

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
COUNTY OF LEE, STATE OF ILLINOIS**

**JOHN DOE,** )  
Plaintiff, )  
v. )  
 ) Case No. 21L26  
 )  
 )  
**KATHERINE SHAW BETHEA HOSPITAL** )  
**AND KSB MEDICAL GROUP, INC.,** )  
Defendants. )  
 )  
 )

**PLAINTIFF’S UNOPPOSED MOTION AND MEMORANDUM IN SUPPORT OF  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

**INTRODUCTION**

Plaintiff John Doe originally filed this putative class action on October 1, 2021, against Katherine Shaw Bethea Hospital and KSB Medical Group, Inc. (“Defendants”), alleging claims for breach of fiduciary duty and violation of 210 ILCS § 85/6.17. Defendants deny Plaintiff’s allegations, deny violation of any law, and deny all liability. The Parties have reached a settlement that provides all Settlement Class Members with the ability to receive a cash payment of \$250.00 from the Settlement Fund. The Court preliminarily approved the settlement on December 8, 2022.

The Settlement Agreement offers significant relief to 1,554 individuals and establishes a cash settlement fund in the amount of \$380,000.00, from which Settlement Class Members who timely submit a valid Claim Form will be compensated. *See* Settlement Agreement and Release (“Settlement” or “Settlement Agreement”), Exhibit 1. The Settlement Agreement will bring certainty, closure, and significant and valuable relief for individuals in what otherwise would likely be contentious and costly litigation regarding Defendant’s alleged unlawful disclosure of patient health information.

Plaintiff now seeks final approval of the Settlement, final certification of a settlement class, final appointment of class counsel, and entry of final judgment so that payments may be distributed to the Settlement Class. The Parties' settlement of this action is fair, reasonable, and adequate under the governing legal standards and satisfies all the criteria for final approval.

Settlement Class Members have been notified of the terms of the settlement, including the monetary relief, the allocation formula, and their right to object to or opt out of the settlement, and the need to complete a Claim Form. Declaration of Ryan Aldridge, Exhibit 2 ("Aldridge Dec."). As of filing, only two Class Members have opted out of the settlement and no Class Members have objected to the settlement. Aldridge Dec. at ¶¶ 16-17. Further, at the time of filing these final approval papers, 597 Class Members have filed timely a Claim Form, giving the Settlement a 38% claims rate. Aldridge Dec. at ¶ 15. With such overwhelming support for the settlement and for the reasons stated below, final approval is warranted.

### **RELEVANT BACKGROUND**

Plaintiff filed his Class Action Complaint in Lee County Circuit Court on October 1, 2021, alleging that Defendants disclosed certain patient medical information through the inadvertent dissemination of billing information to the improper recipients. In his Complaint, Plaintiff alleges that Defendants disclosed his, and the Class's, medical information to third parties without authorization. After filing of the Complaint and Defendants' receipt of same, the Parties, through Counsel, engaged in informal discovery and preliminary settlement discussions. Over the course of the next several months, the Parties continued to exchange information to aid in settlement discussions and continued working towards resolution of the matter. On June 9, 2022, the Parties attended an all-day mediation session with retired Judge Hollis Webster. With the help of Judge

Webster, the Parties successfully negotiated the settlement, and subsequently negotiated and executed a comprehensive Settlement Agreement.

## **THE PROPOSED SETTLEMENT**

### **I. THE SETTLEMENT CLASS**

The proposed Settlement would establish a Settlement Class defined as follows:

All individuals who were sent notification by Magnet<sup>1</sup> on behalf of KSB that their protected health information was or may have been compromised in the Data Breach. Excluded from the Settlement Class are: (1) the judges presiding over this Action, and members of their direct families; (2) KSB and Magnet, and their respective subsidiaries, parent companies, successors, predecessors, and any entity in which KSB and/or Magnet or their respective parents have a controlling interest and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid a Request for Exclusion prior to the Opt-Out Deadline.

Exhibit 1, ¶ 32. The Parties have identified 1,554 class members. At the completion of the notice program, notice was given to 1,530 individuals, or 98.5% of the Settlement Class. Aldridge Dec.at ¶ 14.

### **II. THE SETTLEMENT FUND**

The proposed Settlement will establish a Settlement Fund of \$380,000.00. Exhibit 1, ¶ 35. Given the number of claims currently received, each Settlement Class Member who timely submitted a valid Claim Form will receive the maximum per claimant award of \$250.00. Id., ¶ 45. Any unclaimed or undistributed amounts from the Settlement Fund (including checks disbursed to Settlement Class Members that are uncashed after 60 days, for any reason) will be distributed to the *cy pres* recipient, United Way of Lee County. Id., ¶¶ 17, 51-52.

### **III. SERVICE PAYMENT TO NAMED PLAINTIFF, ATTORNEYS' FEES, AND LITIGATION AND ADMINISTRATION COSTS**

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<sup>1</sup> Magnet Solutions, Inc. is Defendants' third-party provider that manages its billing statements and collections. See Exhibit 1.

As set forth in the Settlement Agreement, Exhibit 1 at ¶ 76, Plaintiff concurrently seeks final approval of an incentive award of \$2,500.00. Additionally, as explained below, Plaintiff's Counsel concurrently seeks approval of an award of attorneys' fees of \$80,000.00, and litigation costs of \$3,500.00. *See* Plaintiff's Unopposed Motion and Memorandum in Support of Final Approval of Plaintiff's Incentive Award and Payment of Attorneys' Fees and Costs. The Parties agree that these sums are fair and reasonable in light of all the facts and circumstances, including the time spent by Class Counsel, the risks undertaken, and the results achieved.

#### **IV. FINAL SETTLEMENT ADMINISTRATION**

Payment of each Settlement Class Member's share will be made by check issued by the Settlement Administrator, which will remain valid for 60 days after issuance. Exhibit 1 at ¶ 49.

#### **V. RELEASE**

In exchange for the relief described above, the Settlement Class Members will provide Defendants, Magnet and the Releasees a full release of all "Released Claims," as defined in Exhibit 1 at ¶ 25.

### **ARGUMENT**

#### **I. THE SETTLEMENT SHOULD BE FINALLY APPROVED BECAUSE IT IS A FAIR, REASONABLE AND ADEQUATE RESOLUTION OF A BONA FIDE DISPUTE OVER PLAINTIFF'S PRIVACY CLAIMS.**

Under Section 2-806 of the Illinois Code of Civil Procedure, class claims may be settled only with court approval. 735 ILCS 5/2-806. The purpose of the court's approval is to ensure that the proposed settlement agreement is "fair, reasonable, and in the best interest of the class." *Steinberg v. Sys. Software Associates, Inc.*, 306 Ill. App. 3d 157, 169 (1st Dist. 1999). The approval of any proposed class action settlement is typically exercised in the two-step process of "preliminary" and "final" approval. Manual for Complex Litigation § 30.41 (3d ed. 2000).

The second and final step of the approval process follows a hearing at which time any objections by class members may be considered. The Court then determines whether the settlement is “fair and reasonable and in the best interest of all those who will be affected by it.” *GMAC Mortgage Corp. of PA v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). “In a class action, the court is the guardian of the interests of the absent class members.” *Waters v. City of Chicago*, 95 Ill. App. 3d 919, 924 (1st Dist. 1981).

Courts favor the settlement of class action litigation. Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (“Newberg”), § 11.41 (4th ed. 2002) (“The compromise of complex litigation is encouraged by the courts and favored by public policy.”). “In reviewing a proposed settlement, the court should consider the judgment of counsel and the presence of good faith bargaining.” *Patterson v. Stovall*, 528 F.2d 108, 114 (7th Cir. 1976) *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998).<sup>2</sup> Courts usually refuse to substitute their business judgment for that of counsel, absent fraud or overreaching. *Id.*

In determining whether the settlement is fair, reasonable, and adequate, courts examine several factors, including: (1) the strength of the plaintiff’s case compared with the terms of the proposed settlement; (2) the defendant’s ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and, (8) the stage of proceedings and the amount of discovery completed. *City*

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2. Section 2-801 of the Illinois Code of Civil Procedure is modeled after Rule 23 of the Federal Rules of Civil Procedure. *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (2005) (citations omitted). Because of the association between these two provisions, federal decisions interpreting Rule 23 are persuasive authority regarding issues of class certification in Illinois. *Id.* (citations omitted).

of *Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990). All of these factors weigh in favor of final approval of the Settlement Agreement.

**A. The Settlement Amount is Substantial Given the Strengths of Plaintiff's Claims and Attendant Risks**

Defendant has agreed to settle this case by establishing a maximum settlement fund of \$380,000.00 for a class totaling up to 1,554 current or former patients whereby each and every Settlement Class Member will have an opportunity to submit a Claim Form and participate in the Settlement Fund. The value to each Class Member is approximately \$250.00 *after* fees, costs, and Plaintiff's requested incentive award.

The settlement amount represents significant value for these Class Members, particularly given the attendant risks of litigating the merits of the case through class certification, additional motion practice, and/or trial, and any appeals of decisions on those matters.

In evaluating the strength of the plaintiff's case on the merits as compared to the amount of the proposed settlement, courts "have been admonished to refrain from resolving the merits of the controversy of making a precise determination of the parties' respective legal rights." *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985) ("*Hiram Walker*"). Accordingly, when deciding whether to approve the settlement, this Court must focus on general principles of fairness and reasonableness, but not the substantive law governing Plaintiff's claims. *Id.*

The outcome of this litigation is not certain and the facts at issue in this case raise novel issues of privacy and damages. Proceeding with this matter through trial on the merits would involve significant risks for the class. The settlement provides far more than a mere fraction of the potential recovery and, indeed, represents substantial value for such claims. Though not providing a maximum value that conceivably might be awarded at trial at a later date, assuming Plaintiff achieved class certification and prevailed on further legal challenges by Defendants, the settlement

provides substantial monetary benefits now, without the time, difficulties, expense, and uncertainty of further litigation and without the years of delay any subsequent appeal might cause. *See Mars Steel Corp. v. Continental Ill. Nat'l Bank & Trust*, 834 F.2d 677, 682 (7th Cir. 1987) (a settlement is fair “if it gives [plaintiffs] the expected value of their claim if it went to trial, net the costs of trial”); *Hiram Walker*, 768 F.2d at 891 (settlement approved where “there [was] no showing that the amounts received by the beneficiaries were totally inadequate”).

The proposed settlement thus ensures that Class Members will receive significant monetary relief and will receive a settlement amount that is reasonable and consistent with the established facts as applied to the governing law. Weighing the benefits of the settlement against the available evidence and the risks associated with proceeding in the litigation, the settlement amount is reasonable. This factor therefore weighs in favor of final approval.

**B. Defendant’s Ability to Pay**

The second factor, Defendant’s ability to pay, further supports the settlement. Any judgment finally entered against Defendants could be much lower or higher than their exposure from the Settlement, particularly given the sensitive nature of the information alleged to have been disclosed.

**C. Litigation Through Trial Would Be Complex, Costly, and Long**

By reaching a favorable settlement prior to class certification briefing or trial, Plaintiff seeks to avoid significant expense and delay, and instead ensure recovery for the class. “[A]n integral part of the strength of a case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation.” *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 309 (7th Cir. 1985). Although Class Counsel believes Plaintiff’s case is strong, it is subject to considerable risks and costs if the case is not settled.

Continued litigation carries with it a decrease in the time value of money, for “[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now.” *Reynolds v. Beneficial Nat’l Bank*, 288 F.3d 277, 284 (7th Cir. 2002). Here, further litigation would certainly result in fully briefed motions for class certification and summary judgment and would prolong the risk, time, and expense associated with a complex trial for damages. Any judgment would likely be appealed, further extending the litigation. These costs of further litigation are considerable in terms of both time and money but would not reduce the risks that litigation holds for the class. The proposed settlement, on the other hand, provides immediate benefits.

Under these circumstances, the benefits of a guaranteed recovery today as opposed to an uncertain result in the future, are readily apparent. As one court noted, “[t]he bird in the hand is to be preferred to the flock in the bush and a poor settlement to a good litigation.” *Rubenstein v. Republic Nat’l Life Ins. Co.*, 74 F.R.D. 337, 347 (N.D. Tex. 1976). This factor therefore weighs in favor of final approval.

**D. There is No Opposition to the Settlement**

Here, the absence of any objections by Class Members is significant in determining whether the proposed settlement is reasonable to the class as a whole. *See Hispanics United of DuPage County v. Village of Addison, Illinois*, 988 F. Supp. 1130, 1166, 1169 (N.D. Ill. 1997) (“the court may approve a fair settlement over objections by some or even many Class Members”); *Mangone v. First USA Bank*, 206 F.R.D. 222, 226-27 (S.D. Ill. 2001) (same). Thus, this factor also favors approval of the settlement.

**E. The Settlement is the Result of Arm’s Length Negotiations, Without Any Hint of Collusion, and Was Achieved With the Assistance of a Respected Local Judge**



There is plainly no collusion or fraud with respect to this proposed settlement, which was reached after intense negotiation. As a distinguished commentator on class actions has noted, there is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval. Newberg §11.41 at 11-88. In this case, as explained above, the terms of the settlement were reached during extensive arm's-length negotiations, which only occurred with the assistance of an experienced mediator. Therefore, as there was no deceit or collusion, this factor supports final approval of the settlement.

**F. Competent Counsel for All Parties Endorse This Agreement**

Courts are “entitled to rely heavily on the opinion of competent counsel.” *Gautreaux v. Pierce*, 690 F.2d 616, 634 (7th Cir. 1982) (quoting *Armstrong v. Bd. of Sch. Dirs. of Milwaukee*, 616 F.2d 305, 325 (7th Cir. 1980)). Class Counsel are competent and experienced in class actions and are familiar with the strengths and weaknesses of the claims and defenses. *See* Johnson Decl. at ¶ 16. Using that litigation experience and their intimate knowledge of the facts of the case and the legal issues facing the Settlement Class Members, Class Counsel were capable of making, and did make, well informed judgments about the value of the claims, the time, costs and expense of protracted litigation, discovery, and appeals, and the adequacy of the settlement reached. Defendants’ counsel also endorse this settlement. This factor therefore weighs in favor of final approval.

**G. Resolution at This Stage of Proceedings Is Appropriate**

This class action was resolved more than a year after it was initiated. This period involved extensive research, analysis, drafting, informal discovery, and negotiation. The stage of litigation has advanced to a state that Class Counsel could fairly and fully evaluate the value of the settlement. This is borne out by the fact that this settlement is not only a fair result, but rather, a

great result given the risk associated with further litigation. As such, this factor favors final approval.

### **CONCLUSION**

For the foregoing reasons, Plaintiff John Doe respectfully requests that the Court enter the Proposed Final Order and Judgment attached hereto as Exhibit 3.

Date: February 27, 2023

Respectfully Submitted,  
/s/ G. Michael Stewart  
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**SETTLEMENT CLASS COUNSEL CLASS**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2023, I filed the foregoing document with the clerk of the Court using the Illinois E-Filing System, which should further distribute a true and accurate copy of the foregoing to all counsel of record.

/s/ G. Michael Stewart