DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO Court Address: 7325 South Potomac St. Centennial, CO 80112	DATE FILED April 22, 2025 6:16 PM CASE NUMBER: 2025CV30456
Plaintiffs: Paula Henderson, Shykira Scott, Daniel Jones, Carol Goldberg, Vahram Haroutunian, Brian Kearney, Hilda Lopez, Preference Robinson, Sharon Etchieson, Radhe Banks, Jonathan Trusty, Marie Netrosio, Michaela Mujica-Steiner, Roger Loeb, Kyle Denlinger, Martin Coleman, Alyssa Halaseh, Rachel Hunter, Todd Valentine and David Moynahan, *on behalf of themselves and all others similarly situated*, v. **Defendants:** Reventics, LLC, OMH Healthedge Holdings, Inc., d/b/a Omega Healthcare	▲ **COURT USE ONLY** ▲ Case No.: 2025CV30456 Div.:

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Before the Court is Plaintiffs' motion for preliminary approval of a class action settlement reached between them and Defendants Reventics, LLC and OMH Healthedge Holdings, Inc., d/b/a Omega Healthcare ("Settlement or "Settlement Agreement"). For the reasons below, the Court grants Plaintiffs' motion. The Settlement Agreement is preliminarily approved, and the Settlement Administrator is hereby ordered to conduct the Notice program in accordance with the Settlement Agreement and this Order.

I. Background

On or about December 15, 2022, Defendants discovered that Private Information of a large number of clients and patients of clients had been made accessible to unauthorized parties during a

data hack (hereafter, the "the Data Security Incident.") The Private Information varied by individual, but included Class Members' names, dates of birth, SSNs, patient account numbers, clinical data including diagnosis information, dates of services, treatment costs, prescription medication details and more.

Starting on or about February 24, 2023, Defendants sent notice letters, in an abundance of caution, to all potentially and then-known affected persons. Over the next several months, Defendants notified as many as 4.2 million individuals that their data may have been compromised. Litigation in Colorado federal District Court followed, starting in March 2023, and discovery and various motions were pursued, as set forth in more detail below (the "Litigation"). Defendants deny the allegations asserted in the Litigation, and the instant and related matters, denies liability, denies that the medical information of every Class Member was necessarily impacted, denies harm to Plaintiffs and the Class (as further defined below) and certifiability of the Class, and denies any resulting damages to Plaintiffs and/or the Class. Rather than continue through prolonged litigation, however, the Parties have negotiated a class wide Settlement that is now before the Court for review and preliminary approval.

II. The Settlement Agreement

In exchange for a release of claims, the Settlement negotiated on behalf of the Class and currently before this Court provides for a $8,150,000 non-reversionary Settlement Fund with a simple claims process. The settlement provides relief for the approximately 4.2 million members of the Settlement Class defined as follows:

> All United States residents whose Private Information was potentially exposed to unauthorized third parties as a result of the data breach allegedly discovered by Defendant on or before December 15, 2022. (the "Nationwide Class" or simply the "Class").

Excluded from the Settlement Class are (a) all persons who are governing board members of Defendants, (b) governmental entities, (c) the Court, the Court's immediate family, and Court

staff, and (d) any individual who timely and validly opts-out of the Settlement. Settlement Class Members may submit a claim for a Cash Payment for (a) up to $5,000.00 for documented losses related to the Data Security Incident or (b) a flat cash payment in the amount of $100.00 (subject to *pro rata* adjustment based upon the total number of claims submitted). In addition to the monetary settlement benefits, Defendants agreed to implement and/or maintain certain reasonable steps to adequately secure their systems and environments, adding to the total value of this settlement.

III. The Court Preliminarily Approves the Settlement as Within the Range of Reasonableness

The approval of a class action settlement is a two-step process. First, the Court must determine whether the proposed settlement deserves approval pursuant to the requirements of Colo. R. Civ. P. 23. Second, after notice has been provided and settlement class members have had the opportunity to object, the Court must determine whether final approval is warranted. *See* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.635. Preliminary approval is appropriate as long as the proposed settlement falls "within the range of possible judicial approval." MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.632 at 321. Prior to the 2018 amendments to Fed. R. Civ. P. 23, Colo. R. Civ. P. 23 was virtually identical to its federal counterpart. As such, federal case law is highly instructive concerning the application of Colo. R. Civ. P. 23. *Thomas v. Rahmani-Azar*, 217 P.3d 945, 947 (Colo. App. 2009); *Toothman v. Freeborn & Peters*, 80 P.3d 804, 809 (Colo. App. 2002); *Bruce W. Higley, D.D.S., M.S., P.A. Defined Benefit Annuity Plan v. Kidder, Peabody, & Co.*, 920 P.2d 884, 889 (Colo. App. 1996). At this stage, the Court is tasked only with determining whether to grant preliminary approval to the proposed Class Settlement.

In evaluating a proposed settlement under Colo. R. Civ. P. 23(e), the trial court must determine whether the settlement is fundamentally fair, adequate, and reasonable." *Bruce W. Higley*, 920 P.2d at 884. "Some of the numerous factors that may govern the fairness inquiry include the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation;

the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed; the experience and views of counsel; and the reaction of the class members to the proposed settlement." *Id.* (citing *Helen G. Bonfils Found. v. Denver Post Emps. Stock Tr.*, 674 P.2d 997 (Colo. App. 1983)).

The Strength of Plaintiffs' Case, and the Complexity, Risk, Expense, and Duration of Litigation

The Court finds this factor weighs in favor of granting this motion. First, data breach litigation is inherently complex and risky. It is also expensive in that both sides would likely have to retain expensive damages and liability experts and propound extensive discovery. Because the Parties appear to believe strongly in their respective positions, the costs of continuing the Litigation would be substantial for all sides. Second, Defendants have expressed a firm denial of Plaintiffs' material allegations and have raised and pursued numerous defenses, including that Plaintiffs do not have standing to bring their claims (i.e., that they have not been injured or damaged), or that, if there *are* damages, any such damages are not traceable to, or caused by, the Data Security Incident. Third, Defendants were fully prepared to challenge class certification, a procedural challenge not well developed in data breach litigation, generally. Any of these defenses, if successful, would likely result in no recovery for Plaintiffs and/or the proposed Settlement Class Members. Moreover, either party may pursue time-consuming appeals if its claims or defenses fail, as evidence by the pending appeal to the 10th Circuit Court of Appeals. Finally, C.R.S.A. § 13-17-201(1) provided a significant fee shifting risk for Plaintiffs. *Torres v. American Family Mut. Ins. Co.*, 606 F.Supp.2d 1286, 1287 (Feb. 9, 2009, D. Colo.) (fee shifting applies to tort actions dismissed under FRCP Rule 12(b)(6)). Thus, the risk, expense, and potential duration of litigation weigh in favor of settlement. *See In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 625 (D. Colo. 1976).

Risk of Maintaining Class Status

The Court finds risk for all Parties on the question of class certification. Though data breach

plaintiffs have seen some successes, defendants in data breach cases have had some success in thwarting plaintiffs' efforts to obtain class certification. *See, e.g., In re TJX Cos. Retail Sec. Breach Litig.*, 246 F.R.D. 389, 397 (D. Mass. 2007) (refusing to certify a class of banks alleging damages resulting from a retailer's data breach because of individual issues relating to causation); *Gardner v. Health Net, Inc.*, 2010 WL 11579028, at *4 (C.D. Cal. Sept. 13, 2010) (certification denied due to numerous individualized inquiries such as whether each class member's personal information was actually exposed); *Fulton-Green v. Accoldate, Inc.* No. 18-274, 2019 WL 4677954, at *8 (E.D. Pa. Sep. 24, 2019) (observing that "This is a complex case in a risky field of litigation because data breach class actions are uncertain and class certification is rare.") The inconsistencies in certifying data breach class actions provides another hurdle Plaintiffs' must clear, and further weighs in favor of the reasonableness of the Settlement. Moreover, data breach class litigation remains a developing area of law, and a class wide trial within this field has yet to occur, further clouding for the Parties whether a litigation class would, if certified, remain certified and/or prevail at trial.

Status of Proceedings and Discovery Prior to Settlement

This Litigation was originally filed in the United States District Court, District of Colorado. The parties engaged in discovery, performed various case management activities, and exchanged significant documentation, concurrent with extensive briefing on Defendants' motion to strike and motion to dismiss. At the conclusion of those effort, the federal Court granting Defendants' Motion to Dismiss, promoting an appeal by Plaintiffs to the Tenth Circuit (where the appeal remains pending, but would be dismissed pursuant to the terms of the Settlement Agreement). While the basis for dismissal of the underlying Litigation was a lack of federal Article III standing, Plaintiffs contend that such challenges do not apply in this state court proceeding and explain that this is the key reason the parties elected to seek conditional class certification and settlement approval from this Court. Notably, while the appeal was pending, Class Counsel, in an abundance of caution to

preserve the statute of limitations on their claims, also filed two other cases (in Colorado federal court and California state court). Those actions will also be dismissed pursuant to the terms of the Settlement Agreement.

The present case was filed after the parties reached the terms of a Settlement and includes the Representative Plaintiffs from all currently pending actions. As referenced above, the Parties exchanged informal requests for discovery and exchanged information about the strengths and weaknesses of their claims, including for many of the named plaintiffs, and defenses during settlement negotiations. Thus, the Parties have obtained sufficient information from one another to inform their decisions in this action, including as to settlement. That qualified counsel understand the strength of weaknesses of their respective cases weighs in favor of approval of the class settlement.

The Amount Offered in Settlement is Adequate

This factor also weighs in favor of preliminary approval of the Settlement. In contrast to the risks presented by continued litigation discussed above, the Settlement makes substantial monetary relief available to valid claimants. In addition, the Settlement Agreement addresses security relating to Class Member data maintained by Defendant, as well as provides for attorneys' fees, costs, and the costs of notice and administration. Each Settlement Class Member has an opportunity to claim up to $5,000 in documented losses or a $100 cash payment, subject to a *pro rata* adjustment.

This sizable relief fund falls well within the range of data breach settlements approved in cases in Colorado and across the country. *See Hall v. AspenPointe, Inc.*, No. 2020CV32175 (Colo. 4th Dist. Ct. El Paso Cty. Oct. 24, 2022) (final approval granted in data breach class action settlement providing up to $5,000 in expense reimbursements including compensation for four hours of lost time at $15 per hour, and two years of credit monitoring); *Snyder v. Urology Ctr. of Colo.*, No. 2021CV33707 (Colo. 2d Dist. Ct. Denver Cnty. Oct. 30, 2022) (final approval granted

in data breach class action settlement providing up to $2,500 in expense reimbursements including compensation for five hours of lost time at $20 per hour, and two years of credit monitoring); *Kenney v. Centerstone of Am., Inc.*, No. 3:20-cv-01007 (M.D. Tenn. Aug. 9, 2021) (final approval granted in data breach class action settlement providing up to $500 for ordinary losses, $2500 for extraordinary losses, and two years of credit monitoring); *Chacon v. Nebraska Med.*, No. 8:21-cv-00070 (D. Neb. Sept. 15, 2021) (final approval granted in data breach class action providing: up to $300 in ordinary expense reimbursements, up to $3,000 in extraordinary expense reimbursements, and one year of automatic credit monitoring; and data security enhancements).

The salient question is whether the monetary relief made available through the Settlement, combined with the additional benefits of data security enhancements, outweighs the possibility that the Plaintiffs would have prevailed in extensive motion practice, trial and/or appeals. Given the multitude of risks entailed in this litigation, and the favorable results achieved in comparison to other data breach settlements across the country, a negotiated settlement guaranteeing the relief provided here is appropriate and in the best interests of the Class. *Tennille v. W. Union Co.*, No. 09-cv-00938-JLK-KMT, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014) (the relief available through the settlement "puts the bird in the hand rather than in the bush.").

Plaintiffs had Sufficient Information to Evaluate the Merits and Negotiate a Settlement that Highly Experienced Class Counsel Find Fair, Adequate, and Reasonable

Class Counsel attests that this matter was thoroughly investigated and are counsel experienced in data breach litigation. Counsel's experience and investigation, combined with the informal exchange of information that occurred prior to and during arm's-length settlement negotiations and three mediation sessions put Plaintiffs in a position to proficiently evaluate the case and negotiate a settlement they view as fair, reasonable, and adequate, and worthy of preliminary approval. *See O'Dowd v. Anthem, Inc.*, No. 14-cv-02787, 2019 WL 4279123, at *14 (D. Colo. Sept. 9, 2019); *Hapka v. CareCentrix, Inc.*, No. 2:16-cv-02372, 2018 WL 1871449, at *5 (D. Kan. Feb.

15, 2018); *Marcus v. Kansas Dep't of Revenue*, 209 F. Supp. 2d 1179, 1183 (D. Kan. 2002) ("'Counsels' judgment as to the fairness of the agreement is entitled to considerable weight.'"); *see also In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 690 (D. Colo. 2014) (finding that, even without formal discovery, the parties were able to give adequate consideration to the strengths and weaknesses of their respective claims). The Court finds that this factor further weighs in favor of preliminary approval.

For the foregoing reasons, the Court finds that the relevant factors weigh in favor of preliminary approval. Thus, the Court finds that the Settlement is within the range of reasonableness and potential final approval and is, thus, preliminarily approved.

IV. Settlement Administrator

The Court finds CPT Group, Inc. ("CPT Group") is an experienced settlement administrator with substantial experience in class action settlements, including for data breach actions. Class Counsel represents that bids from nine (9) highly experienced claims administration companies were solicited, with substantial follow up with each company so as to select the most cost-effective administration solution for what will be a sizable notice program. CPT Group prevailed as the best choice in that contest.

Accordingly, the Court appoints CPT Group as Claims Administrator. As the Claims Administrator, CPT Group shall be responsible for resolving all disputes related to any claim submissions. CPT Group shall also administer the Notice program as defined in the Settlement Agreement, which the Court finds is reasonably designed to provide the best practicable notice to Class Members and to afford them with the due process they are owed. Specifically, the Claims Administrator shall cause the mailing to the Class Members of the postcard notice and, if applicable, a mirror notice provided by email. The Claims Administrator shall create a settlement website where all key documents will be made available, including this Order, the Complaint, the Settlement

Agreement, the postcard and email Notices, and access to an on-line Claim Form. The website shall also provide Class Members with telephone and physical address contact information for the Claims Administrator, the date and time of the final approval hearing, and the ability to electronically file a claim directly on the site.

V. Final Fairness Hearing

A final approval hearing (the "Final Fairness Hearing") shall be held before the undersigned Judge at: To be determined a a date and time consistent with the Court's docket.

_____ o'clock, on [August 15, 2025 or] _____, 2025, via in-person appearance, video or teleconference (to be arranged with the Court prior to the hearing), for the purpose of: (a) determining whether the Settlement Class should be finally certified for entry of Judgment on the Settlement; (b) determining whether the Settlement Agreement is fair, reasonable, and adequate and should be finally approved, including as to the releases therein; (c) determining whether a Final approval Order and Judgment should be entered; and (d) considering Class Counsels' application for an award of attorneys' fees and expenses, for service awards to the Class Representatives and reimbursement of the claims administration costs. The Court may adjourn, continue, and reconvene the Final Fairness Hearing pursuant to oral announcement without further notice to the Class, and the Court may consider and grant final approval of the Settlement, with or without minor modification and without further notice to the Class. Members of the Class shall be afforded an opportunity to request exclusion from the Class. A request for exclusion from the Class must comply with the requirements for form and timing set forth in the notices included in the Settlement. Members of the Class who submit a timely and valid request for exclusion shall not participate in and shall not be bound by the Settlement. Members of the Settlement Class who do not timely and validly opt out of the Class in accordance with the notices shall be bound by all determinations and judgments in the action concerning the Settlement.

Class Members who have not excluded themselves shall be afforded an opportunity to object to the terms of the Settlement Agreement by submission of a formal objection and by appearance at the Final Fairness Hearing. Objections must comply with the requirements for form and timing set forth in the provided notices included in the Settlement. If the Class Member or his or her Counsel wishes to speak at the Final Approval Hearing, he or she must comply with the requirements for form and timing set forth in such notices. Any Class Member who does not make his or her objection known in the manner provided in the Settlement Agreement and Detailed Notice shall be deemed to have waived such objection and shall be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement Agreement.

VI. Class Counsel

The Court finds Scott Edward Cole of Cole & Van Note and Joseph M. Lyon of The Lyon Law Firm are qualified and experienced in consumer class action litigation, including in data breach matters. The Court preliminarily appoints Mr. Cole and Mr. Lyon and their firms as Settlement Class Counsel.

VII. Class Representatives

For the purposes of the Settlement proceedings, the Court preliminarily finds Paula Henderson, Shykira Scott, Daniel Jones, Carol Goldberg, Vahram Haroutunian, Brian Kearney, Hilda Lopez, Preference Robinson, Sharon Etchieson, Radhe Banks, Jonathan Trusty, Marie Netrosio, Michaela Mujica-Steiner, Roger Loeb, Kyle Denlinger, Martin Coleman, Alyssa Halaseh, Rachel Hunter, Todd Valentine and David Moynahan are the Class Representatives, as provided for in the Parties' Settlement Agreement. These individuals appear to allege claims typical of the Class and have meaningfully participated in and taken risks in connection with the Litigation.

VIII. Class Certification

For the purpose of the Settlement Agreement only and purposes of preliminary approval, the Court finds the proposed Class meets the requirements of Colorado Rule of Civil Procedure 23(a) in that (1) the proposed class is "so numerous that joinder of all members is impractical," (2) that common questions of law and fact exist, and (3) that the named plaintiffs will "fairly and adequately protect the interests of the class." Here, the proposed class is more than 4.2 million individuals, all claims relate to the same Data Security Incident and ask the same questions, and the named Plaintiffs appear to be fair representatives of the typical harm alleged. Thus, the Court preliminarily certifies the Class for the purpose of the Settlement proceedings only. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997).

The Court's preliminary findings on Class Certification and otherwise in this order shall not be used in this or any other proceeding as evidence, concession, or admission by Plaintiffs or Defendants as to the validity of their respective claims, defenses, positions on class certification, or other positions asserted in the Litigation.

IT IS SO ORDERED

Date: April 22, 2025

District Court Judge