

IN THE PENNSYLVANIA COURT OF COMMON PLEAS
WARREN COUNTY

ROBERT PESSIA, PETER HETTMAN,
HEIDI TULLER, ROBERT MARRONE, and
JEAN BERRY individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

WARREN GENERAL HOSPITAL,

Defendant.

CIVIL DIVISION

CASE NO. 501-2023

CONSOLIDATED CLASS ACTION

WARREN COUNTY
PROTHONOTARY/
CLERK OF COURTS

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FILED

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

The Court, having considered all matters submitted to it and otherwise, and finding no just reason for delay in entry of this Preliminary Approval Order,¹ and good cause appearing therefore, and having considered the papers filed and any proceedings held in connection with the Settlement, having considered all the other files, records, and proceedings in the Action, and being otherwise fully advised,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

1. The Settlement Agreement, attached to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") as Exhibit 1 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.

¹ Unless otherwise indicated or defined separately herein, all capitalized terms share the same definitions as those terms are defined in the Settlement Agreement.

2. The Court has jurisdiction over the claims at issue in this lawsuit, Plaintiffs Robert Pessia, Peter Hettman, Heidi Tuller, Robert Marrone, and Jean Berry (“Plaintiffs”), individually and on behalf of all others similarly situated, and Defendant Warren General Hospital (“WGH” or “Defendant”) (together with Plaintiffs, the “Parties”).

3. This Order is based on Pennsylvania Rule of Civil Procedure 1702.

4. The Court finds that the Parties’ Settlement as set forth in Exhibit 1 to Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement is fair, reasonable, and adequate, and falls within the range of possible approval, and was entered into after extensive, arm’s-length negotiations, such that it is hereby preliminarily approved and notice of the Settlement should be provided to the Settlement Class Members.

PROCEDURAL HISTORY

5. This case arises out of a Data Incident at WGH between September 15, 2023, and September 23, 2023. WGH is a Pennsylvania-based healthcare provider which has its principal place of business at 2 W Crescent Park, Warren, PA 16365. As a condition of receiving health services at WGH, current and former patients like Plaintiffs are required to provide personal information.

6. Plaintiffs allege that the Data Incident resulted in the unauthorized access to files within WGH’s systems. As a result of Data Incident, WGH notified approximately 168,921 individuals that their Private Information was potentially impacted in the Data Incident.

7. On December 1, 2023, Plaintiff Robert Pessia filed *Pessia v. Warren General Hospital*, Case No. 501 in this Court asserting various state law claims as a result of the Data Incident. Subsequent additional actions were filed in both federal court and in this Court.

8. On January 29, 2024, the Court consolidated four related actions into this Action and appointed Andrew W. Ferich of Ahdoot & Wolfson, PC and Danielle L. Perry of Mason LLP as Interim Co-Lead Class Counsel for the putative class. Plaintiffs then filed a Consolidated Class Action Complaint against the Defendant alleging: (a) negligence; (b) breach of contract; (c) breach of implied contract; (d) breach of fiduciary duty; (e) breach of confidence; (f) unjust enrichment; (g) breach of the Pennsylvania Unfair Trade and Consumer Protection Law; and (h) for declaratory judgment.

9. Plaintiffs alleged they and class members suffered or will suffer: (i) risk of fraud and identity theft; (ii) lost or diminished value of Private Information; (iii) out-of-pocket expenses associated with mitigation efforts; (iv) lost opportunity costs due to mitigation efforts, e.g., lost time; (v) invasion of privacy; and (vi) emotional distress, fear, anxiety, nuisance, and annoyance.

10. Plaintiffs sought various relief, including monetary relief and equitable relief enjoining Defendant from engaging in the wrongful conduct complained of and compelling Defendant to use appropriate methods and policies with respect to data collection and security.

SETTLEMENT BENEFITS

11. The Settlement negotiated on behalf of the Class provides for a \$1,300,000 non-reversionary Settlement Fund that will be used to pay for Settlement Administration Costs, taxes, and any service awards (“Service Awards”) and attorneys’ fees and costs (“Fees and Costs”). The remaining amount in the net settlement fund (the “Net Settlement Fund”) will be used to pay for Valid Claims submitted by Settlement Class Members for Settlement Benefits. Settlement Class Members may submit a Claim for only one of the following Settlement Benefits:

a. Cash Payment A – Documented Losses Payment: Settlement Class Members may submit a Claim for Cash Payment A (“Documented Losses Payment”) seeking up to \$5,000 per

person for the reimbursement of documented losses (“Documented Losses”) with reasonable documentation. Documented Losses must be supported sufficiently to show that the claimed loss is more likely than not a result of the Data Incident. The Settlement Administrator will review these Claims for compliance with the requirements of the Settlement Agreement. Any Claim for a Cash Payment A – Documented Loss Payment that is rejected, if not timely cured, may instead be considered for a Cash Payment B – Flat Cash Payment by discretion of the Settlement Administrator.

b. Cash Payment B – Flat Cash Payment: Settlement Class Members may instead elect to receive a *pro rata* flat cash payment (“Flat Cash Payment”). The actual amount a Settlement Class Member will receive for this option may be more or less depending on the number of Valid Claims submitted. Settlement Class Members who submit a Claim for a Flat Cash Payment are not entitled to also select the Documented Loss Payment (Cash Payment A).

12. In addition to the monetary Settlement Benefits, WGH will implement data security measures and enhancements for a period of three years following entry of the Final Approval Order and Judgment.

13. The Settlement Fund shall be used to make payments for the following: (i) Settlement Administration Costs; (ii) attorneys’ fees and litigation costs and expenses; (iii) Valid Claims for Documented Losses Payments (Cash Payment A), up to \$5,000 per Claim; (iv) Valid Claims for Flat Cash Payments (Cash Payment B), to be paid on a *pro rata* basis; and (v) taxes.

14. Importantly, the Settlement Fund is non-reversionary. To the extent any monies remain in the Net Settlement Fund more than 210 days after the distribution of Settlement Payments, a subsequent Settlement Payment will be evenly made to all Settlement Class Members with Approved Claims for Cash Payment B who cashed or deposited the initial payment they

received, assuming such payment is over \$3.00. Should any amount remain in the Net Settlement Fund, 100% of the amount remaining in the Net Settlement Fund 45 days following the 180-day check negotiation period and after all efforts to re-send returned Settlement payments have conclude, shall be given to the Pennsylvania Interest on Lawyers Trust Account Board (PA IOLTA), pursuant to Pa. R. Civ. P. 1716.

CLASS CERTIFICATION

15. For purposes of settlement only, the Court provisionally certifies the class, defined as follows:

All natural persons in the United States whose Private Information was accessed as a result of the Data Incident, including those who were sent a notification from Defendant of the Data Incident. Excluded from the Settlement Class are (a) all persons who are governing board members of the Defendant; (b) governmental entities; and (c) the Court and any Judge(s) presiding over this matter), the Court's immediate family, and Court staff.

16. The Court provisionally finds, pursuant Pa. R. Civ. P. 1708, for settlement purposes 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 claims of the Settlement Class; (d) the Class Representatives and Class Counsel will fairly and adequately protect the interests of the Settlement Class; and (e) the Court finds that the questions of law or fact common to the Settlement Class Members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

CLASS COUNSEL AND THE CLASS REPRESENTATIVES

17. Plaintiffs Robert Pessia, Peter Hettman, Heidi Tuller, Robert Marrone, and Jean Berry 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, and, therefore, they will be adequate Class Representatives.

18. The Court finds that Andrew W. Ferich of Ahdoot & Wolfson, PC and Danielle L. Perry of Mason LLP are experienced and adequate counsel, and are provisionally designated as Settlement Class Counsel.

NOTICE TO SETTLEMENT CLASS

19. No later than 45 days after the entry of the Preliminary Approval Order (i.e., the Notice Date), or such other time as may be ordered by the Court, the Settlement Administrator shall disseminate and complete the Notice to the Settlement Class Members as follows:

- a. For any Settlement Class Member for whom a physical address is reasonably available, the Settlement Administrator will send the Notice (in Postcard form) by U.S. mail, postage prepaid;
- b. In the event the Settlement Administrator transmits a Notice via U.S. Mail, then the Settlement Administrator shall perform any further investigations deemed appropriate by the Settlement Administrator, including using the National Change of Address (“NCOA”) database maintained by the United States Postal Service, in an attempt to identify current mailing addresses for individuals or entities whose names are provided by WGH;
- c. For any Notice that has been mailed via U.S. mail and returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail;

- d. At the direction and discretion of the Parties, the Settlement Administrator shall perform reasonable address traces for those Postcard Notices that are returned as undeliverable. If the Parties elect remailing, then no later than 45 days before the original date set for the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces.
- e. Neither the Parties nor the Settlement Administrator shall have any other obligation to re-mail individual notices that have been mailed; and
- f. Mailed Notice shall also be enhanced by the Digital Advertisement Notice.

20. Prior to any dissemination of the Notice and prior to the Notice Date, the Settlement Administrator shall cause the Settlement Website to be launched on the internet. The Settlement Administrator shall create the Settlement Website. The Settlement Website shall contain information regarding how to submit Claim Forms (including submitting Claims Forms electronically through the Settlement Website) and relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, this Agreement, the Preliminary Approval Order entered by the Court, and the operative Consolidated Class Action Complaint in the Action, as well as the date, time, and place of the Final Approval Hearing. The Settlement Website shall also include a toll-free telephone number and mailing address through which Settlement Class Members may contact the Settlement Administrator directly.

21. The Long Form Notice, Postcard Notice, Digital Advertisement Notice and Claim Form, attached as Exhibits E, F, B and A, respectively, to the Settlement Agreement, are constitutionally adequate and are hereby approved. The Notice contains all essential elements required to satisfy federal statutory requirements and due process. The Court further finds that the

form, content, and method of providing the 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.

22. The Notice Program set forth in the Settlement Agreement provides the best notice practicable under the circumstances, and is hereby approved.

23. The Settlement Administrator is directed to carry out Notice and the Notice Program, as set forth in the Settlement Agreement.

OPT-OUT AND OBJECTIONS

24. Class Members may submit a request to opt-out or object to the Settlement 30 days before the Final Approval Hearing. Any Settlement Class Member may submit a request to opt-out of the Settlement at any time during the Opt-Out Period by mailing a request to opt-out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Period. The opt-out request must be in writing and must identify the case name "*Pessia, et al. v. Warren General Hospital*;" be personally signed by the Settlement Class Member and contain the name, address, telephone number, and email address (if any), and unique identifier of the Class Member seeking exclusion; identify any lawyer representing the Class Member seeking to opt out; and must include a statement indicating a request to be excluded from the Settlement Class. Any individual in the Settlement Class who does not timely and validly request to opt-out shall be bound by the terms of this Agreement even if he or she does not submit a Valid Claim.

25. Opt-outs may only be on an individual basis, and no person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs. Any Class Member who timely requests exclusion shall not: (i) be bound by any Final Approval Order or the Judgment; (ii) be entitled to the Settlement Benefits under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement.

26. Any Class Member who wishes to object shall submit a timely written notice of his or her objection within the Objection Period, which is 30 days before the Final Approval Hearing. For an objection to be considered by the Court, the objection must also set forth: (a) the objector’s full name, mailing address, telephone number, and email address (if any); (b) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector’s counsel; (c) the number of times the objector has objected to a class action settlement within the 5 years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector’s prior objections that were issued by the trial and appellate courts in each listed case; (d) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys’ Fees, Costs, and Service Awards; (e) 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 5 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel’s or the counsel’s law firm’s prior objections that were issued by the trial and appellate courts in each listed case in which the objector’s counsel and/or counsel’s law firm have objected to a class action

settlement within the preceding 5 years; (f) any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector’s counsel and any other person or entity; (g) the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing; (h) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any); (i) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (j) the objector’s signature (an attorney’s signature is not sufficient). All objections must be submitted to the Settlement Administrator and to the Court either by mailing them to: Clerk, Warren County Court of Common Pleas, 204 4th Avenue, Warren, Pennsylvania, 16365, or by filing them in person at the Courthouse. A copy of all objections must be served upon Class Counsel identified below. All objections must be filed or postmarked on or before the Objection Deadline, as set forth above.

27. Any Settlement Class Member who does not make their objections in the manner and by the date set forth in the last paragraph shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

28. Without limiting the foregoing, any challenge to the Settlement Agreement, this Order Granting Preliminary Approval of the Class Action Settlement Agreement, and the Final Approval Order and Judgment shall be pursuant to appeal under the Pennsylvania Rules of Appellate Procedure and not through a collateral attack.

ADMINISTRATION OF SETTLEMENT

29. The Class Representatives, Class Counsel, and WGH 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 the Settlement Benefits as described in Sections III and VII of the Settlement Agreement.

30. The Court appoints Epiq Class Action & Claims Solutions, Inc. as Settlement Administrator.

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

32. 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.

33. If the Final Approval Order and Judgment are 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 payments or benefits pursuant to the Settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Final Approval Order and Judgment.

34. The Settlement Fund shall be used by the Settlement Administrator to pay for: (1) Settlement Class Member Benefits to those Settlement Class Members who submit a Valid Claim; (2) any Service Awards awarded to the Class Representatives; (3) any attorneys' fees and costs

and expenses awarded to Class Counsel; and (4) all Settlement Administration Costs,² pursuant to the terms and conditions of the Settlement Agreement.

FINAL APPROVAL HEARING

35. A hybrid (i.e., in-person and remote via Zoom or another similar service) Final Approval Hearing shall be held on May 5, 2025 at the Warren County Courthouse, located at 204 Fourth Avenue, Warren, PA 16365, in Courtroom Main, to be noticed on the Settlement Website.

36. The Court may require or allow the Parties and any objectors to appear at the Final Approval Hearing either in person or by telephone or videoconference.

37. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and Judgment, and whether to grant the Application for Attorneys' Fees, Costs, and Service Awards. Such proposed Final Approval Order shall, among other things: (a) Determine that the Settlement is fair, adequate and reasonable; (b) Finally certify the Settlement Class for settlement purposes only; (c) Determine that the Notice Program satisfies Due Process requirements; (d) Bar and enjoin all Releasing Parties from asserting any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; bar and enjoin all Releasing Parties from pursuing any Released Claims against Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions; (e) Release Defendant and the Released Parties from the Released Claims; and (f) Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, Plaintiffs, all

² "Settlement Administration Costs" is defined in the Settlement Agreement as: "all costs and fees of the Settlement Administrator regarding Notice and Settlement administration."

Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

38. Class Counsel shall file an Application for Attorneys' Fees, Costs and Class Representatives' requests for Service Awards no later than 45 days before the original date set for the Final Approval Hearing.

39. Class Counsel shall file a motion for Final Approval and Judgment of the Settlement no later than 21 days before the original date set for the Final Approval Hearing.

TERMINATION

40. 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, if the Settlement is not finally approved by the Court or is terminated in accordance with Section XIV of the Settlement Agreement.

41. In the event this Agreement is terminated or fails to become effective, then the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement, and the parties shall jointly file a status report in the Court seeking to reopen the Action and all papers filed. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

42. In the event this Agreement is terminated or fails to become effective, all funds in the Settlement Fund shall be promptly returned to Defendant. However, Defendant shall have no right to seek from Plaintiffs, Class Counsel, or the Settlement Administrator the Settlement Administration Costs paid by or on behalf of Defendant. After payment of any Settlement

Administration Costs that have been incurred and are due to be paid from the Settlement Fund, the Settlement Administrator shall return the balance of the Settlement Fund to Defendant within 21 days of termination.

43. In the event of a termination, the Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, Defendant's, and Defendant's Counsel's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all the Parties' respective pre-Settlement rights, claims, and defenses will be retained and preserved.

44. In the event the Settlement is terminated in accordance with the provisions of the Agreement, any discussions, offers, or negotiations associated with the Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if the Agreement had not been negotiated, made, or filed with the Court.

45. 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 WGH of any fault, wrongdoing, breach, liability, or the certifiability of any class.

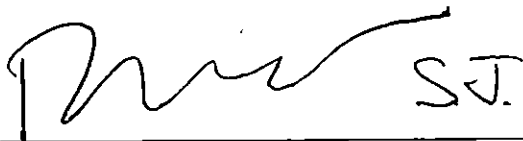
SUMMARY OF DEADLINES

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

Defendant shall prepare and provide the Class List to the Settlement Administrator	7 days after the Court enters the Preliminary Approval Order (<u>February 3</u> , 2025)
Deadline to mail Notices (the "Notice Date")	No later than 45 days after Court enters Preliminary Approval Order (<u>March 12</u> , 2025)
Deadline to File Motion for Fee Award and Costs, and Service Awards	45 days before the original date set for the Final Approval Hearing (March 21, 2025)
Deadline to File Request to Opt-Out or Objection	30 days before the original date set for the Final Approval Hearing (April 5, 2025)
Deadline to file Motion for Final Approval of Settlement	21 days before the original date set for the Final Approval Hearing (April 14, 2025)
Deadline to File Claim Form	15 days before the original date set for the Final Approval Hearing (April 20, 2025)
Final Approval Hearing date (hybrid in-person and remote, e.g., Zoom, hearing)	May 5, 2025 at 9:00 a.m. ET

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Date: January 20, 2025

 SJ.

 HONORABLE ROBERT G. YEATTS

FILED
 2025 JAN 23 AM 11:25
 WARREN COUNTY
 PROTHONOTARY/
 CLERK OF COURTS

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