

STATE OF NORTH CAROLINA  
COUNTY OF JOHNSTON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 22CVS002873-500

**MICHAEL POPE**, on behalf of herself  
and all others similarly situated,  
Plaintiff,

v.

**BENSON AREA MEDICAL CENTER,  
INC. a/k/a BENSON HEALTH,**

Defendant

**ORDER**

FILED

DATE: November 21, 2024

TIME: 12:43:13 PM

JOHNSTON COUNTY

CLERK OF SUPERIOR COURT

BY: C. Anderson

Before the Court is Plaintiff's Motion for Preliminary Approval of Class Action Settlement (the "Motion"), the terms of which are set forth in a Settlement Agreement between Michael Pope ("Plaintiff") and Benson Area Medical Center, Inc. a/k/a Benson Health ("Benson Health" or "Defendant" and, together with Plaintiffs, the "Parties"), with accompanying exhibits attached to Plaintiffs' Memorandum of Law in Support of the Motion (the "Settlement Agreement").<sup>1</sup>

Having fully considered the issue, the Court hereby **GRANTS** the Motion and **ORDERS** as follows:

1. **Class Certification for Settlement Purposes Only.** The Settlement Agreement provides for a Class defined as follows:

All individuals residing in the United States to whom Defendant sent a notice concerning the Data Incident.

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<sup>1</sup> All defined terms in this Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order") have the same meaning as set forth in the Settlement Agreement, unless otherwise indicated.

Excluded from the Settlement Class are (i) Benson Health; and (ii) The judge presiding over this case and their staff and family.

Pursuant to North Carolina Rule of Civil Procedure 23, the Court finds giving notice to the Settlement Class is justified. The Court finds it will likely be able to approve the proposed Settlement as fair, reasonable, and adequate. The Court also finds it will likely be able to certify the Settlement Class for purposes of judgment on the Settlement because it meets all requirements of Rule 23.

Specifically, the Court provisionally finds for settlement purposes only that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact that are common to the Settlement Class; (c) the claims of the Settlement Class Representatives are typical, and the Settlement Class Representatives seek similar relief as the claims of the Settlement Class Members; (d) the Settlement Class Representatives will fairly and adequately protect the interests of the Settlement Class; € questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this Litigation.

2. **Settlement Class Representatives and Settlement Class Counsel**. Michael Pope is hereby provisionally designated and appointed as the Class Representative. The Court provisionally finds that the Class Representative is similarly situated to absent Settlement Class Members and therefore typical of the Settlement Class and that he will be an adequate Class Representative. The Court further finds that Milberg Coleman Bryson Phillips Grossman, PLLC, and Stauss Borrelli, PLLC are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel.

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds the Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the Settlement Class and accordingly the Settlement is preliminarily approved. In making this determination, the Court has considered the monetary and non-monetary benefits provided to the Settlement Class through the Settlement, the specific risks faced by the Settlement Class in prevailing on their claims, the good faith, arms' length negotiations between the Parties and absence of evidence of collusion in the Settlement, the effectiveness of the proposed method for notifying and distributing relief to the Settlement Class, the proposed manner of allocating benefits to Settlement Class Members, the equitable treatment of the Settlement Class Members under the Settlement.

4. **Final Approval Hearing.** A Final Approval Hearing shall be held on \_\_\_\_\_, 202\_\_\_\_, at [address/via zoom], where the Court will determine, among other things, whether: (a) the Settlement Class should be finally certified for settlement purposes; (b) the Settlement should be approved as fair, reasonable, and adequate, and finally approved; (c) this action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members (who have not timely and validly excluded themselves from the Settlement) should be bound by the releases set forth in the Settlement Agreement; (e) the application of Settlement Class Counsel for an award of Attorneys' Fees, Costs, and Expenses should be approved; (f) the Action should be dismissed with prejudice; and (g) the application of the Settlement Class Representatives for a Service Award should be approved.

5. **Settlement Administrator.** The Court appoints Atticus Administration, LLC, as the Settlement Administrator, with responsibility for class notice and settlement administration. The Settlement Administrator is directed to perform all tasks the Settlement Agreement requires.

The Settlement Administrator's fees will be paid pursuant to the terms of the Settlement Agreement.

6. **Notice**. The proposed notice program set forth in the Settlement Agreement and the Notices and Claim Form attached to the Settlement Agreement as **Exhibits B and C** are hereby approved. Non-material modifications to these Exhibits consistent with this Order may be made by the Settlement Administrator in consultation and agreement with the Parties, and without further order of the Court.

7. **Findings Concerning Notice**. The Court finds that the proposed form, content, and method of giving Notice to the Settlement Class as described in the Settlement Agreement and its exhibits: (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, 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 to claim benefits provided under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members; (d) meet all applicable requirements of law, including Rule 23; and (e) meet the requirements of the Due Process Clause(s) of the United States and North Carolina Constitutions. The Court further finds that the Notice provided for in the Settlement Agreement is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members.

The Settlement Administrator is directed to carry out the Notice program in conformance with the Settlement Agreement.

8. **Exclusion from Class**. Any Settlement Class Member who wishes to be excluded from the Settlement Class must individually sign and timely submit a written request to the

designated address established by the Settlement Administrator in the manner provided in the Notice. The written request must clearly manifest a person's intent to be excluded from the Settlement Class, as set forth in the Settlement Agreement, and must be submitted individually, i.e., one request is required for every Settlement Class Member seeking exclusion. To be effective, such requests for exclusion must be postmarked no later than the Opt-Out Date, which is no later than forty-five (45) days after the date on which the notice program is completed.

If a Final Approval Order and Judgment is entered, all Persons falling within the definition of the Class who do not timely and validly request to be excluded from the Settlement Class shall be bound by the terms of this Settlement Agreement and the Final Approval Order and Judgment. All Persons who submit valid and timely requests to be excluded from the Settlement Class shall not receive any cash benefits of and/or be bound by the terms of the Settlement Agreement.

9. **Objections and Appearances.** A Settlement Class Member (who does not submit a timely written request for exclusion) desiring to object to the Settlement Agreement may submit a timely written objection by the Objection Deadline and as stated in the Notice. The Notice shall instruct Settlement Class Members who wish to object to the Settlement Agreement to file their objections with the Court by the Objection Date. Any such objections to the Settlement Agreement must be written and must include all of the following: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement as to whether the objector and/or his or her counsel will appear at the

Final Fairness Hearing; and (vi) the objector's signature and, if applicable, the signature of the objector's duly authorized attorney or other duly authorized representative.

To be timely, written notice of an objection must be filed with the Clerk of Court by the Objection Date, which is forty-five (45) days from the date on which notice program.

Any Settlement Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Action, and shall be precluded from seeking any review of the Settlement Agreement and/or Final Approval Order and Judgment by appeal or other means. The provisions stated in the Settlement Agreement shall be the exclusive means for any challenge to the Settlement Agreement. Any challenge to the Settlement Agreement or the Final Approval Order and Judgment shall be pursuant to appeal under the Florida Rules of Appellate Procedure and not through a collateral attack.

10. **Claims Process.** Settlement Class Counsel and Benson Health have created a process for Settlement Class Members to claim benefits under the Settlement. The Court preliminarily approves this process and directs the Settlement Administrator to make the Claim Form or its substantial equivalent available to Settlement Class Members in the manner specified in the Notice.

The Settlement Administrator will be responsible for effectuating the claims process.

Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirement and procedures specified in the Notice and the Claim Form. If the Final Approval 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 Final Approval Order and Judgment, including the releases contained therein.

11. **Termination of Settlement.** This Preliminary Approval Order shall become null and void and shall be without prejudice to the rights of the Parties and of no force or effect if: (a) the Court does not enter this Preliminary Approval Order; (b) Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement; or (c) the Effective Date does not occur. In such event, (i) the Parties shall be restored to their respective positions in the Action prior to execution of the Settlement Agreement and shall jointly request all scheduled Action deadlines be reasonably extended by the Court to avoid prejudice to any Party or Party's counsel; (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and (iii) 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*.

12. **Use of Order.** This Preliminary Approval shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the propriety of certifying any class in the Action. Nor shall this Preliminary Approval Order be i) construed or used as an admission, concession, or declaration by or against the Class Representatives or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable, or ii) as a waiver by any Party of any defense or claims they may have in this Action or in any other lawsuit.

13. **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 Settlement Website maintained by the Settlement Administrator. The Court may approve the Settlement, with such modifications as may be agreed upon by the Parties, if appropriate, without further notice to the Settlement Class.

14. **Stay of Litigation.** All proceedings in the Action, other than those related to approval of the Settlement Agreement, are hereby stayed. Further, any actions brought by Settlement Class Members concerning the Released Claims are hereby enjoined and stayed pending the Final Approval Hearing and the order issuing therefrom.

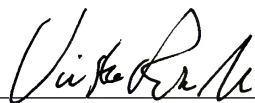
15. **Schedule and Deadlines.** The Court orders the following schedule of dates for the specified actions/further proceedings:

<b><u>Event</u></b>	<b><u>Deadline</u></b>
Defendant Provides Class Member Information To Claims Administrator	Within 30 Days Of Entry Of Preliminary Approval Order
Deadline For Notice to the Class to be Substantially Completed	Within 21 Days Of Class Administrator's Receipt of Class Member Information ("Notice Deadline")
Motion for Attorneys' Fees, Costs, Expenses, and Service Award to Be Filed by Settlement Class Counsel	At Least 14 Days Prior To Opt-Out/Objection Dates
Opt-Out/Objection Date Deadlines	45 Days After Notice Deadline
Claims Deadline	60 Days After Notice Deadline
Motion For Final Approval To Be Filed By Class Counsel	At Least 14 Days Prior To Final Approval Hearing
Final Approval Hearing	[COURT TO ENTER DATE AND TIME] No Earlier Than 120 Days After Entry Of Preliminary Approval Order

IT IS SO ORDERED



Dated: 11/21/2024

  
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Hon. Winston M. Rozier, Jr., Superior Court  
Judge

The Parties respectfully request that the Court enter the above Preliminary Approval for Class Action Settlement Order in this matter.

<p><u>/s/ Scott C. Harris</u> Scott C. Harris N.C. Bar No.: 35328 MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC 900 W. Morgan St. Raleigh, NC 27603 T: 919-600-5003 E: <a href="mailto:sharris@milberg.com">sharris@milberg.com</a> <i>Attorneys for Plaintiff</i></p>	<p><u>/s/ Richard N. Sheinis</u> Richard N. Sheinis N.C. Bar No.: 39078 Brock C. Wolf N.C. Bar No.: 58250 HALL BOOTH SMITH, PC 11215 Community House Rd., Suite 750 Charlotte, NC 28277 T: 980-859-0380 E: <a href="mailto:rsheinis@hallboothsmith.com">rsheinis@hallboothsmith.com</a> <a href="mailto:bwolf@hallboothsmith.com">bwolf@hallboothsmith.com</a> <i>Attorneys for Defendant</i></p>
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