

RECEIVED MAR 21 2023

MONTANA EIGHTH JUDICIAL DISTRICT COURT
CASCADE COUNTY

PATRICIA TAFELSKI, <i>et. al.</i> , on behalf of themselves and all others similarly situated,)	Cause No. ADV-22-0108 (D)
)	
)	
Plaintiffs,)	Honorable John W. Parker
)	
v.)	
)	
LOGAN HEALTH MEDICAL CENTER,)	JUDGMENT
)	
Defendant.)	

On March 9, 2023, the Court granted Plaintiffs' motion for final approval of the Class Action Settlement with Logan Health Medical Center, and Plaintiffs' motion for an award of attorney's fees, costs, and expenses, and payment of Service Awards to the Settlement Class Representatives. Judgment is hereby entered.

IT IS SO ORDERED.

So Ordered this 16th day of March, 2023.

ELECTRONICALLY SIGNED AND DATED BELOW.

CERTIFICATE OF MAILING

This is to certify that the foregoing was
duly served by mail upon counsel of
record at their address this _____
day of 03/17/2023, 20____

TINA HENRY, CLERK OF COURT
BY [Signature] DEPUTY

Electronically Signed By:
Hon. Judge John Parker
Thu, Mar 16 2023 09:47:54 AM

RECEIVED MAR 21 2023

MONTANA EIGHTH JUDICIAL DISTRICT COURT
CASCADE COUNTY

PATRICIA TAFELSKI, <i>et. al.</i> , on behalf of)	
themselves and all others similarly situated,)	Cause No. ADV-22-0108 (D)
)	
Plaintiffs,)	Honorable John W. Parker
)	
v.)	
)	
LOGAN HEALTH MEDICAL CENTER,)	ORDER
)	
Defendant.)	
)	

WHEREAS, on December 2, 2022, a Preliminary Approval Order was entered by the Court preliminarily approving the proposed Settlement pursuant to the terms of the Parties' Settlement Agreement, and directing that Notice be given to the Settlement Class.

WHEREAS, pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement, of the right of members of the Settlement Class to object or opt-out, and of the right of members of the Settlement Class to be heard at a Final Approval Hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether the Final Approval Order and Judgment should be entered dismissing this Litigation with prejudice;

WHEREAS, a Final Approval Hearing was held on March 9, 2023. Settlement Class Members were notified of their right to appear at the Final Approval Hearing in support of or in

opposition to the proposed Settlement, the award of attorney's fees, costs, and expenses to Class Counsel, and requested Service Award Payment.

NOW, THEREFORE, the Court having heard the presentation of Class Counsel and counsel for Defendant, the presentation of counsel for objectors Fisher, Johnson, and Monforton, having reviewed all of the submissions presented with respect to the proposed Settlement, having determined that the Settlement is fair, reasonable, and adequate, having considered the application for attorney's fees, expenses, and costs made by Class Counsel and the application for a Service Award Payment to the Settlement Class Representatives, and having reviewed the materials in support thereof, and good cause appearing:

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The capitalized terms used in this Final Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered.
2. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all parties thereto, including the Settlement Class.
3. The Court hereby approves the Settlement, including the plans for implementation and distribution of the settlement relief, and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class Members, within the authority of the parties and the result of extensive arm's-length negotiations. The parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

4. There are 3 objections and 6 opt outs to the Settlement. Those Settlement Class Members who timely and properly excluded themselves from the settlement are identified in **Exhibit A.**

5. The Settlement Class, which will be bound by this Final Approval Order, shall include all members of the Settlement Class who did not submit timely and valid requests to be excluded from the Settlement Class.

6. For purposes of the Settlement and this Final Approval Order, the Court hereby:

a. certifies the following Settlement Class pursuant to M.R. Civ. P. 23: “Individuals identified on the Settlement Class List, including all individuals who were notified, including by direct notice and publication by Logan Health that their personal information was or may have been compromised in the data security incident initially disclosed by Logan Health on or about February 18, 2022. Excluded from the Settlement Class are: (1) the judges presiding over this Litigation, and members of their direct families; (2) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, and employees; (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline”;

b. appoints Plaintiffs Hazel Conway, John Conway, Bonnie Leahy, Timothy Leahy, Mark Reitan, Allison Smeltz, Rhonda Stephens-Block, Patricia Tafelski, Jennifer Teich, and Patrick Teich, for settlement purposes only, as representatives for the Settlement Class for purposes of Montana Rule 23;

c. appoints John Heenan of Heenan & Cook, Andrew W. Ferich of Ahdoot & Wolfson, PC, David R. Paoli of the Paoli Law Firm, P.C., and John A. Yanchunis of Morgan & Morgan as Class Counsel; and

d. finds that the dissemination of Notice to Settlement Class Members: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of the Litigation; (ii) their right to submit a claim (where applicable) by submitting a Claim Form; (iii) their right to exclude themselves from the Settlement Class; (iv) the effect of the proposed Settlement (including the releases to be provided thereunder); (v) Class Counsel's motion for a Fee Award and Costs and for Service Awards to the Class Representatives; (vi) their right to object to any aspect of the Settlement, and/or Class Counsel's motion for Service Awards to the Class Representatives and for a Fee Award and Costs; and (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and sufficient notice to all natural persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Montana Rule 23, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

7. All persons who have not made their objections to the Settlement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

8. Within the time periods set forth in Sections III-V of the Settlement Agreement, the Settlement benefits provided for in the Settlement Agreement shall be paid to the Settlement Class

Members submitting valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

9. Upon the Effective Date, Settlement Class Members who did not validly and timely opt-out shall, by operation of this Final Approval Order, have fully, finally, and forever released, relinquished and discharged Defendant from all claims that were or could have been asserted in the action.

10. All Settlement Class Members who did not validly and timely opt-out are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims against Defendant released pursuant to the Settlement Agreement.

11. The terms of the Settlement Agreement and this Final Approval Order shall have maximum *res judicata*, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorney's fees, costs, interest or expenses which were or could have been asserted in the Litigation or in any third party action.

12. The Final Approval Order, the Settlement Agreement, the Settlement which it reflects, and all acts, statements, documents, or proceedings relating to the Settlement are not, and shall not be construed as, or used as an admission by or against Defendant of any fault, wrongdoing, or liability on the part of Defendant or of the validity or certifiability for litigation of any claims.

13. The Court finds a Service Award of \$3,500 per Settlement Class Representative is fair and reasonable. These amounts are to be paid out of the Settlement Fund, in accordance with the Settlement Agreement.

17. The Court hereby approves an award of attorney's fees in an amount of \$1,433,333.00 and costs and expenses in an amount of \$23,334.12. These amounts are to be paid out of the Settlement Fund, in accordance with the Settlement Agreement. The Court finds these amounts to be fair and reasonable pursuant to the non-exclusive factors approved by the Montana Supreme Court in *Gendron v. Montana University System*, 339 Mont. 470 (2020) to determine a reasonable fee under the percentage of the recovery calculation. Specifically, the Court finds:

a. The percentage of the fund formula is preferable over the lodestar formula in this case given that the case did not present fee-shifting claims, Class Counsel undertook the case on a contingency fee basis and Class Representatives agreed to this fee structure, the percentage of the fund formula incentivized Class Counsel to be efficient with the prosecution of this case and in seeking maximum relief to the class, particularly given the cannibalizing/wasting insurance policy at issue.

b. A contingency fee determined by applying the percentage of the fund formula is the standard for plaintiffs' cases in general and common fund class action cases specifically.

c. Overwhelming authority exists in Montana to use the percentage of the common fund method, with a 1/3 contingency fee being common in class action litigation. *See, e.g., Henderson v. Kalispell Regional Hospital*, No. CDV-19-0761 (Judge Best awarded 1/3 fee of common fund); *Sones v. Rimrock Engineering, Inc.*, No. DV 19-0575 (Judge Todd awarded 1/3 fee of common fund); *Hageman v. AT&T Mobility*, No. CV-13-50-DLC-RWA, (Magistrate Judge

Anderson awarded 1/3 fee of common fund); *Sones v. Copper Ridge*, No. DV 19-0575 (Judge Souza awarded a 1/3 fee of common fund).

d. The issues in this data breach case are complex and novel. They are a different order of business outside the scope of what a general practitioner is capable of litigating. The amended complaint filed in this matter reveals the novelty and difficulty of the legal and factual issues presented here.

e. The offer of proof from Class Counsel confirmed that significant time and effort went into achieving this settlement. There was no contravening offer of proof by Objectors to contest the degree of work that was performed. The assertion by Objectors and their counsel that very little time was spent litigating this action is rejected as unfounded.

f. Risk in this litigation was profound, both to the Class and to Class Counsel. This case involved very important issues to the class of data breach and remedies, and the resolution secures significant remedies for the Class Members. Class Counsel took this case on with significant risk that they would recover nothing given the numerous legal issues they faced.

g. Class Counsel secured an exceptional result for the class. This Settlement reflects a significant monetary recovery for the Settlement Class and robust forward-looking relief with respect to Logan Health's business practices, none of which would have occurred without the diligence and hard work of Class Counsel and is an excellent result. Plaintiffs presented the Court with objective proof that the per class member recovery in this case far exceeds numerous data breach settlements approved as fair and reasonable by other courts.

h. Members of the class lacked the means to prosecute these cases individually, or to engage and pay counsel to bring these cases without a contingency fee arrangement. There are significant policy considerations that heavily support this decision. Justice Morris articulated these

in his dissent in *Pallister v. Blue Cross and Blue Shield of Montana, Inc.*, 366 Mont. 175 (2012). Class action litigation is necessary to allow large numbers of Plaintiffs to join together to seek redress for the harms caused to them. Many times, the redress sought would be cost prohibitive for an individual or a handful of people to bring the case. The Class action opens the courthouse doors to these deserving plaintiffs. Thus, Class Counsel who take on the risk of bringing these cases and representing the class should be encouraged to do so.

i. Class Counsel are experienced in the fields of class actions and data breach cases and possessed the experience, skills, and reputations to achieve the results secured.

j. Class Counsel undertook the significant risk of no recovery and had to forego other lucrative work to prosecute this case on behalf of the class.

k. Class Counsel have earned and are entitled to a 1/3 attorney fee for their work securing this Settlement on behalf of the class, and are additionally entitled to the sum of \$23,334.12 for costs and expenses that were reasonably and necessarily incurred to litigate this case.

18. The Court has considered the objection to the Settlement by Objectors Johnson, Fisher, and Monforton. The Court finds and concludes that the objection is without merit, and is hereby overruled. Specifically, the Court finds:

a. The only objection to approval of the settlement was Mr. Monforton's request to "see" the insurance policy to confirm it is a "wasting" or "cannibalistic" policy. Messrs. Paoli, Heenan, and Zadick all confirmed on the record that the policy is an eroding policy. As officers of this Court, I am satisfied with their clear confirmation and no further discovery on this issue or any other discovery is necessary or permitted by Objectors.

b. Class Counsel submitted satisfactory proof as stated above that they earned and deserve a 1/3 common fund payment for their work on behalf of the Class. Objectors made no offer of the proof to the contrary. Indeed, Objectors didn't state what they considered to be a fair and reasonable payment to Class Counsel, and didn't present any persuasive evidence or argument that a 1/3 common fund payment was not warranted.

c. A lodestar crosscheck is not required under Montana jurisprudence, and has been rejected by federal courts and commentators as unnecessary and wasteful of judicial resources. While a lodestar crosscheck may be necessary in some cases, the Court does not find that a lodestar crosscheck is necessary or warranted under the facts of this case for the reasons stated above.

19. Objectors' Motion for Discovery is denied in whole. Objectors' offered authority in support of the Motion for Discovery, *Pallister*, is factually distinguishable as Objectors did not present any evidence of collusion. Plaintiffs and Defendant objectively presented proof that this settlement was the result of arms-length negotiations facilitated by a retired judge serving as mediator. The requested discovery by Objectors would not serve the best interests of the class as it would cause delay in payment and remedies afforded under the settlement to the class, and could expose Objectors themselves to legal risks.

19. The above-captioned Litigation and action is hereby dismissed against Defendant in its entirety, with prejudice. Except as otherwise provided in this Final Approval Order, the parties shall bear their own costs and attorney's fees. Without affecting the finality of the Judgment entered, the Court reserves jurisdiction over the implementation of the Settlement, including enforcement and administration of the Settlement Agreement.

20. The Court hereby approves the distribution of any remaining value from the Settlement Fund to the Montana Justice Foundation pursuant to M.R.Civ.P. 23.

So Ordered this 16th day of March, 2023.

ELECTRONICALLY SIGNED AND DATED BELOW.

CERTIFICATE OF MAILING

This is to certify that the foregoing was
duly served by mail upon counsel of
record at their address this _____
day of 03/17/2023, 20_____
TINA HENRY, CLERK OF COURT
By *L. Morris* DEPUTY