

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

WILLIAM BOYKIN AND SALLY )  
 ROBBINS, on behalf of themselves and )  
 all others similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 TENNESSEE ORTHOPAEDIC )  
 ALLIANCE, P.A. )  
 )  
 Defendant. )

CIVIL ACTION  
DOCKET NO. 20-061

2020 SEP 29 PM 6:05  
 CLERK, MASTER  
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**ORDER CERTIFYING A SETTLEMENT CLASS,  
 PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,  
 AND DIRECTING NOTICE TO SETTLEMENT CLASS**

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This matter came before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

Plaintiffs William Boykin and Sally Robbins brought this putative class action against Defendant Tennessee Orthopaedic Alliance, PA ("TOA") on April 6, 2020 for damages allegedly suffered by Plaintiffs and the Class in connection with a phishing attack ("Phishing Attack") targeting TOA's email system sometime between August and October 2019. On February 14, 2020, TOA announced that two of its employees had been subjected to the Phishing Attack and that the attack had resulted in the potential compromise of emails that contained the personally identifiable information ("PII") and protected health information ("PHI") of numerous TOA patients. The data that was compromised may have included: patient names, dates of birth, contact information (addresses, phone numbers and email addresses), health insurance information,

treatment or diagnostic information (including codes), and/or treatment cost information. It is also possible that some Class Member's Social Security numbers were compromised.

In their Complaint, Plaintiffs assert claims for negligence, negligence *per se*, invasion of privacy and public disclosure of private facts, breach of implied contract, unjust enrichment, and constructive fraud. Plaintiffs' complaint seeks monetary damages as well as equitable, declaratory, and injunctive relief compelling TOA to adopt security practices to safeguard patient PII and PHI that remains in TOA's custody.

The parties, through their counsel, have entered into a Settlement Agreement and Release following good faith, arm's-length negotiations and a mediation overseen by Mr. Rodney A. Max, a respected mediator who is extremely experienced in this type of litigation. The parties have agreed to settle this action, pursuant to the terms of the Settlement Agreement, and subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the settlement which, if approved, will result in dismissal of this action with prejudice.

Having reviewed the Settlement Agreement and Release, including the exhibits attached thereto (together, the "Settlement Agreement" or "Settlement"), the Motion for Preliminary Approval, the Memorandum In Support of Motion for Preliminary Approval, the Declarations and Affidavits of Joel R. Rhine, Martin A. Ramey, Micah S. Adkins, and Scott M. Fenwick, the arguments of Counsel presented at the hearing on this Motion on September 24, 2020, and the entire record in this case, and all prior proceedings herein, and for good cause shown, it is hereby ordered that Plaintiffs' Motion for Preliminary Approval is granted as set forth herein.<sup>1</sup>

#### **I. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

For settlement purposes only and pursuant to Tennessee Rules of Civil Procedure 23.01, the Court provisionally certifies a class in this matter defined as follows:

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<sup>1</sup> Unless otherwise indicated, capitalized terms used herein have the same meaning as defined in the Settlement Agreement and Release, which was filed with Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

All individuals residing in the United States who, on or about February 14, 2020, were notified via mail of a Phishing Attack by Tennessee Orthopaedic Alliance, P.A. that occurred between August and October 2019. Excluded from the Settlement Class are: (1) the Judge presiding over this Litigation, the Judge's immediate family members and any members of the Judge's judicial staff; (2) the officers, directors, and employees of Tennessee Orthopaedic Alliance, P.A.; (3) Class Counsel and their immediate family members; and (4) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

The Court provisionally finds, pursuant to the standards outlined in Tennessee Rules of Civil Procedure Rules 23.01 and 23.02, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims of the Settlement Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Settlement Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Settlement Class Representatives have no interest antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this case.

## **II. SETTLEMENT CLASS REPRESENTATIVE AND SETTLEMENT CLASS COUNSEL**

William Boykin, who is a former patient of TOA, and Sally Robbins, who is a current patient of TOA, and as more specifically described in the Complaint filed in this Cause, are hereby provisionally designated and appointed as the Settlement Class Representatives. The Court provisionally finds that the Settlement Class Representatives are similarly situated to absent Settlement Class Members, and therefore typical of the Class, and they will be adequate Settlement Class Representatives.

The Court finds that Joel R. Rhine and Martin A. Ramey of the Rhine Law Firm, P.C. and Micah S. Adkins of the Adkins Firm, P.C are experienced and adequate counsel and are provisionally designated as Settlement Class Counsel.

### **III. PRELIMINARY SETTLEMENT APPROVAL**

Upon preliminary review, the Court finds that the proposed Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the Settlement Class and accordingly is preliminarily approved, subject to the Final Approval Hearing and further consideration by the Court at the Final Approval Hearing..

### **IV. JURISDICTION**

The Court finds that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for the purposes of the Settlement pursuant to Tenn. Code Ann. §§16-11-101. Additionally, venue is proper in this Court pursuant to Tenn. Code Ann. §20-4-101(a).

### **V. FINAL APPROVAL HEARING**

A Final Approval Hearing shall be held on **January 14, 2021** in Chancery Court Part I, Courtroom 402, at 10:00 A.M. Central Standard Time, Metro Courthouse, 1 Public Square, Nashville, Tennessee, to determine, among other things, whether: (1) this matter should be finally certified as a class action for settlement purposes pursuant to Tennessee Rules of Civil Procedure 23.03; (2) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to Tennessee Rule of Civil Procedure 23.04 and 23.05 (3) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (4) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (5) the application of Settlement Class Counsel for an award of attorneys' fees, costs, and expenses (the "Fee Request") should be approved pursuant to Tennessee Rule of Civil Procedure 23.05); and (6) the application of the Settlement Class Representative for a Service Award (the "Service Award Request") should be approved.

Plaintiff's motion for final approval of the Settlement shall be filed with the Court by **December 2, 2020**. Plaintiff's Service Awards Request, and Fee Request shall be filed with the Court by **December 2, 2020**. By no later than **January 5, 2021**, the parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or the Service Award Request and Fee Request.

#### **VI. ADMINISTRATION**

The Court appoints Heffler Claims Group, as the Settlement Administrator, with responsibility for class notice and claims administration. Defendant shall pay all costs and expenses associated with providing notice to Settlement Class Members including, but not limited to, the Settlement Administrator's fees and costs. These payments shall be made separate and apart from the Settlement Fund.

#### **VII. NOTICE TO THE CLASS**

The Proposed Notice Program set forth in the Settlement Agreement, including the Claim Form, Postcard Notice and Long Form Notice, attached to the Settlement Agreement as its Exhibits A, B, and C, satisfy the requirements of Tennessee Rule of Civil Procedure 23.03, provide the best notice practicable under the circumstances, and are hereby approved. Non-material modifications to these Exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement.

By **October 29, 2020**, the Settlement Administrator shall complete the Notice Program, which shall be completed in the manner set forth in the Settlement Agreement.

#### **VIII. FINDINGS CONCERNING NOTICE**

The Court finds that the form, content, and method of giving notice to the Settlement Class as described in Section VII of this Order and the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement, including but not limited to

their rights to object to or exclude themselves from the proposed settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including the Tennessee Rules of Civil Procedure 23.03, and the Due Process Clause(s) of the Tennessee Constitution.

The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

#### **IX. EXCLUSION FROM CLASS**

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 from the Settlement Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than **December 28, 2020**. The written notification must include the individual's name and address; a statement that he or she wants to be excluded from the Action; and the individual's signature.

The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Settlement Class Counsel may move to file under seal with the Court no later than **January 4, 2021**. Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement. If Final Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Parties relating to the claims and transactions released in the Settlement Agreement. All Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

#### **X. OBJECTIONS AND APPEARANCES**

A Settlement Class Member who complies with the requirements of this paragraph may object to the Settlement, the Service Award Request, or the Fee Request, and must do so no later than **December 28, 2020**.

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, Plaintiffs' Counsel, and Defendants' Counsel, at the addresses listed in the Notice, and postmarked by no later than **December 28, 2020**, as specified in the Notice. For an objection to be considered by the Court, the objection must also substantially comply with this format:

- a. The name of the Litigation;
- b. The objector's full name, address, email address, and telephone number;
- c. An explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. All grounds for the objection, accompanied by any legal support for the objection;
- e. The identity of all counsel who represent the objector, including any former or current counsel who previously represented the objector and may be entitled to compensation for any reason related to the objection to the Settlement, the fee application, or the application for Service Award;
- f. The identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- g. The number of times in which the objector has objected to a class action settlement within the five (5) years preceding the date on which the objector files the objection, the caption of each case in which the objector has made such objections, 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;

- h. The number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five (5) years preceding the date that the objector files the objection, the caption of each case in which the counsel or the firm has made such objections, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;
- i. 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;
- j. A list of any persons who will be called to testify at the Final Approval Hearing in support of the objection;
- k. A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- l. The objector's signature on the written objection (an attorney's signature is not sufficient).

Any Settlement Class Member who fails to substantially comply with the provisions in this Paragraph may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the Release in the Settlement Agreement if Final Judgment is entered. The Court retains the right to allow objections in the interest of justice.

Any Settlement Class Member, including a Settlement Class Member who files and serves a written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Award Request, or the Fee Request.



If Final Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the Service Award Request, or the Fee Request.

#### **XI. CLAIMS PROCESS AND DISTRIBUTION AND ALLOCATION PLAN**

The Settlement Class Representatives and Defendant have created a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid claim form. The Court preliminarily approves the settlement benefits to the class and plan for remuneration described in Section V of the Settlement Agreement, and directs that the Settlement Administrator effectuate the distribution of settlement consideration according to the terms of the Settlement Agreement, should Settlement be finally approved.

Settlement Class Members who 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 Final Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the claim form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in the Settlement Agreement, and the Final Judgment.

#### **XII. TERMINATION OF THE SETTLEMENT**

This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before July 29, 2020 (the date the parties participated in mediation), if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

### **XIII. USE OF ORDER**

This Order shall be of no continuing force or effect if Final Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Settlement Class Representatives or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims he, she, or it may have in this litigation or in any other lawsuit.

### **XIV. STAY OF PROCEEDINGS**

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

### **XV. CONTINUANCE OF HEARING**

The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the 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.

### **XVI. SUMMARY OF DEADLINES**

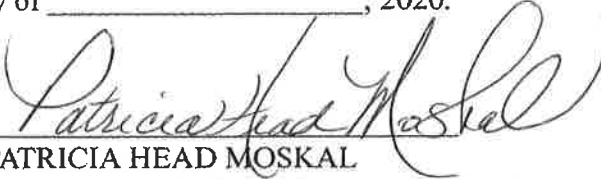
The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

1. Notice Deadline: **October 29, 2020**
2. Motion for Final Approval: **December 2, 2020**
3. Motion for Service Award, Attorneys' Fees, Costs, and Expenses: **December 2, 2020**

4. Claims Deadline: **December 28, 2020**
5. Opt-Out and Objection Deadlines: **December 28, 2020**
6. Replies in Support of Final Approval, Service Awards, and Fee Requests: **January 5, 2021**
7. Final Approval Hearing: **January 14, 2021** before the undersigned in Chancery Court Part I, Courtroom 402 Metro Courthouse, 1 Public Square, Nashville Tennessee.

The dates set in this Order should be used as appropriate in the Notices to the Class.

IT IS SO ORDERED this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

  
PATRICIA HEAD MOSKAL  
CHANCELLOR, PART I

Approved for Entry:

/s/ Micah S. Adkins

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*Counsel for Plaintiffs and the Putative Class*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing is being forwarded via U.S. Mail, first-class postage pre-paid, with a courtesy copy via email, to the parties or their counsel named below.

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Deputy Clerk & Master

9/29/20  
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Date