



AlaFile E-Notice

01-CV-2022-900851.00

Judge: MONICA Y. AGEE

To: MANN JONATHAN STEPHEN
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

KATHY L LIMBAUGH V. NORWOOD CLINIC, INC.
01-CV-2022-900851.00

The following matter was FILED on 11/21/2023 6:16:00 PM

Notice Date: 11/21/2023 6:16:00 PM

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CIRCUIT COURT CLERK
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**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
 BIRMINGHAM DIVISION**

LIMBAUGH KATHY L,)	
GRATTON KRISTIAN,)	
WADE MARK,)	
Plaintiffs,)	
)	
V.)	Case No.: CV-2022-900851.00-MYA
)	Case No.: CV-2022-901037.00-MYA
NORWOOD CLINIC, INC.,)	
Defendant.)	

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

The Court having held a Preliminary Approval Hearing on November 21, 2023, at 1:30 p.m. in the Courtroom of the Honorable Monica Y. Agee, Circuit Court Judge in Jefferson County, Alabama, Birmingham Division, 716 Richard Arrington, Jr. Blvd. N., Birmingham, AL 35203, and having Plaintiffs' Unopposed Motion for Preliminary Approval of the Class Action Settlement ("Motion for Preliminary Approval"), the supporting Memorandum, the Parties' Settlement Agreement, the proposed Summary Notice, Long-Form Notice, and Claim Form, and all other matters submitted to it at the Preliminary Approval Hearing and otherwise, and finding no just reason for delay in entry of this Order Granting Preliminary Approval of Class Action Settlement (this "Order") and good cause appearing therefore, and having considered the papers filed and proceedings held in connection with the Settlement, having considered all of 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, which is attached to Plaintiffs' 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.

2. The Court has jurisdiction over (a) the claims at issue in the lawsuits, (b) Plaintiffs Kathy L. Limbaugh, Kristian Gratton, Mark Wade, and Suzanne Maddox, individually and on behalf of all others similarly situated (“Plaintiffs”), and (c) Defendant Norwood Clinic, Inc., (“Norwood” or “Defendant” and together with Plaintiff, the “Parties”).

3. This Order is based on Alabama Rule of Civil Procedure 23 (“Rule 23”).

4. The Court finds that the Parties’ Settlement as set forth in **Exhibit 1** to Plaintiffs’ Motion for Preliminary Approval 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, pursuant to Rule 23.

PROCEDURAL HISTORY

5. This case involves a putative class action against Norwood relating to a cyber incident against Norwood’s computer systems which contained Private Information and may have affected approximately 228,000 of Norwood’s current and former patients. Norwood provided notice and mailed notification letters to all potentially impacted individuals for which it had addresses on or about March 8, 2022.

6. Plaintiff Limbaugh filed her lawsuit against Norwood on March 23, 2022, in the Circuit Court for Jefferson County, Alabama. On August 1, 2022, Plaintiff Limbaugh amended her lawsuit to also include Plaintiffs Gratton and Wade. Plaintiff Maddox filed her lawsuit against Defendant on April 8, 2022, in the Circuit Court for Jefferson County, Alabama.

7. In light of the multiple individual complaints filed by Plaintiffs, the presiding judge at the time, Judge Robert S. Vance, granted the Parties' Joint Motion for Consolidation of Cases for all purposes including trial on November 8, 2022. Additionally, on November 8, 2022, Judge Robert S. Vance appointed Pittman, Dutton, Hellums, Bradley & Mann, P.C and Cory Watson, PC as Interim Co-Lead Counsel.

8. The Plaintiffs' Lawsuits alleged eleven causes of action: (1) negligence; (2) negligence per se; (3) invasion of privacy, (4) breach of express contract, (5) breach of implied contract, (6) unjust enrichment, (7) breach of fiduciary duty, (8) bailment, (9) breach of confidence, (10) violation of Alabama's data breach notification law; and (11) declaratory relief.

9. Plaintiffs and Defendant agreed that an early mediation of the above-captioned litigation (the "Litigation") was warranted and agreed to employ respected mediator Rodney A. Max, Esq., of Upchurch Watson White & Max mediation group. After an exchange of pertinent information, the Parties submitted extensive briefs.

10. On November 14, 2022, the Parties participated in a full day virtual mediation conducted by Rodney A. Max, Esq., a mediator with the respected professional mediation firm Upchurch, Watson, White, & Max. Mr. Max is well versed in data breach and privacy litigation. The parties were unable to reach a resolution, and continued arms-length negotiations with the aid and effort of Mr. Max. On December 5, 2022, the Parties participated in another virtual mediation session conducted by Rodney A. Max, Esq. and failed to reach an agreement on all material terms. The parties continued arms-length negotiations through Rodney A. Max, Esq., which culminated in agreement on central terms of a settlement. On May 18, 2023, the parties reached an agreement in principle on all material terms which was memorialized into a Settlement Agreement.

SETTLEMENT BENEFITS

11. The Settlement negotiated on behalf of the Class provides for monetary relief to be paid by Norwood to eligible claimants of a Settlement Class that includes 228,000 persons whose Private Information was potentially compromised as a result of the Norwood Data Breach and who were sent written notice thereof. Defendant will provide (1) reimbursement for Lost Time; (2), reimbursement for Out-of-Pocket Losses; (3) Credit Monitoring Services; (4) notice and administration costs; and (5) Plaintiffs' service awards and attorneys' fees and costs awarded by the Court. Specifically, Settlement Class Members may be eligible to receive the following Settlement Benefits:

- a. Payment for Lost Time: Settlement Class Members can make a claim for compensation for up to twenty (20) hours of lost time, compensable at a rate of \$25.00 per hour (\$500.00 total) for time spent to mitigate the potential effects of or to deal with the effects of the Data Breach. Claims for lost time may include, without limitation, time spent dealing with replacement card issues, reversing fraudulent charges, or monitoring accounts, but only if at least one full hour was spent. To be valid, a claim for compensation for lost time must be supported by a signed statement or reasonable documentation of the time lost.
- b. Payment for Out-of-Pocket Losses: Settlement Class Members can make a claim for recovery of out-of-pocket costs or expenditures incurred by a Class Member that are fairly traceable to the Data Breach. Out-of-Pocket Losses will be deemed "fairly traceable" if (1) the timing of the loss occurred on or after September 20, 2021 (or the earliest verifiable date the data breach occurred); and (2) the personal information used to commit identity theft or fraud consisted of the same

type of personal information that was provided to Defendant prior to the Data Breach. Out-of-Pocket Losses may include, without limitation, the following: (1) unreimbursed costs, expenses, losses or charges incurred a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of Class Member's personal information; (2) costs incurred on or after September 20, 2021 (or the earliest verifiable date the data breach occurred) associated with accessing or freezing/unfreezing credit reports with any credit reporting agency; (3) other miscellaneous expenses incurred related to any Out-of- Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges; (4) credit monitoring or other mitigative costs that were incurred on or after October 1, 2021 (or the earliest verifiable date the data breach occurred) through the date of the class member's claim submission; and (5) unpaid time off work to address issues fairly traceable to the data breach at the actual hourly rate of that class member.

- c. Credit Monitoring and Insurance Services: Norwood will offer each Class Member with up to two years of free credit monitoring services, which services will include (1) dark web scanning with immediate user notification if potentially unauthorized use of a class member's personal information is detected; (2) identity theft insurance; (3) real-time credit monitoring with all three credit bureaus (Equifax, Experian, and TransUnion); and (4) access to fraud resolution agents. Class Members will be required to submit a claim to obtain this benefit.
- d. Non-Monetary Relief: In addition to the settlement benefits set forth in subsections (a) – (c) above, after discovering the Cyber Incident, and during the

pendency of this Litigation, Norwood adopted and implemented significant data security measures, as identified below. Effective January 14, 2023, Norwood entered into an asset purchase agreement pursuant to which it sold its assets and is now closing down all of its operations and is no longer seeing patients.

- Reset all passwords and changed password requirements;
- Changed all admin accounts to 8-character passwords;
- Upgraded to Office 365; Conducted risk assessments;
- Went through all systems to ensure all patches updated, firewalls updated;
- Implemented 2-factor authentication (when converting to Office 365);
- Provided cybersecurity training to employees; and
- Revamped policies.

12. In the event the amount claimed under paragraph 11 exceeds two million three hundred thousand dollars (*i.e.* \$2.3 million) after paying for payment of court approved attorneys' fees and costs, service awards and payment of costs for Notice and Claims Administration, the amount paid to valid claimants will be reduced on a *pro rata* basis.

CLASS CERTIFICATION

13. For purposes of settlement only, and pursuant to Rule 23, the Court provisionally certifies the class, defined as follows:

All individuals residing in the United States whose Private Information was or may have been compromised in the Cyber Incident that is the subject of the data security notice that Defendant sent to Plaintiffs and others in substantially the same form on or about March 8, 2022.

14. The Settlement Class specifically excludes: (i) Norwood, Inc., and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; and (iii) the Judge assigned to evaluate the fairness of this settlement.

15. The Court provisionally finds, 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 Plaintiffs' claims are typical of the claims of the Settlement Class; (d) the Plaintiffs will fairly and adequately protect the interests of the Settlement Class; (e) the questions of law or fact common to the Settlement Class Members predominate over any questions affecting only individual members; and (f) that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Alabama Rules of Civil Procedure 23(a)(1)- (4), (b)(3).

SETTLEMENT CLASS REPRESENTATIVES AND CLASS COUNSEL

16. Kathy L. Limbaugh, Kristian Gratton, Mark Wade, and Suzanne Maddox 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, will be adequate Class Representatives.

17. The Court finds that Pittman, Dutton, Hellums, Bradley & Mann, P.C., Cory Watson, P.C., and Migliaccio & Rathod LLP are experienced and adequate counsel and are provisionally designated as Settlement Class Counsel.

NOTICE TO SETTLEMENT CLASS

18. No later than thirty (30) days after entry of the Preliminary Approval Order (the "Notice Date"), Notice shall be provided to Settlement Class Members via postcard mail to the postal address used for providing notice to the Settlement Class Members by Norwood in or about October 2021 and via e-mail to any e-mail address Norwood has on record for class members. A reminder e-mail shall also be sent to all settlement class members for whom the

Administrator is able to procure a valid email address, two weeks prior to the deadline for Settlement Class Members to submit their claim. The notice plan shall be subject to approval by the Court as meeting constitutional due process requirements. The Settlement Administrator shall establish a dedicated settlement website, www.norwoodcyberincident.com, and shall maintain and update the website throughout the claim period, with the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement. A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement. The Settlement Administrator will also provide copies of the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement, upon request of Settlement Class Members.

19. Prior to any dissemination of the Short 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 Notice, the Claim Form, this Agreement, the Preliminary Approval Order entered by the Court, and the operative Complaints in the Actions, 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. The Settlement Website shall further allow for submission of Requests of Exclusion electronically through the Settlement Website.

20. The Claim Form, Short Notice, and Long Notice, attached as Exhibits A-C, respectively, to the Settlement Agreement, are constitutionally adequate and are hereby

approved. The Notice contains all essential elements required to satisfy state statutory requirements and due process under Alabama Rule 23(c)(2), the United States Constitution, and other applicable laws. The Court further finds that the form, content, and method of providing the Settlement Class 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.

21. The Notice plan set forth in the Settlement Agreement and described herein satisfies the requirements Rule 23(c)(2), provides the best notice practicable under the circumstances, and is hereby approved.

22. The Settlement Administrator is directed to carry out Notice as set forth in the Settlement Agreement.

23. Settlement Class Members who seek to be excluded from the Settlement Class shall individually sign and timely submit written notice of such intent via electronically through the Settlement Website or to the designated Post Office box established by the Settlement Administrator. The written notice must clearly manifest the intent to be excluded from the Settlement Class. To be effective, written notice must be electronically submitted or mailed with the postmark dated no later than sixty (60) days after the Notice Date. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, as set forth in the Settlement Agreement, shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do

not timely request to be excluded from the Settlement Class in the manner set forth in the Settlement Agreement shall be bound by the terms of the Settlement Agreement and Final Approval Order and Judgment entered thereon.

24. In the event that 2% or more of the class opts out of the settlement (exclusions), Norwood may, by notifying Class Counsel in writing within fourteen (14) days after the Opt-Out Date, void the Settlement Agreement. If Norwood voids the Settlement Agreement pursuant to this Paragraph: (a) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel; and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

25. Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the case name and number; (ii) the objector's full name, address, telephone number, and e-mail address (if any); (iii) information identifying the objector as a Settlement Class Member (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of all counsel representing the objector; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); (viii) specify whether the objection applies

only to the objector, a subset of the Settlement Class, or the entire Settlement Class; (ix) include all documents and writings that the objector desires the Court to consider; (x) list all persons who will be called to testify at the Final Approval Hearing in support of the objection; and (xi) be filed or postmarked on or before the Objection Deadline. In addition to the foregoing, objections must also provide the following information: (a) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years; and (b) a list, by case number, court, and docket number, of all other cases in which the objector has been named a plaintiff or class representative. The Notice will further inform Settlement Class Members that, to be considered timely and valid, they must mail a copy of their objection to the Clerk of the Court, Class Counsel, and Defendant's Counsel as stated herein.

26. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court no later than sixty (60) days after the Notice Date and served concurrently therewith upon by mail (postmarked no later than sixty (60) days after the Notice Date) to Class Counsel (Attn: Jon Mann, Pittman, Dutton, Hellums, Bradley & Mann, P.C., 2001 Park Place North, Suite 1100, Birmingham, AL 35203); and counsel for Norwood (Attn: Jennifer S. Stegmaier, 55 West Monroe Street, Suite 3800, Chicago, Illinois 60603).

27. Any Settlement Class Member who does not make their objections to the Settlement in the manner and by the date set forth herein shall be deemed to have waived and forfeited any and all rights he or she may have to appear separately and/or object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any

challenge to the Settlement Agreement shall be through the provisions stated herein and set forth in the Settlement Agreement.

28. Without limiting the foregoing, any challenge to the Settlement Agreement, this Preliminary Approval Order, the Final Approval Order, and Final Judgment shall be pursuant to appeal under applicable Court rules and not through a collateral attack.

ADMINISTRATION OF SETTLEMENT

29. The Settlement Administrator shall calculate and administer the claims submitted by Settlement Class Members in accordance with the terms of the Settlement Agreement. Class Counsel and counsel for Defendant shall be given reports as to both claims and distribution and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Settlement Administrator shall determine the validity or invalidity of any such claims shall be binding, subject to the dispute resolution process set forth in the Settlement Agreement.

30. The Court appoints A.B. Data, Ltd. 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 Final 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 and will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, including the Releases contained therein and the Final Approval Order and Judgment.

34. Prior to the Final Approval Hearing, Class Counsel and Norwood shall cause to be filed with the Court an appropriate affidavit or declaration regarding compliance with the provisions of the Settlement Agreement relating to the Notice provided to the Settlement Class Members.

FINAL APPROVAL HEARING

35. A Final Approval Hearing shall be held not less than 110 days following the entry of this Order, *to wit*, on April 22, 2024 at 9:00 a.m. in the Circuit Court of Jefferson County, Alabama, Birmingham Division, or as otherwise directed by the Court, 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 the Final Approval Hearing, the Court will determine whether: (1) this action should be finally certified as a class action for settlement purposes pursuant Rule 23(a)(1)-(4), (b)(3) & (c)(1); (2) the Settlement should be finally approved as fair, reasonable, and adequate; (3) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (4) Settlement Class Members should be bound by the Releases set forth in the Settlement Agreement; (5) Class Counsel's application for Attorneys' Fee Award and Costs should be approved; (6) the Class Representatives' requests for Service Awards should be approved; and (7) the Parties, their respective attorneys, and the Settlement Administrator

should consummate the Settlement in accordance with the terms of the Settlement Agreement.

38. Class Counsel shall file a motion for an Attorneys' Fee Award and Costs and Class Representatives' requests for Service Awards on or before fourteen (14) days prior to the Objection Deadline.

39. Class Counsel shall file a motion for Final Approval and Final Judgment of the Settlement no later than fourteen (14) days prior to the date of the Final Approval Hearing.

RELEASE

40. Upon the Effective Date, and without any further action, each Settlement Class Member, including Representative Plaintiffs, and including themselves, their heirs, successors, representatives, assigns, attorneys, agents, executors, trustees and administrators, shall be deemed to have, and by operation of the Final Approval Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged any and all Released Claims against each and any of the Released Entities and shall forever be barred and enjoined, without the necessity of any of the Released Entities posting a bond, from commencing, instituting, prosecuting or maintaining any of the Released Claims. Further, upon the Effective Date, and without any further action, Representative Plaintiffs further agree not to knowingly and voluntarily assist in any way any third-party in commencing or prosecuting any suit against the Released Entities relating to any Released Claim.

TERMINATION

41. In the event that the Effective Date does not occur, class certification shall be automatically vacated and this Preliminary Approval Order, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

42. In the event the Settlement is terminated, the Parties to the Settlement Agreement, including Settlement Class Members, shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of the Settlement Agreement, and, except as otherwise expressly provided in the Settlement Agreement, the Parties shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered. In addition, the Parties agree that in the event the Settlement is terminated, any orders entered pursuant to the Settlement Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses.

SUMMARY OF DEADLINES

43. 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:

EVENT	DATE
Notice Date	No later than 30 days after entry of this Preliminary Approval Order
Deadline for Plaintiffs to File Motion for Attorneys' Fees, Expenses and Service Awards for Class Representatives	No later than 14 days prior to the Objection Deadline
Deadline for Class Members to Opt-Out of Settlement	60 days after entry of Preliminary Approval Order
Deadline for Class Members to Object to Settlement	60 days after entry of Preliminary Approval Order

Deadline for Class Members to Submit Timely, Valid Claims for Monetary Relief	90 days after Notice Date
Deadline for Plaintiffs to File Motion for Final Approval and Judgment	No later than 7 days prior to the date of the Final Approval Hearing
Final Approval Hearing	[To be determined by the Court. Must be 111 days from the date of preliminary approval.]

44. Upon application of the Parties and good cause shown, the deadlines set forth in this Preliminary Approval Order may be extended by order of the Court, without further notice to the Settlement Class. Settlement Class Members must check the Settlement Website regularly for updates and further detail regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Approval Hearing and/or to extend the deadlines set forth in this Order, without further notice of any kind to the Settlement Class.

DONE on this the 21st day of November, 2023.

/s/ MONICA Y. AGEE
CIRCUIT JUDGE