

CAUSE NO. DC-23-01733

IDA PATTERSON, MICHAEL LASSITER,
SELMA EARLS, and COLETTE WILLIAMS,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

DPP II LLC and HOME CARE PROVIDERS
OF TEXAS,

Defendants.

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

14TH JUDICIAL DISTRICT

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

This matter came before the Court on Plaintiffs' Motion for Preliminary Approval of Class Settlement. Ida Patterson, Michael Lassiter, Selma Earls, and Colette Williams ("Representative Plaintiffs"), individually and on behalf of the proposed Settlement Class, and Defendant DPP II LLC ("DPP") doing business as Home Care Providers of Texas ("Defendant") have entered into a Settlement Agreement (the "Settlement Agreement") that settles the above-captioned litigation.

On June 29, 2022, Defendant became aware of a data-security incident in which an unauthorized third party gained access to DPP's network environment which contained certain information such as individuals' personally identifiable information ("PII") and protected health information ("PHI").

Representative Plaintiffs are the named plaintiffs in the consolidated action and underlying individual actions and represent a class of persons whose personally identifiable and/or protected health information was compromised in the Data Security Incident or who were sent a notice of the Data Security Incident, which occurred on Defendant's network between June 15 and June 29, 2022.

The First Amended Consolidated Class Action Petition asserts six counts, all of which allegedly arise from the Data Breach: (1) negligence; (2) negligence *per se*; (3) breach of implied contract; (4) breach of fiduciary duty; (5) public disclosure of private facts; and (6) unjust enrichment.

Plaintiffs and Defendant agreed that an early mediation of the above-captioned litigation (the “Litigation”) was warranted. On August 29, 2023, a full-day mediation was conducted before private mediator John DeGroot. The Parties negotiated a settlement by which the Parties agree and hereby wish to resolve all matters pertaining to, arising from, or associated in any way with the Litigation. The Settlement Agreement is the result of the mediation and subsequent settlement discussions.

Having reviewed the Settlement Agreement, including the exhibits attached thereto, and for good cause shown, it is hereby ordered that Plaintiffs’ Motion for Preliminary Approval is granted as set forth herein.¹

1. **Class Certification for Settlement Purposes Only**. For settlement purposes only and pursuant to Rule 42 of the Texas Rules of Civil Procedure, the Court provisionally certifies a Settlement Class in this matter defined as follows:

individuals identified on the Class List whose certain personal information may have been involved in the Data Incident who does not timely elect to be excluded from the Class.

The Settlement Class includes approximately 126,681 people. The Settlement Class specifically excludes: (1) the judge presiding over this Action, and members of his direct family; (2) DPP, its subsidiaries, parent companies, successors, predecessors, and any entity in which the

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

Defendant or its parents have a controlling interest and their current or former officers and directors; and (3) Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

Pursuant to Tex. R. Civ. P. 42(a) the Court provisionally finds, for settlement purposes only, that: (1) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (2) there are questions of law or fact common to the Settlement Class which predominate over any questions affecting only individual class members; (3) the claims of the Representative Plaintiffs are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; and (4) the Representative Plaintiffs and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Representative Plaintiffs have no interest antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class. Pursuant to Tex. R. Civ. P. 42(b)(3), the Court finds that questions of law or fact common to Settlement Class Members predominate over questions affecting only individual members and a class action is superior to other methods available for a fair and efficient resolution of this controversy.

2. **Representative Plaintiffs and Settlement Class Counsel.**

Ida Patterson, Michael Lassiter, Selma Earls, and Colette Williams are hereby provisionally designated and appointed as the Representative Plaintiffs. Pursuant to Tex. R. Civ. P. 42(a)(4), the Court provisionally finds that the Representative Plaintiffs will fairly and adequately protect the interests of the Settlement Class. The Court also provisionally finds that the Representative Plaintiffs are similarly situated to absent Class Members and are therefore typical of the Class.

The Court finds, pursuant to Tex. R. Civ. P. 42(g), that Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC is experienced and adequate counsel and is hereby provisionally designated as Settlement Class Counsel and Joe Kendall of Kendall Law Group, PLLC as Texas Local Counsel.

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

4. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for purposes of the Settlement. Additionally, venue is proper in this Court as a substantial portion of the acts and transactions complained of occurred in Dallas County, Texas and Defendant conducts substantial business throughout Dallas County.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on [DATE at least 150 days after entry of this Order] at 10:30 a.m. on Apr 29, 2024, before the Honorable Eric V. Moyé, Judge of the 14th Judicial District Court, at the George L. Allen Sr. Courts Building, 600 Commerce Street, 5th Floor New Tower, Dallas, Texas 75202, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to Tex. R. Civ. P. 42(c); (b) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to Tex. R. Civ. P. 42(e)(1)(C); (c) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the motion of Settlement Class Counsel for an award of attorneys' fees, costs, and expenses (the "Fee Request") should be approved; and (f) the motion of Representative Plaintiffs for a Service Award (the "Service Award

Request”) should be approved. Plaintiffs’ Motion for Final Approval of the Settlement, Fee Request, and Service Award Request shall be filed with the Court **ninety (90) days from the date of this Order**. By no later than **fourteen (14) days prior to the Final Approval Hearing**, the Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or the Fee Request and Service Award Request.

6. **Administration**. The Court appoints Epiq as the Settlement Administrator, with responsibility for class notice and claims administration and to fulfill the duties of the Claims Administrator and Notice Specialist set forth in the Settlement Agreement. All costs and expenses associated with providing notice to Settlement Class Members including, but not limited to, the Settlement Administrator’s fees as well as the costs associated with administration of the Settlement shall be paid from the Settlement Fund.

7. **Notice to the Class**. The proposed notice program set forth in the Settlement Agreement, and the Claim Form, Short-Form Notice, and Long-Form Notice attached to the Settlement Agreement as Exhibits A, B, and C, satisfy the requirements of Tex. R. Civ. P. 42(c)(2), provide the best notice practicable under the circumstances, and are hereby approved. Non-material modifications to these Exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the notice program in conformance with the Settlement Agreement.

Within **thirty (30) days from the date of this Order** (the “Notice Deadline”), the Settlement Administrator shall complete the notice program in the manner set forth in Section V of the Settlement Agreement.

8. **Findings and Conclusions Concerning Notice**. The Court finds that the form, content, and method of giving notice to the Settlement Class as described in Paragraph 8 of this

Order and the Settlement Agreement (including the exhibits thereto): (a) will 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 proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and the Court concludes that the notice program meets all applicable requirements of law, including Tex. R. Civ. P. 42(c)(2), and the Due Process Clause of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

9. **Exclusion from Class**. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail an individual written notification of the intent to exclude himself or herself from the Settlement Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than **sixty (60) days from the Notice Deadline** (the "Exclusion Deadline"). The written notice must clearly manifest a person's intent to be excluded from the Settlement Class and must be signed by the individual seeking to be excluded from the class.

The Settlement Administrator shall provide the Parties and the Court with copies of all completed opt-out notifications and a final list of all who have timely and validly excluded themselves from the Settlement Class within **ten (10) days after the Exclusion Deadline**.

Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If Final Order and

Judgment is entered, any Settlement Class Member – including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Persons relating to the claims or transactions released in the Settlement Agreement – who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Order and Judgment. All Settlement Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

10. **Objections and Appearances.** A Settlement Class Member who complies with the requirements of this paragraph may object to the Settlement, the Fee Request, or the Service Award Request. To do so, the objection must, as specified in the Notice, by **sixty (60) days from the Notice Deadline** (the “Objection Deadline”), be filed with the Dallas County District Clerk, George L. Allen Sr. Courts Building, 600 Commerce Street, Dallas, Texas 75202, and contain the case name and docket number, *Patterson, et al. v. DPP II LLC, et al.*, Case No. DC-23-01733, and served concurrently therewith upon Class Counsel, Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, 227 W. Monroe Street, Suite 2100, Chicago, IL 60606, and counsel for Defendant, Noah H. Nadler, 3131 McKinney Avenue, Suite 500, Dallas, TX 75204. For an objection to be considered by the Court, the objection must include all of the information set forth in Paragraph 69 of the Settlement Agreement, which is as follows:

- (a) the name of the proceedings;
- (b) the Class Member’s full name, current mailing address, email address, and telephone number;

- (c) a statement of the specific grounds for the objection, as well as any documents supporting the objection;
- (d) the identity of any attorneys representing the objector;
- (e) a statement regarding whether the Class Member (or his/her attorney) intends to appear at the Final Approval Hearing;
- (f) a statement identifying all class action settlements objected to by the Class Member in the previous five (5) years; and
- (g) the signature of the Class Member or the Class Member's attorney.

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

Any Settlement Class Member, including a Settlement Class Member who files and serves a written objection as described above may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Award Request, or the Fee Request. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must file a notice of appearance with the Court (and serve it on Settlement Class Counsel and Defendant's Counsel) by the Objection Date. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objecting Settlement Class Member who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone

number, e-mail address, state bar(s) to which counsel is admitted, as well as associated state bar numbers, and a list identifying all objections such counsel has filed to class action settlements in the past three (3) years, the results of each objection, any court opinions ruling on the objections, and any sanctions issued by a court in connection with objections filed by such attorney.

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

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

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

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

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

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

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

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

Notice Deadline: 30 Days after Preliminary Approval

Motion for Service Awards, Attorneys' Fees and Costs: 46 Days after Notice Deadline

Exclusion Deadline: 60 Days after the Notice Deadline

Objection Deadline: 60 Days after the Notice Deadline

Motion for Final Approval: 14 Days before Final Approval Hearing

Replies in Support of Final Approval, Service Awards and Fee Requests: 7 Days before Final Approval Hearing

Claim Deadline: 90 Days after Notice Deadline

THIS MATTER IS ADMINISTRATIVELY CLOSED UNTIL FURTHER ORDER

IT IS SO ORDERED this 30 day of October, 2023.



HONORABLE ERIC V. MOYÉ