonistic to
15 or in conflict with the class, and have retained Class Counsel who are experienced and competent
16 counsel to prosecute this matter; common issues predominate over any individual issues; and a
17 class action is the superior means of adjudicating the controversy.

18 The Court finds the proposed Settlement is fair, reasonable, and adequate, in accordance
19 with Rule 23(e) of the Federal Rules of Civil Procedure, pending a final hearing on the Settlement
20 as provided herein. The Court further finds that the Settlement was negotiated at arm's length by
21 informed and experienced counsel, who were overseen by an experienced and impartial mediator.
22 The relief provided to the Settlement Class under the Settlement is adequate. There would be
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1 substantial costs, risks and delay associated with proceeding to trial and potential appeal. The
2 method proposed for distributing relief to the Settlement Class and processing claims is adequate
3 and effective. Finally, the Court finds that the proposed Settlement treats Settlement Class
4 Members equitably relative to each other.

5 The Settlement meets the criteria for approval and warrants issuance of notice to the
6 Settlement Class. Accordingly, the Court preliminarily approves the terms of the Settlement
7 Agreement.

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9 4. Preliminary Certification of Settlement Class. The Court hereby certifies, for
10 settlement purposes only, the following Settlement Class:

11 All United States residents whose personally identifiable
12 information (PII) and/or protected health information (PHI) was
13 accessed or acquired during the MCG data security incident that
MCG discovered on or about March 25, 2022.

14 Excluded from the Settlement Class are the Court and all members of the Court's staff, and
15 persons who timely and validly request exclusion from the Settlement Class.

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17 5. Appointment of Class Representatives. Plaintiffs ("Named Plaintiffs") are
18 designated and appointed as the Settlement Class Representatives pursuant to Rule 23(a) of the
19 Federal Rules of Civil Procedure. The Court preliminarily finds, for settlement purposes only,
20 that Named Plaintiffs will fairly and adequately represent the interests of the Class in enforcing
21 their rights in the Action; that Named Plaintiffs are similarly situated to absent Settlement Class
22 Members; that Named Plaintiffs have Article III standing to pursue their claims; and that Named
23 Plaintiffs are therefore typical of the Class and will be adequate class representatives.

24
25 6. Appointment of Class Counsel. For purposes of the Settlement, the Court appoints
26 Jason T. Dennett of Tousley Brain Stephens PLLC, Gary M. Klinger of Milberg Coleman Bryson

1 Phillips Grossman, PLLC, and Adam Polk of Girard Sharp LLP as Class Counsel pursuant to
2 Fed. R. Civ. P. 23(g) to act on behalf of the Settlement Class Representatives and the Settlement
3 Class with respect to the Settlement. The Court finds that these lawyers are experienced and will
4 adequately protect the interests of the Settlement Class.

5 7. Notice Provider and Settlement Administrator. The Court appoints Kroll
6 Settlement Administration LLC as Settlement Administrator to administer the notice procedure
7 and the processing of claims, under the supervision of Class Counsel and oversight of this Court.
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9 8. Notice Plan. The Notice Plan set forth in the Settlement Agreement, and the form
10 and content of the notice to class members as set forth in Exhibits A-C thereto, satisfy the
11 requirements of Federal Rule of Civil Procedure 23 and are thus approved. The Court finds that
12 the form, content, and method of giving notice to the Settlement Class as described in the Notice
13 Plan submitted with the Motion for Preliminary Approval: (a) constitute the best practicable
14 notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise
15 Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement,
16 and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate,
17 and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements
18 of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any
19 other legal requirements. The Court further finds that the notices are written in plain language,
20 use simple terminology, and are designed to be readily understandable by Settlement Class
21 Members.
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24 Non-material modifications to the notices may be made without further order of the
25 Court. The Settlement Administrator is directed to carry out the Notice Plan in conformance with
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1 the Settlement Agreement and to perform all other tasks that the Settlement Agreement requires.
2 Prior to the Final Approval Hearing, Class Counsel shall cause to be filed with the Court an
3 appropriate declaration with respect to complying with the provisions of the Notice Plan.

4 9. Notice Date. The Court directs that the Settlement Administrator cause a copy of
5 the Notice to be mailed to all Potential Settlement Class Members in the manner outlined in the
6 Settlement Agreement. The mailing is to be made by first class United States mail within thirty
7 (30) calendar days following the entry of the Preliminary Approval Order (the “Notice Date”).
8 The Settlement Website shall include, and make available for download, copies of the Settlement
9 Agreement and Long Form Notice.
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11 10. Funds Held by Settlement Administrator. All funds held by the Settlement
12 Administrator shall be deemed and considered to be *in custodia legis* of the Court and shall
13 remain subject to the jurisdiction of the Court until such time as the funds are distributed pursuant
14 to the Settlement or further order of the Court.
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16 11. Deadline to Submit Claim Forms. Settlement Class Members will have until 120
17 calendar days from the Notice Date to submit their claim forms (“Claims Deadline”), which is
18 adequate and sufficient time.

19 12. Exclusion from the Settlement Class. Any Settlement Class Member that wishes
20 to be excluded from the Settlement Class must mail a Request for Exclusion to the Settlement
21 Administrator at the addresses provided in the Notice, postmarked no later than the Deadline to
22 Opt-Out, as specified on the Notice, and sent via first class postage pre-paid U.S. mail, or submit
23 a Request for Exclusion through the Settlement Website no later than the Deadline to Opt-Out.
24 The Request for Exclusion must: a) state the Settlement Class Member’s full name, address, and
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1 telephone number; (b) state the name and number of this case, *In re MCG Health Data Security*
2 *Issue Litigation*, Case No. 2:22-cv-0849-RSM-DWC; (c) contain the Settlement Class Member's
3 personal and original signature or the original signature of a person authorized by law to act on
4 the Settlement Class Member's behalf with respect to a claim or right such as those asserted in
5 the Litigation, such as a trustee, guardian or person acting under a power of attorney; and (d)
6 state unequivocally the Settlement Class Member's intent to be excluded from the settlement. All
7 Requests for Exclusion must be submitted individually in connection with a Settlement Class
8 Member, *i.e.*, one request is required for every Settlement Class Member seeking exclusion.
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10 Any Settlement Class Member who does not timely and validly exclude themselves from
11 the Settlement shall be bound by the terms of the Settlement. If final judgment is entered, any
12 Settlement Class Member who has not submitted a timely, valid written notice of exclusion from
13 the Settlement Class shall be bound by all subsequent proceedings, orders, and judgments in this
14 matter, including but not limited to the release set forth in the Settlement Agreement and
15 incorporated in the Judgment.
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17 13. Objections and Appearances. Any Settlement Class Member may enter an
18 appearance in the Action, at his or her own expense, individually or through counsel of his or her
19 own choice. If a Settlement Class Member does not enter an appearance, they will be represented
20 by Class Counsel.
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22 Any Settlement Class Member who wishes to object to the Settlement, the Settlement
23 benefits, Service Awards, and/or the Attorneys' Fees and Expenses, or to appear at the Final
24 Approval Hearing and show cause, if any, why the Settlement should not be approved as fair,
25 reasonable, and adequate to the Settlement Class, why a Final Approval Order and Judgment
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1 should not be entered thereon, why the Settlement benefits should not be approved, or why the
2 Service Awards and/or the Attorneys' Fees and Expenses should not be granted, may do so, but
3 must proceed as set forth in this paragraph. No Settlement Class Member will be heard on such
4 matters unless they have filed in this Action the objection, together with any briefs, papers,
5 statements, or other materials the Settlement Class Member wishes the Court to consider, within
6 ninety (90) calendar days following the Notice Date. Any objection must include: i) the objector's
7 full name, address, telephone number, and e-mail address (if any); (ii) the name and number of
8 this case, *In re MCG Health Data Security Issue Litigation*, Case No. 2:22-cv-0849-RSM-DWC;
9 (iii) information identifying the objector as a Settlement Class Member, including proof that the
10 objector is a member of the Settlement Class; (iv) a statement as to whether the objection applies
11 only to the Settlement Class Member, to a specific subset of the Settlement Class, or to the entire
12 class; (v) a clear and detailed written statement of the specific legal and factual bases for each
13 and every objection, accompanied by any legal support for the objection the objector believes
14 applicable; (vi) the identity of any counsel representing the objector; (vii) a statement whether
15 the objector intends to appear at the Final Approval Hearing, either in person or through counsel,
16 and, if through counsel, identifying that counsel; (viii) a list of all persons who will be called to
17 testify at the Final Approval Hearing in support of the objections and any documents to be
18 presented or considered; and (ix) the objector's signature and the signature of the objector's duly
19 authorized attorney or other duly authorized representative (if any). In addition to the foregoing
20 requirements, if an objecting Settlement Class Member intends to speak at the Final Approval
21 Hearing (whether pro se or through an attorney), the written objection must include a detailed
22 description of any evidence the objecting Settlement Class Member may offer at the Final
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1 Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may
2 introduce at the Final Approval Hearing. Any Settlement Class Member who fails to object to
3 the Settlement in the manner described in the Settlement Agreement and in the notice provided
4 pursuant to the Notice Plan shall be deemed to have waived any such objection, shall not be
5 permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and
6 shall be precluded from seeking any review of the Settlement or the terms of the Settlement
7 Agreement by appeal or any other means.
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9 With leave of Court for good cause shown, the Parties may take discovery of an objector
10 or an objector’s counsel. Any Settlement Class Member that fails to comply with the provisions
11 in this Order will waive and forfeit any and all rights it may have to object, and shall be bound
12 by all the terms of the Settlement, this Order, and by all proceedings, orders, and judgments,
13 including, but not limited to, the releases in the Settlement, if finally approved. Any Potential
14 Settlement Class Member who both objects to the Settlement and submits a Request for
15 Exclusion will be deemed to have opted-out and the objection shall be deemed null and void.
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17 14. Final Approval Hearing. A hearing will be held by this Court in the Courtroom of
18 The Honorable Ricardo S. Martinez, United States District Court for the Western District of
19 Washington, United States Courthouse, 700 Stewart Street, Suite 13206, Seattle, WA 98101-
20 9906 at **9:00 a.m. on September 13, 2024** (“Final Approval Hearing”), to determine: (a) whether
21 the Settlement should be approved as fair, reasonable, and adequate to the Class; (b) whether the
22 Final Approval Order should be entered; (c) whether the Settlement Agreement should be
23 approved as fair, reasonable, and adequate to the Settlement Class; (d) whether to approve the
24 application for service awards for the Named Plaintiffs (“Service Awards”) and an award of
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1 attorneys' fees and litigation expenses ("Fee Award and Costs"); and (e) any other matters that
2 may properly be brought before the Court in connection with the Settlement. The Final Approval
3 Hearing is subject to continuation or adjournment by the Court without further notice to the Class.
4 The Court may approve the Settlement with such modifications as the Parties may agree to, if
5 appropriate, without further notice to the Class.

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7 15. Final Approval Briefing. All opening briefs and supporting documents in support
8 of a request for Final Approval of the Settlement and Settlement benefits must be filed and served
9 at least fourteen (14) days prior to the Final Approval Hearing. All briefing and supporting
10 documents in support of an application for Attorneys' Fees and Expenses and Service Awards
11 must be filed fourteen (14) days prior to the Objection Deadline. The deadline to file responses,
12 if any, to any objections, and any replies in support of final approval of the Settlement and/or
13 Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards must
14 be filed and served at least four (4) days prior to the Final Approval Hearing.

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16 16. CAFA Notice. Prior to the Final Approval Hearing, Class Counsel and Defendant
17 shall cause to be filed with the Court an appropriate affidavit or declaration with respect to
18 complying with the provision of notice pursuant to the Class Action Fairness Act, 28 U.S.C.
19 § 1715(b), as set forth in Section 6.1 of the Settlement Agreement.

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21 17. Summary of Deadlines. In sum, the Court enters the following deadlines:

Action	Date
Defendant Provides Class List	Within 10 business days following entry of this Order
Notice Deadline	30 days following entry of this Order
Motion for Attorneys' Fees, Costs, and Service Awards Due	14 days prior to the Objection Deadline
Exclusion/Opt-Out Deadline	90 days after the Notice Deadline

1	Objection Deadline	90 days after the Notice Deadline
2	Motion for Final Approval Due	14 days prior to the Final Approval Hearing
3	Reply in Support of Motion for attorneys' fees, costs, and for Service Awards and Final Approval Motion	4 days prior to the Final Approval Hearing
4	Final Approval Hearing	September 13, 2024 at 9:00 a.m.
5	Deadline to Submit Claims	120 days after the Notice Date

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7 18. Extension of Deadlines. Upon application of the Parties and good cause shown,

8 the deadlines set forth in this Order may be extended by order of the Court, without further notice

9 to the Settlement Class. Settlement Class Members must check the Settlement website regularly

10 for updates and further details regarding extensions of these deadlines. The Court reserves the

11 right to adjourn or continue the Final Approval Hearing, and/or to extend the deadlines set forth

12 in this Order, without further notice of any kind to the Settlement Class.

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14 19. Conditional Nature of Certification and Use of this Order. If the Settlement is not

15 finally approved by the Court, this Order shall become null and void and shall be without

16 prejudice to the rights of the Parties, all of which shall be restored to their respective positions

17 existing immediately before this Court entered this Order. In such event, the Settlement shall

18 become null and void and be of no further force and effect, and neither the Settlement (including

19 any Settlement-related filings) nor the Court's orders, including this Order, relating to the

20 Settlement shall be construed or used as an admission, concession, or declaration by or against

21 Defendants of any fault, wrongdoing, breach, or liability; shall not be construed or used as an

22 admission, concession, or declaration by or against any Settlement Class Representative or any

23 other Settlement Class Member that its claims lack merit or that the relief requested is

24 inappropriate, improper, and unavailable; and shall not constitute a waiver by any party of any

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1 defense (including, without limitation, any defense to class certification) or claims it may have
2 in this Litigation or in any other lawsuit.
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4 IT IS SO ORDERED this 1st day of May, 2024.
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7 RICARDO S. MARTINEZ
8 UNITED STATES DISTRICT JUDGE
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12 Presented by:
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14 **TOUSLEY BRAIN STEPHENS PLLC**
15

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