

**APPROVED BY COURT**

**07/10/2022**

DATE FILED: July 10, 2022 2:40 PM  
CASE NUMBER: 2021CV33707

2nd DISTRICT COURT, COUNTY OF DENVER, STATE  
OF COLORADO  
Court Address: 1437 Bannock Street  
Denver, Colorado 80202



**ANDREW PATRICK MCCALLIN**  
District Court Judge

**Plaintiffs:**

KRISTEN SNYDER and DIONA LOPEZ, individually and on  
behalf of all others similarly situated,

v.

**Defendant:**

THE UROLOGY CENTER OF COLORADO, a Colorado  
corporation,

**▲ COURT USE ONLY ▲**

Case Number: 2021CV33707

Division: 466

**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION  
SETTLEMENT, APPROVING FORMS OF NOTICE AND NOTICE PLAN, AND  
DIRECTING IMPLEMENTATION OF THE NOTICE PLAN**

The Court, having considered Plaintiffs' Unopposed Motion for Preliminary Approval of the Class Action Settlement (the "Motion"), the supporting brief, the Parties' Settlement Agreement dated June 15, 2022, the proposed Long Form Notice, Short Form Notice, and Claim Form, and being otherwise fully advised in the premises, finds and orders as follows:

**PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

1. The Settlement Agreement, attached to the Motion for Preliminary Approval as Exhibit 2 is incorporated fully herein by reference. The definitions used in the Settlement Agreement are adopted in this Order and shall have the same meaning ascribed in the Settlement Agreement.

2. The Court has jurisdiction over the claims at issue in this Action, Plaintiffs Kristen Snyder and Diona Lopez (“Plaintiffs”) and Defendant The Urology Center of Colorado (“TUCC” or “Defendant”) (together with Plaintiffs, the “Parties”).

3. This Order is based on Colorado law, including Rule 23 of the Colorado Rules of Civil Procedure.

4. The Court finds that the Parties’ Settlement as set forth in Exhibit 2 to the Motion for Preliminary Approval is fair, reasonable, and adequate, and was entered into after extensive, arm’s-length negotiations and a mediation with Mr. Bennett G. Picker of Stradley Ronon Stevens & Young, such that it is hereby preliminarily approved and notice of the Settlement should be provided to the Settlement Class Members.

5. This class action arises out of Defendant’s alleged failure to safeguard the personally identifiable information (“PII”) and protected health information (“PHI”) that it maintained regarding Plaintiffs and class members. Plaintiffs allege that in September 2021, TUCC learned that a third party may have “gained unauthorized access to [TUCC]’s network” “between September 7, 2021 and September 8, 2021.” Plaintiffs also allege that this third-party criminal may have acquired the “names, addresses, dates of birth, phone number, email address, Social Security Number . . . , medical record numbers, treating physicians, treating costs, diagnosis, and health insurance information” of TUCC’s “current and former patients[.]” After TUCC learned of the Data Incident (as defined below), notification was mailed to approximately 137,820 individuals notifying them that their personally identifiable information (or, PII, as defined below) may have been impacted by the Data Incident. Subsequently, this lawsuit was filed asserting claims of (1) negligence; (2) breach of implied contract; (3) breach of fiduciary duty; and (4) violation of

Colorado's Data Security Laws, Colo. Rev. Stat. 6-1-713.5; against TUCC relating to the Data Incident (the "Litigation"). TUCC denies all liability and wrongdoing.

6. Plaintiffs summarize the relevant terms of the proposed Settlement as follows:

a. The Settlement provides for three separate forms of monetary relief: (1) reimbursement of ordinary expenses and lost time up to \$500 per Settlement Class Member; (2) reimbursement of extraordinary expenses up to \$2,500 per Settlement Class Member, and; (3) \$50 per Settlement Class Member with a California address at the time of the Data Incident.

b. Ordinary expense reimbursements can be claimed at up to \$500 per Class Member. Reimbursable ordinary expenses also include: (i) unreimbursed bank fees; (ii) long distance phone charges; (iii) cell phone charges (only if charged by the minute); (iv) data charges (only if charged based on the amount of data used); (v) postage; or (vi) gasoline for local travel. To receive reimbursement for any of the above-referenced out-of-pocket expenses, Settlement Class Members must submit a Valid Claim, including necessary supporting documentation, to the Claims Administrator. Settlement Class Members may receive reimbursement for up to three (3) hours of lost time upon attestation that the time was spent responding to issues raised by the Data Incident. Settlement Class Members may receive an additional two (2) hours of lost time upon documentation showing the lost time was spent related to the Data Incident. Claims for lost time can be combined with claims for out-of-pocket expenses and are subject to the same \$500 cap for all Settlement Class Members.

c. Settlement Class Members may also receive reimbursement for extraordinary expenses, up to \$2,500 per Settlement Class Member, incurred between September 2021 through the Claims Deadline. Settlement Class Members must provide documentation for this benefit.

d. Settlement Class Members who confirm that they had a California mailing address at the time of the Data Incident can submit a claim for an additional \$50.

e. In addition to the potential monetary benefits, Settlement Class Members who previously enrolled in the IDX identity protection services offered by TUCC in the incident response will be automatically provided two (2) years of additional identity theft protection services without the need to make an affirmative claim. Settlement Class Members who did not previously enroll in the identity protection services offered by TUCC during the incident response will be eligible to submit a claim for two (2) years of identity protection services through IDX.

### **CLASS CERTIFICATION**

7. For the purposes of settlement only, and pursuant to Rule 23 of the Colorado Rules of Civil Procedure, the Court provisionally certifies the class, defined as follows:

the approximately 137,820 persons who were notified that their PII may have been compromised as a result of the Data Incident that The Urology Center of Colorado discovered in or about October 2021, and who were sent written notice of the Data Incident.

8. The Court provisionally finds, pursuant to the Colorado Rules of Civil Procedure, that for purposes of this settlement only that: (a) The Settlement Class is so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the Class Representatives' claims are typical of the Settlement Class's

claims; and (4) the Class Representatives will fairly and adequately protect the Settlement Class's interests.

### **CLASS COUNSEL AND THE CLASS REPRESENTATIVES**

9. Kristen Snyder and Diona Lopez, who allege that they are patients of Defendant, as described more fully in the First Amended Complaint filed in this action, are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Settlement Class Members, and are typical of the Settlement Class, therefore they will be adequate Class Representatives.

10. The Court finds that the Milberg Coleman Bryson Phillips Grossman, PLLC and Attorney David K. Lietz are experienced and adequate counsel and are provisionally designated as Class Counsel.

### **NOTICE TO SETTLEMENT CLASS**

11. The forms of the Short Notice (also known as the Postcard Notice), Long Notice, and Claim Form, attached as Exhibits B, C, and D respectively to the Settlement Agreement, are constitutionally adequate, and are hereby approved. The Notice contains all essential elements required to satisfy Colorado statutory requirements and due process. The Court further finds that the form, content, and method of providing the Settlement Class Notice, as described in the Settlement Agreement, including the exhibits thereto: (a) 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 Settlement, their rights under the Settlement, including but not limited to their rights to object to or exclude themselves from the Settlement; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members.

12. The Notice program set forth in the Settlement Agreement, and described below, satisfies the requirements of Rule 23 of the Colorado Rules of Civil Procedure, provides the best notice practicable under the circumstances and is hereby approved.

13. The Claims Administrator is directed to carry out the Notice program as set forth in the Settlement Agreement.

14. Within forty-five (45) days of this Preliminary Approval Order, the Claims Administrator shall complete the Notice program in the manner set forth in the Settlement Agreement.

#### **EXCLUSIONS AND OBJECTIONS**

15. Settlement Class Members who seek to be excluded from the Settlement Class must sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator, as set forth in the Notices. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. The notice must be postmarked no later than sixty (60) days from the Notice Date.

16. In the event that within ten (10) days after the Opt-Out Date as approved by the Court, there have been more than fifty (50) timely and valid Opt-Outs (exclusions) submitted, Defendant may, by notifying Class Counsel and the Court in writing, void this Settlement Agreement. If Defendant voids the Settlement Agreement pursuant to this paragraph, Defendant shall be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Class Counsel and Plaintiffs' Counsel and service awards and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

17. Settlement Class Members who comply with the requirements of this paragraph may object to the Settlement, the Attorneys' Fees Request, or the Service Award Requests. Settlement Class Members seeking to object to the Settlement must submit timely written notice of his or her objection. This 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) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing, and; (vii) 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). To be timely, written notice of an objection must be filed with the Clerk of the Court Denver District Court, located at 1437 Bannock Street, Room 256, Denver, Colorado 80202, and contain the case name and docket number, *Snyder et al. v. The Urology Center of Colorado, P.C.*, Case No. 2021CV33707 (the "*Snyder Action*"). This written notice of objection must be filed no later than sixty (60) days from the Notice Date, and must be served concurrently upon Class Counsel, Milberg Coleman Bryson Phillips Grossman, PLLC, 5335 Wisconsin Avenue NW, Suite 440, Washington, D.C. 20015; and counsel for Defendant, Casie D. Collignon, Baker & Hostetler, LLP, 1801 California Street, Suite 4400, Denver, Colorado 80202.

18. Any Settlement Class Member who fails to comply with the requirements for objecting to the Settlement shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement, and the Settlement Class Member shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the means described above. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the Colorado Rules of Appellate Procedure and not through a collateral attack.

#### **ADMINISTRATION OF THE SETTLEMENT**

19. The Class Representatives, Class Counsel, and Defendant have created a process for assessing the validity of claims and a payment methodology to Settlement Class Members who submit timely, valid Claim Forms. The Court hereby preliminarily approves the Settlement benefits to the Settlement Class, and the plan for distributing Settlement benefits as described in Section 8 of the Settlement Agreement.

20. The Court appoints Epiq Class Action & Claims Solutions, Inc. as the Claims Administrator. Defendant shall pay all costs and expenses associated with providing Notice to Settlement Class Members. These payments shall be made separate and apart from the Settlement benefits.

21. The Court directs that the Claims Administrator effectuate the distribution of Settlement benefits according to the terms of the Settlement Agreement, should the Settlement be finally approved.



22. Settlement Class Members who qualify for Settlement benefits and who wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice.

23. If Final Judgment is entered, all Settlement Class Members who fail to submit a claim in accordance with the requirements and procedures specified in the Notice, and who do not timely exclude themselves from the Settlement Class, shall be forever barred from receiving any Settlement benefit, and will in all other respects be subject to and bound by the provisions of the Settlement Agreement, including the Releases, and the Final Judgment.

#### **FINAL FAIRNESS HEARING**

24. A Final Fairness Hearing shall be held on \_\_\_\_, 2022 at \_\_\_\_ in the Denver District Court Room\_\_\_\_, located at 1437 Bannock Street, Denver, Colorado 80202 to be noticed on the Settlement Website.

25. The Court may require or allow the Parties and any objectors to appear at the Final Fairness Hearing by telephone or videoconference.

26. At the Final Fairness Hearing, the Court will determine whether (1) this action should be finally certified as a class action for settlement purposes pursuant to Colorado Rules of Civil Procedure; (2) the Settlement should be finally approved as fair, reasonable, and adequate; (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) Class Counsel's application for attorneys' fees and expenses should be approved; and (6) the Class Representatives' requests for service awards should be approved.

27. Plaintiffs' Motion for Final Approval shall be filed with the Court no later than fourteen (14) days before the Final Fairness Hearing.

28. Plaintiffs' Motion for attorneys' fees and expenses shall be filed with the Court no later than fourteen (14) days prior to the Opt-Out and Objection Deadline.

### **TERMINATION**

29. 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 March 29, 2022, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement.

30. 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.

31. This Order shall have no continuing force or effect if Final Judgment is not entered and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the certifiability of any class.

32. All proceedings and deadlines in this matter, except those necessary to implement this Order and Settlement, are hereby stayed and suspended until further order of the Court.

### **SUMMARY OF DEADLINES**

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

EVENT	DATE
Notice Date	45 days after the entry of the Preliminary Approval Order
Deadline for Class Members to Opt-Out of Settlement	60 days after Notice Date
Deadline for Class Members to Object to Settlement	60 days after Notice Date
Deadline for Plaintiffs to File Motion for Final Approval	14 days prior to Final Fairness Hearing
Deadline for Plaintiffs to File Motion for Attorneys' Fees, Expenses and Service Awards for Class Representatives	14 days prior to Opt-Out and Objection Deadlines
Deadline for Class Members to Submit Claim Forms	90 days after Notice Date
Final Fairness Hearing	

ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2022.

**BY THE COURT:**

\_\_\_\_\_  
Honorable Andrew P. McCallin

cc: Counsel of Record