

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT**

JESSE MARTINEZ, KYRA NIETO, MICHAEL O. GARCIA,
and JUAN GONZALES, individually and on behalf of all others
similarly situated,

Plaintiffs,

D-202-CV-2020-01578

v.

PRESBYTERIAN HEALTHCARE SERVICES,

Defendant.

PRELIMINARY APPROVAL ORDER

This matter is before the Court on a motion pursuant to Rule 1-023(E) of the New Mexico Rules of Civil Procedure for the District Courts for preliminary approval of the class action Settlement Agreement (the "Settlement") between Plaintiffs, individually and on behalf of all others similarly situated, and Defendant Presbyterian Healthcare Services ("PHS"). The Court, being duly advised, now finds that the motion should be, and hereby is, GRANTED.

ACCORDINGLY, THE COURT HEREBY FINDS AND ORDERS:

1. Terms capitalized in this Order and not otherwise defined shall have the meanings set forth in the Settlement.
2. This Court has jurisdiction over the subject matter and parties to this action.
3. This Court finds the proposed settlement set forth in the Settlement Agreement fair, reasonable, and adequate such that it is hereby preliminarily approved, and notice of the settlement should be provided to the Settlement Class and that a final approval hearing should be held.

4. The Court conditionally certifies, solely for the purposes of settlement, the Settlement Class defined as:

The individuals to whom PHS sent letters notifying those individuals that information relating to them may have been compromised as a result of the Data Incident.

The Settlement Class specifically excludes: (i) officers and directors of PHS and/or the Related Entities; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the members of the judiciary who have presided or are president over this matter and their families and staff; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

5. Subject to final approval of the settlement, the Court finds and concludes that the Settlement Class meets the requirements for class certification under Rules 1-023(A) and (B)(3) of the New Mexico Rules of Civil Procedure for the District Courts. Specifically, the Court finds:

- a. the Settlement Class is so numerous that joinder of all members is impracticable, as there are thousands of members of the Settlement Class;
- b. there are questions of law or fact common to the Settlement Class;
- c. the claims of the Plaintiffs are typical of the claims of the Settlement Class in that they all relate to the Incident;
- d. Plaintiffs and their counsel will fairly and adequately protect the interests of the Settlement Class, as Plaintiffs and their Counsel's interests are aligned with interests of the Settlement Class in pursuing the litigation and the Settlement;
- e. questions or fact common to the members of the Settlement Class predominate over any questions affecting only individual members, as the focus of the litigation is on the Incident;

- f. a class action is superior to other methods for the fair and efficient adjudication of the controversy, particularly because a Settlement avoids any complexities of a potential trial.

6. The Court appoints Plaintiffs Jesse Martinez, Kyra Nieto, Michael O. Garcia, and Juan Gonzales as Class Representatives and appoints J. Gerard Stranch IV of Branstetter, Stranch & Jennings, PLLC, Lynn A. Toops of Cohen & Malad, LLP, and David K. Lietz of Milberg Coleman Bryson Phillips Grossman LLP, as Class Counsel. The Court appoints Kroll Settlement Administration, LLC (“Kroll”) as Claims Administrator.

7. The Court finds that the Settlement, on a preliminary examination, appears to be within the range of a fair, reasonable, and adequate compromise of the claims, particularly considering: (a) the Settlement was negotiated at arm’s-length by experienced counsel and through the use of a third-party neutral mediator; (b) the value of the Settlement compares favorably to the risks, uncertainties, and delays of continued litigation; (c) the response of the Settlement Class to the proposal has been overwhelmingly favorable; and (d) attorneys’ fees and service awards were not negotiated until after the parties had reached agreement on the materials terms of the Settlement for the benefit of the Settlement Class, are subject to Court approval, and are within the range of possible approval. The Court therefore grants preliminary approval to the Settlement.

8. The Court approves the proposed form, manner, and method of providing notice of the Settlement to the Settlement Class, as set forth in the Settlement, complies with the requirements of Rule 1-023(C) of the New Mexico Rules of Civil Procedure of the District Courts and with the requirements of Due Process. The Court also approves the form and method of providing the Claim Form to Settlement Class members as set forth in the Settlement. The notice procedures described in the Settlement are found to be the best means of providing notice under

the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing, comply with all the requirements of Rule 1-023 and due process law, and constitute the best notice practicable under the circumstances.

9. Within thirty (30) days of entry of this Order, Class Counsel shall cause the Claims Administrator to send the Short Notice to each Settlement Class Member; and shall cause to be published the Long Notice available to the rest of the Settlement Class as stated in the Settlement. The Parties may by mutual written consent make non-substantive changes to the Notices without Court approval. Contemporaneous with seeking final approval of the Settlement, Class Counsel shall file with the Court and serve on PHS a verification of compliance with the notice requirements.

10. Members of the Settlement Class shall be afforded an opportunity to exclude themselves from the Settlement by sending a written notice to the address established by the Claims Administrator postmarked no later than sixty (60) days from the date on which the notice is first mailed clearly manifesting the person's intent to be excluded from the Settlement.

11. Any member of the Settlement Class who does not timely submit a request for exclusion shall also be afforded the right to object to the Settlement by sending a notice of objection postmarked no later than sixty (60) days from the date on which the notice is first mailed. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement as to whether

the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years. The objection must either 1) be filed with the Clerk of the Court, located at 400 Lomas Boulevard NW, Room 119, 1st Floor, Albuquerque, NM 87102, and contain the case name and docket number, *Martinez et. al. v. Presbyterian Healthcare Services*, Case No. D-202-CV-2020-01578, or 2) be served upon Class Counsel, Lynn A. Toops, Cohen & Malad, LLP, 1 Indiana Square, Suite 1400, Indianapolis, IN 46204; and counsel for PHS, Kenneth L. Chernof, Arnold & Porter Kaye Scholer LLP, 601 Massachusetts Avenue, NW, Washington, D.C., 20001-3743.

12. Any Settlement Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the litigation.

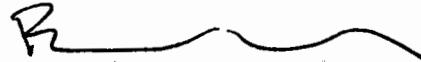
13. The Court adopts the following schedule for the remaining events in this case:

Event	Date
Notice program commences	Within 30 days after entry of the Preliminary Approval Order.
Class Counsel to file Fee Petition	14 days before Opt-Out Date
Postmark deadline for Opt-Outs and Objections	60 days after the Notice Program commences
Motion for Final Approval	14 days before Final Approval
Final Approval Hearing	No earlier than 90 days after the date Notice Commences (i.e. no earlier than 120 days after the entry of this Preliminary Approval Order)

14. A Final Approval Hearing shall be held on **April 23, 2024, at 9:00 a.m.**, before this Court at 400 Lomas Boulevard NW, Albuquerque, NM 87102 (or by videoconference or

teleconference, if necessary), for the purpose of: (a) determining whether the proposed Settlement should be finally approved by the Court as fair, reasonable and adequate; (b) considering Class Counsel's Motion for Award of Fees, Costs, and Service Award; and (c) consideration of such other matters as the Court may deem necessary or appropriate. The Court may adjourn, continue, and reconvene the Final Approval Hearing pursuant to oral announcement without further notice to the Settlement Class, and the Court may consider and grant final approval of the Settlement, with or without minor modification and without further notice to the Settlement Class.

IT IS SO ORDERED.



**BENJAMIN CHAVEZ
DISTRICT COURT JUDGE**