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**GRAYS HARBOR COUNTY SUPERIOR COURT
STATE OF WASHINGTON**

CHELICIE BAILEY, individually and on behalf of others similarly situated,

Plaintiff(s),

v.

GRAYS HARBOR COUNTY PUBLIC HOSPITAL DISTRICT NO. 2, a Washington State special purpose district, GRAYS HARBOR COMMUNITY HOSPITAL, a Washington State nonprofit corporation, and GHCH PHYSICIAN SERVICES, LLC d/b/a HARBOR MEDICAL GROUP, a Washington State limited liability corporation and a subsidiary of Grays Harbor Community Hospital,

Defendant(s).

CLASS ACTION

Case No. 20-2-00217-14

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT
AGREEMENT**

This matter came before the Court on Plaintiff’s Unopposed Motion for Preliminary Approval of Class Settlement Agreement. Plaintiff, individually and on behalf of the proposed Settlement Class, and Defendants have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-captioned litigation.

In June 2019, Grays Harbor was the victim of a criminal cyberattack in which criminals gained access to certain of Grays Harbor’s servers and installed a virus that prevented Grays Harbor from accessing certain information stored on those servers (“Data Incident”). On October 2, 2019, Plaintiff Chelcie Bailey (“Plaintiff” or “Settlement Class Representative”) sent a demand letter attaching a draft complaint for a putative class action (the “Complaint”) against

1 Defendants Grays Harbor County Public Hospital District No. 2; Grays Harbor Community
2 Hospital; and GHCH Physician Services, LLC d/b/a Harbor Medical Group (“Grays Harbor,”
3 and together with Plaintiff, “the Parties”). The Complaint asserts seven causes of action, all of
4 which allegedly arise from the Data Incident: (1) violation of the Washington State Uniform
5 Healthcare Information Act; (2) violation of the Washington State Consumer Protection Act; (3)
6 negligence; (4) intrusion upon seclusion/invasion of privacy; (5) violation of the Washington
7 State Constitution’s right to privacy; (6) breach of express contract; and (7) breach of implied
8 contract.

9 According to the Complaint, Grays Harbor’s electronic medical records system was
10 accessed in an unauthorized manner by a third party in or about June 2019, which resulted in the
11 exposure of patients’ personally identifiable and/or protected health information. The
12 information allegedly exposed included names, addresses, telephone number, email address,
13 social security numbers, dates of birth, chart numbers, and potentially insurance or primary care
14 information. The third party did not have access to credit cards or financial account information.

15 The Parties, through their counsel, have entered into a Settlement Agreement following
16 good faith, arm’s-length negotiations and a mediation overseen by Mark G. Honeywell of
17 Gordon Thomas Honeywell. The Parties have agreed to settle this action, pursuant to the terms
18 of the Settlement Agreement, and subject to the approval and determination of the Court as to the
19 fairness, reasonableness, and adequacy of the Settlement which, if approved, will result in
20 dismissal of this action with prejudice.

21 Having reviewed the Settlement Agreement, including the exhibits attached thereto, and
22 all prior proceedings herein, and for good cause shown, it is hereby ordered that Plaintiff’s
23 Motion for Preliminary Approval is granted as set forth herein.¹

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27 ¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the
Settlement Agreement.

1 **1. Class Certification for Settlement Purposes Only.** For settlement purposes
2 only and pursuant to Washington Civil Rule 23, the Court provisionally certifies a Settlement
3 Class in this matter defined as follows:

4 All persons who were notified by or on behalf of Grays Harbor regarding the
5 Data Incident.

6 The Settlement Class specifically excludes: (i) Grays Harbor and its officers and
7 directors; (ii) all Settlement Class Members who timely and validly request exclusion from the
8 Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; and (iv) any
9 other Person found by a court of competent jurisdiction to be guilty under criminal law of
10 initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who
11 pleads *nolo contendere* to any such charge.

12 The Court provisionally finds, for settlement purposes only, that: (a) the Settlement Class
13 is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there
14 are issues of law and fact common to the Settlement Class; (c) the claims of the Settlement Class
15 Representative are typical of and arise from the same operative facts and seek similar relief as
16 the claims of the Settlement Class Members; (d) the Settlement Class Representative and
17 Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class
18 as the Settlement Class Representative has no interest antagonistic to or in conflict with the
19 Settlement Class and has retained experienced and competent counsel to prosecute this matter on
20 behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class
21 Members predominate over any questions affecting only individual members; and (f) a class
22 action and class settlement is superior to other methods available for a fair and efficient
23 resolution of this controversy.

24 **2. Settlement Class Representatives and Settlement Class Counsel.**

25 Checlie Bailey is hereby provisionally designated and appointed as the Settlement Class
26 Representative. The Court provisionally finds that the Settlement Class Representative is
27 similarly situated to absent Class Members and therefore typical of the Class and that she will be
an adequate Settlement Class Representative.

1 The Court finds that the following counsel are experienced and adequate counsel and are
2 hereby provisionally designated as Settlement Class Counsel pursuant to Washington Civil Rule
3 23(a)(4): Gary E. Mason, David K. Lietz and Gary M. Klinger of Mason Lietz & Klinger, LLP.

4 **3. Preliminary Settlement Approval.** Upon preliminary review, the Court
5 concludes and finds that the proposed Settlement is fair, reasonable, and adequate to warrant
6 providing Notice of the Settlement to the Settlement Class and accordingly is preliminarily
7 approved.

8 **4. Jurisdiction.** The Court concludes that it has subject matter and personal
9 jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is
10 proper in this Court as a substantial portion of the acts and transactions complained of occurred in
11 Grays Harbor County and Defendants conduct substantial business throughout Grays Harbor
12 County.

13 **5. Final Approval Hearing.** A Final Approval Hearing shall be held on _____ at
14 __: __ m. on _____, 2020, in the Superior Court of the State of Washington, County
15 of Grays Harbor, 102 W Broadway, Montesano, WA 98563, to determine, among other things,
16 whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant
17 to Washington Civil Rule 23(b)(3) and (e); (b) the Settlement should be finally approved as fair,
18 reasonable, and adequate pursuant to Washington Civil Rule 23(e); (c) the action should be
19 dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class
20 Members should be bound by the releases set forth in the Settlement Agreement; (e) the motion of
21 Settlement Class Counsel for an award of attorneys' fees, costs, and expenses (the "Fee Request")
22 should be approved; and (f) the motion of the Settlement Class Representative for a Incentive
23 Award (the "Incentive Award Request") should be approved.

24 Plaintiff's Motion for Final Approval of the Settlement, Incentive Award Request, and
25 Fee Request shall be filed with the Court at least 30 Days prior to the Final Approval Hearing.
26 By no later than 14 Days prior to the Final Approval Hearing, the Parties shall file responses, if
27

1 any, to any objections, and any replies in support of final approval of the Settlement and/or the
2 Incentive Award Request and Fee Request.

3 **6. Administration.** The Court appoints Postlethwaite & Netterville as the Settlement
4 Administrator, with responsibility for class notice and claims administration and to fulfill the
5 duties of the Settlement Administrator set forth in the Settlement Agreement. Defendants shall
6 pay all costs and expenses associated with providing notice to Settlement Class Members
7 including, but not limited to, the Settlement Administrator’s fees, as well as the costs associated
8 with administration of the Settlement.

9 **7. Claims Referee.** The Court appoints Mark G. Honeywell as Claims Referee.

10 **8. Notice to the Class.** The proposed Notice Program set forth in the Settlement
11 Agreement, and the Claim Form, Short-Form Notice, and Long-Form Notice attached to the
12 Settlement Agreement as Exhibits A, B, and C satisfy the requirements of Washington Civil Rule
13 23(c)(2), provide the best notice practicable under the circumstances, and are hereby approved.
14 Non-material modifications to these Exhibits may be made without further order of the Court. The
15 Settlement Administrator is directed to carry out the Notice Program in conformance with the
16 Settlement Agreement.

17 Within **30 days from the date of this Order** (the “Notice Deadline”), the Settlement
18 Administrator shall complete the Notice Program in the manner set forth in Section 5 of the
19 Settlement Agreement.

20 **9. Findings and Conclusions Concerning Notice.** The Court finds that the form,
21 content, and method of giving notice to the Settlement Class as described in Paragraph 8 of this
22 Order and the Settlement Agreement (including the exhibits thereto): (a) will constitute the best
23 practicable notice to the Settlement Class; (b) are reasonably calculated to apprise Settlement Class
24 Members of the pendency of the action, the terms of the proposed Settlement, and their rights
25 under the proposed Settlement, including but not limited to their rights to object to or exclude
26 themselves from the proposed Settlement and other rights under the terms of the Settlement
27 Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class

1 Members and other persons entitled to receive notice; and the Court concludes that the Notice
2 Program meets all applicable requirements of law, including Washington Civil Rule 23(c) and (e),
3 and the Due Process Clause(s) of the United States Constitution. The Court further finds that the
4 Notice is written in plain language, uses simple terminology, and is designed to be readily
5 understandable by Class Members.

6 **10. Exclusion from Class.** Any Settlement Class Member who wishes to be excluded
7 from the Settlement Class must mail a written notification of the intent to exclude himself or herself
8 from the Settlement Class to the Settlement Administrator at the address provided in the Notice,
9 postmarked no later than **60 Days from the date of this Order** (the “Opt-Out Period”). The
10 written notification must include the individual’s full name, address, and telephone number; an
11 unequivocal statement that he or she wants to be excluded from the Settlement Class; and the
12 original signature of the individual or a person previously authorized by law, to act on behalf of
13 the individual with respect to the claims asserted in this Action.

14 The Settlement Administrator shall provide the Parties with copies of all completed opt-
15 out notifications, and a final list of all who have timely and validly excluded themselves from the
16 Settlement Class, which Settlement Class Counsel may move to file under seal with the Court no
17 later than **10 Days prior to the Final Approval Hearing.**

18 Any Settlement Class Member who does not timely and validly exclude herself or
19 himself from the Settlement shall be bound by the terms of the Settlement Agreement. If Final
20 Order and Judgment is entered, any Settlement Class Member who has not submitted a timely,
21 valid written notice of exclusion from the Settlement Class shall be bound by all proceedings,
22 orders, and judgments in this matter, including but not limited to the Release set forth in the
23 Final Order and Judgment, including Settlement Class Members who have previously initiated or
24 who subsequently initiate any litigation against any or all of the Released Persons relating to the
25 claims and transactions released in the Settlement Agreement. All Settlement Class Members
26 who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled
27 to receive any benefits of the Settlement.

1 **11. Objections and Appearances.** A Settlement Class Member who complies with
2 the requirements of this paragraph may object to the Settlement, the Incentive Award Request, or
3 the Fee Request.

4 No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other
5 documents submitted by any Settlement Class Member shall be received and considered by the
6 Court, unless the objection is (a) electronically filed with the Court by the Objection Date; or (b)
7 mailed first-class postage prepaid to the Clerk of Court, Plaintiff's Counsel, and Defendants'
8 Counsel at the addresses listed in the Notice, and postmarked by no later than the Objection
9 Date, as specified in the Notice. For an objection to be considered by the Court, the objection
10 must also include all of the information set forth in Paragraph 7.1 of the Settlement Agreement,
11 which is as follows:

- 12 a. the objector's full name, current address, telephone number, and email
13 address (if any);
- 14 b. the Settlement Class Member's original signature;
- 15 c. information identifying the objector as a Settlement Class Member,
16 including proof that the objector is within the Settlement Class (e.g., copy
17 of Notice or copy of original notice of the Data Incident);
- 18 d. a statement of all grounds for the objection, including any legal support for
19 the objection that the objector believes applicable;
- 20 e. identification of all counsel representing the objector;
- 21 f. whether the objector and/or his or her counsel will appear at the Final
22 Approval Hearing;
- 23 g. the signature of the objector's duly authorized attorney or other duly
24 authorized representative, along with documentation setting forth such
25 representation;
- 26 h. a list, including case name, court, and docket number, of all other cases in
27 which the objector and/or the objector's counsel has filed an objection to

1 any proposed class action settlement in the past three (3) years; and

- 2 i. copies of any documents that the objecting Settlement Class Member
3 wishes to submit in support of his or her position

4 Any Settlement Class Member who fails to comply with the provisions in this Paragraph
5 may waive and forfeit any and all rights he or she may have to object, and shall be bound by all
6 the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments
7 in this matter, including, but not limited to, the release in the Settlement Agreement if Final
8 Order and Judgment is entered.

9 Any Settlement Class Member, including a Settlement Class Member who files and serves
10 a written objection, as described above, may appear at the Final Approval Hearing, either in person
11 or through counsel hired at the Settlement Class Member's expense, to object to or comment on
12 the fairness, reasonableness, or adequacy of the Settlement, the Incentive Award Request, or the
13 Fee Request. If an objecting Settlement Class Member intends to appear at the Final Approval
14 Hearing, either with or without counsel, he or she must also file a notice of appearance with the
15 Court (as well as serve on Settlement Class Counsel and Defendants' Counsel) by the Objection
16 Date. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing
17 through counsel, he or she must also identify the attorney(s) representing the objecting Settlement
18 Class Member who will appear at the Final Approval Hearing and include the attorney(s) name,
19 address, phone number, e-mail address, state bar(s) to which counsel is admitted, as well as
20 associated state bar numbers, and a list identifying all objections such counsel has filed to class
21 action settlements in the past three (3) years, the results of each objection, any court opinions ruling
22 on the objections, and any sanctions issued by a court in connection with objections filed by such
23 attorney. If the objecting Settlement Class Member intends to request the Court for permission to
24 call witnesses at the Final Approval Hearing, the objecting Settlement Class Member must provide
25 a list of any such witnesses together with a brief summary of each witness's expected testimony at
26 least sixty (60) Days before the Final Approval Hearing.

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

6 **12. Claims Process and Distribution and Allocation Plan.** Settlement Class
7 Representative and Defendants have created a process for assessing and determining the validity
8 and value of claims and a payment methodology to Settlement Class Members who submit a
9 timely, valid Claim Form. The Court preliminarily approves the plan for remuneration described
10 in Section 2 of the Settlement Agreement and directs that the Settlement Administrator effectuate
11 the distribution of Settlement consideration according to the terms of the Settlement Agreement,
12 should the Settlement be finally approved.

13 Settlement Class Members who qualify for and wish to submit a Claim Form shall do so
14 in accordance with the requirements and procedures specified in the Notice and the Claim Form.
15 If Final Order and Judgment is entered, all Settlement Class Members who qualify for any
16 benefit under the Settlement but fail to submit a claim in accordance with the requirements and
17 procedures specified in the Notice and the Claim Form shall be forever barred from receiving
18 any such benefit, but will in all other respects be subject to and bound by the provisions in the
19 Settlement Agreement, the Release included in that Settlement Agreement, and the Final Order
20 and Judgment.

21 **13. Termination of Settlement.** This Order shall become null and void and shall be
22 without prejudice to the rights of the Parties, all of whom shall be restored to their respective
23 positions existing as of the date of the execution of the Settlement Agreement if the Settlement is
24 not finally approved by the Court or is terminated in accordance with the Settlement Agreement.
25 In such event, the Settlement and Settlement Agreement shall become null and void and be of no
26 further force and effect, and neither the Settlement Agreement nor the Court's orders, including
27 this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

1 **14. Use of Order.** This Order shall be of no force or effect if Final Order and Judgment
2 is not entered or there is no Effective Date and shall not be construed or used as an admission,
3 concession, or declaration by or against Defendants of any fault, wrongdoing, breach, liability, or
4 the certifiability of any class. Nor shall this Order be construed or used as an admission,
5 concession, or declaration by or against the Settlement Class Representative or any other
6 Settlement Class Member that his or her claim lacks merit or that the relief requested is
7 inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she,
8 or it may have in this litigation or in any other lawsuit.

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

12 **16. Continuance of Hearing.** The Court reserves the right to adjourn or continue the
13 Final Approval Hearing and related deadlines without further written notice to the Settlement
14 Class. If the Court alters any of those dates or times, the revised dates and times shall be posted
15 on the website maintained by the Settlement Administrator.

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

19 **Notice Completion Deadline:** 30 Days after Preliminary Approval

20 **Motion for Final Approval:** 30 Days before Final Approval Hearing

21 **Motion for Incentive Awards, Attorneys' Fees and Costs:** 30 Days before Final
22 Approval Hearing

23 **Opt-Out Deadline:** 60 Days after Preliminary Approval

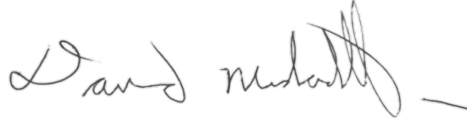
24 **Objection Deadline:** 60 Days after Preliminary Approval

25 **Replies in Support of Final Approval, Incentive Awards and Fee Requests:** 14 Days
26 before Final Approval Hearing

27 **Claim Deadline:** 180 Days after Completion of Notice

1 **Final Approval Hearing: 90 Days after Preliminary Approval**

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3 IT IS SO ORDERED this 27th day of May, 2020.

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6 _____

7 Presented by:

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