

Honorable David Mistachkin
Hearing Date: August 31, 2020 at 1:30 p.m.
With Oral Argument

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

CHELCIE 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] FINAL ORDER AND
JUDGMENT GRANTING FINAL
APPROVAL OF THE CLASS ACTION
SETTLEMENT**

Before the Court is Plaintiff's unopposed motion requesting that the Court enter an Order granting final approval of the class action Settlement involving Plaintiff Chelcie Bailey ("Plaintiff" or "Settlement Class Representative") and Defendants Grays Harbor County Public Hospital District No. 2; Grays Harbor Community Hospital; and GHCH Physician Services, LLC d/b/a Harbor Medical Group ("Defendants") as fair, reasonable, and adequate.

Having reviewed and considered the Settlement Agreement and the motion for final approval of the settlement, and having conducted a Final Approval Hearing, the Court makes the

1 findings and grants the relief set forth below approving the Settlement upon the terms and
2 conditions set forth in this Final Order and Judgment.

3 **THE COURT** not being required to conduct a trial on the merits of the case or determine
4 with certainty the factual and legal issues in dispute when determining whether to approve a
5 proposed class action settlement; and

6 **THE COURT** being required under Washington Civil Rule 23(e) to make the findings and
7 conclusions hereinafter set forth for the limited purpose of determining whether the Settlement
8 should be approved as being fair, reasonable, adequate and in the best interests of the Settlement
9 Class;

10 **IT IS ON THIS** _____ day of _____, 2020,

11 **ORDERED** that:

12 1. The Settlement involves allegations in Plaintiff's Class Action Complaint that
13 Defendants failed to safeguard and protect the personally identifiable information and/or protected
14 health information of its patients and that this alleged failure caused injuries to Plaintiff and the
15 Class.

16 2. The Settlement does not constitute an admission of liability by Defendants, and the
17 Court expressly does not make any finding of liability or wrongdoing by Defendants.

18 3. Unless otherwise noted, words spelled in this Order with initial capital letters have
19 the same meaning as set forth in the Settlement Agreement.

20 4. On May 27, 2020, the Court entered an Order which among other things: (a)
21 approved the Notice to the Settlement Class, including approval of the form and manner of notice
22 under the Notice Program set forth in the Settlement Agreement; (b) provisionally certified a class
23 in this matter, including defining the class, appointed Plaintiff as the Settlement Class
24 Representative, and appointed Settlement Class Counsel; (c) preliminarily approved the
25 Settlement; (d); set deadlines for opt-outs and objections; (e) approved and appointed the Claims
26 Administrator; and (f) set the date for the Final Approval Hearing.

1 5. In the Order Granting the Motion for Preliminary Approval of Class Settlement
2 Agreement, pursuant to Federal Rules of Civil Procedure 23(b)(3) and 23(e), for settlement
3 purposes only, the Court certified the Settlement Class, defined as follows:

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

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

12 6. The Court, having reviewed the terms of the Settlement Agreement submitted by
13 the parties pursuant to Federal Rule of Civil Procedure 23(e)(2), grants final approval of the
14 Settlement Agreement and defines the Settlement Class as defined therein and in the Preliminary
15 Approval Order, and finds that the settlement is fair, reasonable, and adequate and meets the
16 requirements of Washington Civil Rule 23.

17 7. The Settlement Agreement provides, in part, and subject to a more detailed
18 description of the settlement terms in the Settlement Agreement, for:

- 19 a. A process for Settlement Class Members to submit claims for compensation that
20 will be evaluated by a Claims Administrator mutually agreed upon by Settlement
21 Class Counsel and Defendants.
- 22 b. Defendants to pay all Notice and Claims Administration costs.
- 23 c. Defendants to pay a Court-approved amount for attorneys' fees, costs, and expenses
24 of Settlement Class Counsel not to exceed \$185,000.
- 25 d. Defendants to pay an Incentive Award not to exceed \$2,500 to the named Plaintiff.

26 8. The terms of the Settlement Agreement are fair, reasonable, and adequate and are
27 hereby approved, adopted, and incorporated by the Court.

1 9. The requested fee is reasonable in light of the benefit conferred upon the class, and
2 meets the criteria used by Washington Courts in assessing and awarding attorneys' fees.

3 10. The requested Incentive Award represents reasonable compensation for Plaintiff's
4 efforts on behalf of the Settlement Class.

5 11. Accordingly, the Court approves Class Counsel's requested fees in the amount of
6 \$175,000.00, and costs in the amount of \$9,697.51. The Court further approves Plaintiff's request
7 for an Incentive Award in the amount of \$2,500.00.

8 12. The Parties, their respective attorneys, and the Claims Administrator are hereby
9 directed to consummate the Settlement in accordance with this Order and the terms of the
10 Settlement Agreement.

11 13. Notice of the Final Approval Hearing, the proposed motion for attorneys' fees,
12 costs, and expenses, and the proposed Service Award payment to Plaintiff have been provided to
13 Settlement Class Members as directed by this Court's Orders, and an affidavit or declaration of
14 the Settlement Administrator's compliance with the Notice Program has been filed with the Court.

15 14. The Court finds that such Notice as therein ordered, constitutes the best possible
16 notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all
17 Settlement Class Members in compliance with the requirements of Washington Civil Rule
18 23(c)(2).

19 15. As of the final date of the Opt-Out Period, 22 potential Settlement Class Members
20 have submitted a valid Opt-Out Request to be excluded from the Settlement. The names of those
21 persons are set forth in Exhibit A to this Order. Those persons are not bound by this Final Order
22 and Judgment, as set forth in the Settlement Agreement.

23 16. As of the final date of the Objection Period, ___ potential Settlement Class
24 Members have filed an objection with the Court.

25 17. The Court has considered all the documents filed in support of the Settlement, and
26 has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the
27

1 Final Approval Hearing, all other papers and documents comprising the record herein, and all oral
2 arguments presented to the Court.

3 18. Pursuant to the Settlement Agreement, Defendants, the Claims Administrator, and
4 the Claims Referee shall implement the Settlement in the manner and time frame as set forth
5 therein.

6 19. Pursuant to the Settlement Agreement, Plaintiff and the Settlement Class Members
7 release claims against Defendants and all Released Persons, as defined in the Settlement
8 Agreement, as follows:

9 any and all claims and causes of action including, without limitation, any causes of action
10 under or relying on the Washington State Uniform Healthcare Information Act; the
11 Washington State Consumer Protection Act; Washington State Constitution's right to
12 privacy; negligence; breach of contract; breach of implied contract; breach of fiduciary
13 duty; breach of confidence; invasion of privacy/intrusion upon seclusion;
14 misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment;
15 bailment; wantonness; failure to provide adequate notice pursuant to any breach
16 notification statute or common law duty; and including, but not limited to, any and all
17 claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief,
18 attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the
19 creation of a fund for future damages, statutory damages, punitive damages, special
20 damages, exemplary damages, restitution, the appointment of a receiver, and any other
21 form of relief that either has been asserted, or could have been asserted, by any Settlement
22 Class Member against any of the Released Persons based on, relating to, concerning or
23 arising out of the Data Incident and alleged theft of personally identifiable information,
24 protected health information, or other personal information or the allegations, facts, or
25 circumstances described in the Litigation. Released Claims shall not include the right of
26 any Settlement Class Member or any of the Released Persons to enforce the terms of the
27 settlement contained in this Settlement Agreement, and shall not include the claims of
Settlement Class Members who have timely excluded themselves from the Settlement
Class.

Released Claims shall not include the right of any Settlement Class Member or any of the Released
Persons to enforce the terms of the Settlement contained in this Settlement Agreement and shall
not include the claims of those persons identified in Exhibit A to this Order who have timely and
validly requested exclusion from the Settlement Class.

20. On the Effective Date and in consideration of the promises and covenants set forth
in this Settlement Agreement, (i) Plaintiff and each Settlement Class Member, and each of their
respective spouses and children with claims on behalf of the Settlement Class Member, executors,

1 representatives, guardians, wards, heirs, estates, successors, predecessors, next friends, co-
2 borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents, and assigns, and all
3 those who claim through them or who assert claims (or could assert claims) on their behalf
4 (including the government in the capacity as parens patriae or on behalf of creditors or estates of
5 the releasors), and each of them (collectively and individually, the “Releasing Persons”), and (ii)
6 Settlement Class Counsel and each of their past and present law firms, partners, or other employers,
7 employees, agents, representatives, successors, or assigns will be deemed to have, and by operation
8 of the Final Order and Judgment shall have, fully, finally, completely, and forever released and
9 discharged the Released Persons from the Released Claims.

10 21. The matter is hereby dismissed with prejudice and without costs except that the
11 Court reserves jurisdiction over the consummation and enforcement of the Settlement.

12 22. In accordance with Washington Civil Rule 23, this Final Order and Judgment
13 resolves all claims against all parties in this Action and is a final order. There is no just reason to
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15 delay the entry of final judgment in this matter, and the Clerk is directed to file this Order as the
16 final judgment in this matter.

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18 Done and ordered this _____ day of _____, 2020.

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EXHIBIT A

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1. Ranette Johnson
2. Shirley Miller
3. Robert Miller
4. Patricia Pruett
5. Terry Hubble
6. Patricia Hubble
7. Leon Macomber
8. Donnie Bass
9. Diane Orman-Bass
10. Michelle Bowers
11. Khieylo Pama
12. Shannon Porter
13. John Bowers
14. John Souza
15. Janet Heesen
16. Christopher Morgan
17. Russell Jones
18. Bernice Bitz
19. Stephanie Beach
20. Aureliano Diaz
21. Sherrie Hovde
22. Michael Mccoy

