

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

In Re: Medical Informatics Engineering,
Inc., Customer Data Security Breach
Litigation
(MDL 2667)

Case No.: 3:15-MD-2667

This Document Relates to All Cases

**ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AND APPROVING NOTICE PROGRAM**

WHEREAS, a class action is pending before the Court entitled *In re Medical Informatics Engineering, Inc.* No. 3:15-MD-2667 (N.D. Ind.);

WHEREAS, all Plaintiffs named in the Consolidated Amended Class Action Complaint in this action (“Plaintiffs” or “Settlement Class Representatives” for purposes of the Settlement Agreement), for themselves and on behalf of the Settlement Class, and Defendants Medical Informatics Engineering, Inc. and NoMoreClipboard, LLC (“Defendants”), have agreed to settle Plaintiffs’ claims related to the Data Breach announced by Defendants in May 2015;

WHEREAS, the Parties’ Stipulation and Agreement of Settlement (“Settlement Agreement”), together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendants for the claims of the Settlement Class upon the terms and conditions set forth in the Settlement Agreement, and the Court having read and considered the Settlement Agreement and exhibits attached thereto;

This matter coming before the Court upon the agreement of the Parties and the motion of Plaintiffs seeking preliminary approval of the Settlement Agreement, good cause being shown, and

the Court being fully advised in the premises,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this order shall have the same meaning as set forth in the Settlement Agreement [Doc. No. 175-1].

2. The Court has jurisdiction over the subject matter of the Action, the Plaintiffs, the Settlement Class Members, and Defendants.

Settlement Class Certification

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, for settlement purposes only, a Settlement Class consisting of the following:

Settlement Class: All persons whose personal or medical information was compromised by the Medical Informatics Engineering, Inc. Data Breach.

4. Excluded from the Settlement Class are those Persons who otherwise satisfy the above requirements for membership in the Settlement Class, but who timely and validly request exclusion from the Settlement Class pursuant to the Notice to be sent to Settlement Class Members.

5. The Court hereby appoints as Settlement Class Representatives all Plaintiffs named in the Consolidated Amended Class Action Complaint in *In re Medical Informatics Engineering, Inc.* No. 3:15-MD-2667 (N.D. Ind.): Antoinette Ann Franklin, Ira Kushner, Steve Walker, Allan Lewis, David Wayne Perry, James Young, Cynthia Weinman, Patricia Justice, Thomas Jones, Herbert L. Schuttler, Jeremy Brann, Cynthia Benoit, Floyd Harris, Lauren Fern Rainess, Anita Colter, Richard Larson, Michael Osbourn, Mark Guth, Richard DiGovine, Brandon Warrick, James Mueller, and Michelle Moore.

6. The Court hereby appoints Irwin B. Levin of Cohen & Malad, LLP as Settlement Class Counsel.

Preliminary Approval

7. Plaintiffs have moved the Court for an order approving the settlement of the Action in accordance with the Settlement Agreement, which, together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice against Defendants. The Court, having read and considered the Settlement Agreement and having heard the Parties' arguments in support of the Settlement Agreement, hereby preliminarily approves the Settlement Agreement [Doc. No. 175-1] in its entirety subject to the Final Approval Hearing referred to in Paragraph 20 of this order.

8. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement falls within the range of possible approval as fair, reasonable, adequate, and in the best interests of the Settlement Class as to their claims against Defendants. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action, and provides beneficial relief to the Settlement Class. The Court also finds that the Settlement Agreement: (a) is the result of serious, informed, non-collusive arms' length negotiations involving experienced counsel familiar with the legal and factual issues of this case and made with the assistance of the Honorable Sanford Brooks (ret.) of JAG, Inc.; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to the Settlement Class; (c) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715; and (d) is not a finding or admission of liability by Defendants.

Notice and Administration

9. KCC Class Action Services, LLC ("KCC") is hereby appointed as Settlement Administrator and shall perform all the duties of the Settlement Administrator as set forth in the Settlement Agreement and this order.

10. The Court finds that the notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits A and B thereto (the "Notice Program") is reasonably

calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement or to exclude themselves from the Class. The Notice Program is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

11. The Court thus hereby approves the Notice Program, including the proposed Notice documents attached as Exhibits A and B to the Settlement Agreement. The Court also approves the plan for Claims administration, including the Election Form and Reimbursement Form attached as Exhibits C and D to the Settlement Agreement. The Parties may, by agreement, revise the Notice, Election Form, or Reimbursement Form documents in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

12. Pursuant to the Settlement Agreement, within thirty (30) calendar days after the entry of this Preliminary Approval Order (the “Notice Date”), and subject to the requirements of the Settlement Agreement and this Preliminary Approval Order, the Parties shall coordinate with the Settlement Administrator to provide Notice pursuant to the Notice Program as follows:

- a. Within thirty (30) days of entry of the Preliminary Approval Order, the Settlement Administrator shall send Email Notice to each Settlement Class Member for whom Defendants or the Settlement Administrator can ascertain an email address;
- b. With respect to Settlement Class Members for whom the Settlement Administrator cannot ascertain an email address or for whom Email Notice was undeliverable, the Settlement Administrator shall send Postcard Notice to the Settlement Class Members’ mailing addresses, as ascertained by Defendants’ records or through the National Change of Address Database or other similar data source;
- c. The Settlement Administrator shall perform reasonable address traces for all initial Postcard Notices that are returned as undeliverable. The Settlement Administrator shall complete the re-mailing of the Postcard Notice by US mail

to Settlement Class Members whose new addresses were identified as of that time through address traces; and

- d. The Settlement Administrator shall publish, on or before the Notice Date, the Long-Form Notice on the Settlement Website in accordance with the requirements set forth in the Settlement Agreement.

13. Settlement Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a valid Election Form for ID Experts' identity theft protection services and/or a valid Reimbursement Form for reimbursement of documented Economic Losses fairly traceable to the Data Breach. All Election Forms and/or Reimbursement Claim Requests must be postmarked or received by the Settlement Administrator not later than ninety (90) days after the Notice Date.

14. Within ten (10) days of the filing of the motion for preliminary approval, Defendants shall, at their own cost, serve or cause to be served a notice of the proposed Settlement in accordance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715(b).

Exclusion

15. Settlement Class Members who wish to exclude themselves from the Settlement Class for purposes of this Settlement may do so by submitting a request for exclusion to the Settlement Administrator not later than sixty (60) days after the Notice Date. The request for exclusion must comply with the exclusion procedures set forth in the Settlement Agreement. Each Settlement Class Member desiring to exclude him or herself from the Settlement Class shall timely submit, by U.S. Mail, written notice of such intent to the designated address set forth in the Notice. The written notice must clearly manifest the intent to be excluded from the Settlement Class and must be signed by the Settlement Class Member. A request for exclusion may not request exclusion of more than one member of the Settlement Class. Mass opt-outs are not permitted.

16. Any member of the Settlement Class who timely requests exclusion consistent with these procedures may not file an objection to the Settlement and shall be deemed to have

waived any rights or benefits under this Settlement. Settlement Class Members who fail to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Judgment.

Objections

17. Any member of the Settlement Class who has not timely filed a request for exclusion may object to the granting of final approval to the settlement. Settlement Class Members may object on their own or may do so through separate counsel at their own expense.

18. Any written objection to the Settlement must include: (i) whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; (ii) with specificity, the grounds for the Objection; (iii) the name of the Action; (iv) the objector's full name, address, telephone number, and e-mail address; (v) a statement of the basis on which the objector claims to be a Settlement Class Member; (vi) the identity of all counsel, if any, representing the objector, including any former or current counsel who may claim entitlement to compensation for any reason related to the Objection; and (vii) must be submitted to the Court either by: (a) mailing it to the Clerk of the Court, United States District Court for the Northern District of Indiana, 204 South Main Street, South Bend, IN 46601, or; (b) filing the objection in person at any location of the United States District Court for the Northern District of Indiana. Mailed objections must be filed or postmarked sixty (60) days following the Notice Date.

19. Any member of the Settlement Class who fails to file and serve a timely written objection in compliance with the requirements of this order and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

Fairness Hearing

20. A fairness hearing (the "Final Approval Hearing" or "Fairness Hearing") shall be held before this Court on **Thursday, January 30, 2020, at 9:00 a.m. (E.S.T.)** in the Robert A.

Grant Federal Courthouse, 204 South Main Street, South Bend, IN 46601, to consider: (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be given final approval by the Court; (b) whether a final judgment should be entered; (c) whether to award payment of attorneys' fees, costs, and expenses to Class Counsel and in what amount; and (d) whether to award payment of a service award to the Settlement Class Representatives and in what amount. The Court may adjourn the Fairness Hearing without further notice to Settlement Class Members.

21. By no later than fourteen (14) days prior to the Objection Deadline, papers supporting the Fee and Expense Application and requested Service Awards shall be filed with the Court.

22. Papers in support of final approval of the Settlement Agreement shall be filed with the Court no later than fourteen (14) days prior to the Fairness Hearing.

Settlement Payment

23. Not later than ten (10) days after the entry of this Preliminary Approval Order, Defendants shall make a settlement payment of \$2,750,000 to the Settlement Administrator who will deposit the settlement payment into an interest-bearing escrow account with the Escrow Agent. Under no circumstances shall Defendants be required to pay, or cause to be paid, more than this amount.

24. The Settlement Administrator shall oversee the administration of the Settlement, the notification to the proposed Settlement Class as directed in the Settlement Agreement, and the administration of the Escrow Account. Notice and administration expenses shall be paid from the settlement payment in accordance with the Settlement Agreement.

Miscellaneous Provisions

1. All case deadlines are stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Order.

2. In the event that this Settlement Agreement is terminated pursuant to its terms, disapproved by any court (including any appellate court), and/or not consummated for any reason, or the Effective Date for any reason does not occur, the order certifying the Settlement Class for purposes of effectuating the Settlement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court, the Action shall proceed as though the Settlement Class had never been certified pursuant to this Settlement Agreement and such findings had never been made, and the Action shall return to the procedural posture on June 1, 2019, in accordance with this paragraph. Neither party, nor counsel shall refer to or invoke the vacated findings and/or order relating to class settlement or Rule 23 of the Federal Rules of Civil Procedure if this Settlement Agreement is not consummated and the Action is later litigated and contested by Defendant under Rule 23 of the Federal Rules of Civil Procedure.

3. The Court retains continuing and exclusive jurisdiction over this Action to consider all further matters arising out of or connected with the Settlement, including the administration and enforcement of the Settlement Agreement

SO ORDERED.

ENTERED: September 25, 2019

/s/ Robert L. Miller, Jr.
Judge, United States District Court
Northern District of Indiana