

COMMONWEALTH OF MASSACHUSETTS
HAMPDEN SUPERIOR COURT

BONITA JOYNER,

Plaintiff,

v.

BEHAVIORAL HEALTH NETWORK,
INC.,

Defendant.

Case No. 2079CV00629

HAMPDEN COUNTY
SUPERIOR COURT
FILED

SEP 28 2021


CLERK OF COURTS

PRELIMINARY APPROVAL ORDER

WHEREAS, an action is pending before the Court entitled *Bonita Joyner v. Behavioral Health Network, Inc.*, No. 2079CV00629 (the "Action");

WHEREAS, the Plaintiff and the Defendant in the Action have entered into a Settlement Agreement intended to resolve the Action on a class-wide basis;

WHEREAS, the Settlement agreement, together with supporting materials (collectively, the "Settlement"), sets forth the terms and conditions for a proposed settlement and dismissal of the Action;

WHEREAS, the Court has before it the Unopposed Motion for Preliminary Approval of Class Action Settlement and papers in support thereof, together with the Settlement agreement and supporting materials; and

WHEREAS, the Court has considered the terms and conditions of the proposed Settlement and determined that they were the result of good faith, arm's-length settlement negotiations between competent and experienced counsel for both Plaintiff and Defendant.

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. Terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement Agreement.

2. This Court has jurisdiction over the subject matter and Parties to this Action.¹

Preliminary Approval of Settlement and Conditional Certification of Settlement Classes

3. Subject to the Final Approval Hearing and further review, the Court preliminarily approves the Settlement as being fair, reasonable, and adequate. The terms of the parties' Settlement are hereby conditionally approved, subject to further consideration at the Final Approval Hearing provided for below. The Court finds that the Settlement is sufficiently within the range of reasonableness and that notice of the proposed settlement should be given as provided in this Order.

4. The Court finds, for settlement purposes only, that the prerequisites for a class action under Rules 23(a) and (b) of the Massachusetts Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members of the Classes is impracticable; (b) there are questions of law and fact common to each member of

¹ Massachusetts courts have jurisdiction over nonresident class members when those class members possess the requisite "minimum contacts" with Massachusetts. *Moelis v. Berkshire Life Ins. Co.*, 887 N.E.2d 214, 218 (Mass. 2008). Under the minimum contacts standard, a court may exercise personal jurisdiction over a nonresident class member "when the nonresident establishe[s] minimum contacts in the forum . . . [that] have a basis in some act by which the nonresident purposefully avails himself of the privilege of conducting activities in Massachusetts, thus invoking the benefits and protections of its laws." *Id.* In this case, Behavioral Health Network, Inc., only has locations in the Commonwealth of Massachusetts. See <https://www.bhninc.org/locations> (last visited Aug. 25, 2021). Thus, in order for Defendant to have had a class members' personal information to begin with, the class member would have had to have travelled to Massachusetts to do business with Defendant, thus establishing the necessary minimum contacts to support jurisdiction. *Moelis*, 887 N.E.2d at 218.

the Settlement Class; (c) the claims of the Plaintiff are typical of the claims of the Settlement Class she seeks to represent; (d) the Plaintiff and Class Counsel will fairly and adequately protect the interests of the Settlement Class; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Accordingly, the Court conditionally certifies, for settlement purposes only, the following Settlement Class pursuant to the Massachusetts Rules of Civil Procedure:

All individuals to whom a notification was sent on behalf of Behavioral Health Network, Inc. regarding the Data Security Incident.²

5. A Final Approval Hearing shall be held on 10/14, 2020, at 2:00 ~~am~~ p.m., before this Court in Courtroom tba of the Hampden County Superior Court, located at 50 State St., Springfield, MA 01102 (or by videoconference or teleconference, if necessary), for the purpose of: (a) determining whether the proposed Settlement should be finally approved by the Court as fair, reasonable and adequate; (b) considering Class Counsel's Motion for Award of Fees, Costs, and Service Award; and (c) consideration of such other matters as the Court may deem necessary or appropriate. The Court may adjourn, continue, and reconvene the Final Approval Hearing pursuant to oral announcement without further notice to the Settlement Class, and the Court may consider and grant final approval of the Settlement, with or without minor modification and without further notice to the Settlement Class.

² "Data Security Incident" means the access, as the result of a cyberattach, by an unauthorized third party to certain computer systems of Defendant containing personal information and protected health information stored by Defendant, including patients' names, addresses, dates of birth, Social Security numbers, medical/diagnosis/treatment information, and/or health insurance claim information from May 26, 2020 to May 28, 2020. Settlement § 1.8.

6. The Court may finally approve the Settlement at or after the Final Approval Hearing with modifications agreed to by the Parties, and without further notice to the members of the Settlement Class.

7. The Court appoints the following counsel as Class Counsel: Branstetter, Stranch & Jennings, PLLC; Cohen & Malad, LLP; and Turke & Strauss LLP.

Class Notice and Objections

8. The Court hereby approves, as to form and content, the proposed Notices to the Settlement Classes attached as Exhibit A (the "Short-Form Notice") and Exhibit B (the "Long-Form Notice") to the Settlement agreement. The Long-Form Notice shall be posted to the Settlement Website and the Short-Form Notice shall be emailed and/or sent by U.S. Mail to the members of the Settlement Class. The manner of distribution of the Notices set forth in the Settlement agreement meets the requirements of the Massachusetts Rules of Civil Procedure and Due Process and is the best notice practicable under the circumstances.

9. Class Counsel and the Settlement Administrator shall cause Notice to be sent to each Settlement Class Member in accordance with the Settlement agreement and this Order. The Parties may by mutual written consent make non-substantive changes to the Notices without Court approval.

10. Members of the Settlement Class shall be afforded an opportunity to object to the terms of the Settlement. To be valid and considered by the Court, the objection must be in writing and mailed to the Clerk of Court, with a copy to the Settlement Administrator, Class Counsel and Defendant's Counsel, at the addresses specified in the Long-Form Notice. The objection must be postmarked on or before the Objection Deadline, which shall be thirty (30) days after the first date

that Notice is sent to members of the Settlement Class pursuant to the Settlement agreement. The objection must include the following information:

- i. The name of the Action;
- ii. The objector's name, address, telephone number, and email address;
- iii. The contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case;
- iv. A statement of the factual and legal basis for each objection, and any exhibits the objector wishes the Court to consider in connection with the objection;
- v. A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, telephone number, and email address;
and
- vi. The objector's signature signed under oath and penalty of perjury or, if legally incapacitated, the signature of their duly authorized representative, along with documentation setting forth such legal incapacitation and representation (an attorney's signature is not sufficient).

11. Any members of the Settlement Class who does not make his or her objection known in the manner provided in the Settlement Agreement and Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement.

12. Any request for intervention in this Action for purposes of commenting on or objecting to the Settlement must meet the requirements set forth above, including the deadline for filing objections, must be accompanied by any evidence, briefs, motions or other materials the

proposed intervenor intends to offer in support of the request for intervention, and must meet the requirements of the Massachusetts Rules of Civil Procedure.

13. Any lawyer intending to appear at the Final Approval Hearing must be authorized to represent a member of the Settlement Class, must be duly admitted to practice law before the Court, and must file a written appearance. Copies of the appearance must be served on Class Counsel and Defendant's Counsel in accordance with the Massachusetts Rules of Civil Procedure.

Final Judgment & Release

14. Upon entry of Judgment by the Court in accordance with the Settlement, all members of the Settlement Class shall be barred from asserting any Released Claims against the Released Parties and any such member of the Settlement Class shall be conclusively deemed to have released any and all such Released Claims against the Released Parties.

Other Provisions

15. Class Counsel's Motion for Award of Fees, Costs, and Service Award shall be filed no later than fourteen days prior to the Objection Deadline. Class Counsel's Motion for Final Approval shall be filed no later than seven (7) days prior to the Final Approval Hearing. If any objection to the Settlement or Class Counsel's Motion for Award of Fees, Costs, and Service Award is filed, any opposition thereto shall be filed at least seven (7) days before the Final Approval Hearing.

16. All proceedings are hereby stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination as to whether the Settlement should be approved, Plaintiff, all members of the Settlement Class, and persons purporting to act on their behalf, are enjoined from commencing or prosecuting (either directly,

representatively, or in any other capacity) against any of the Released Parties any action or proceeding in any court or other tribunal asserting any of the Released Claims.

17. The Settlement does not constitute an admission, concession, or indication by Defendant of the validity of any claims in this Action or of any wrongdoing, liability, or violation of law by Defendant, nor of the appropriateness of certification of a litigation class. To the contrary, Defendant has advised the Court that it believes it is without any liability whatsoever for any of the claims included in the Settlement and is participating in the Settlement to put an end to all such claims and the risks and expense of protracted litigation.

18. In the event the Settlement is not approved by the Court, or for any reason the Parties fail to obtain a Final Approval Order and Judgment as contemplated in the Settlement, or any such order is reversed on appeal, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- (i) All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;
- (ii) All of the Parties' respective pre-Settlement claims and defenses will be preserved;
- (iii) Nothing contained in this Order is, or may be construed as, any admission or concession by or against Plaintiff or Defendant on any point of fact or law;
- (iv) Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Settlement Agreement, the Notice, court filings, orders, and public statements, may be used as evidence in this or any other proceeding. In addition, neither the fact of, nor any documents relating to,

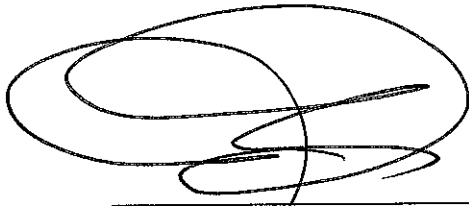
- any Party's withdrawal from the Settlement, any failure of the Court to approve the Settlement, and/or any objections or interventions may be used as evidence; and
- (v) Neither the fact of this Order nor any of its contents, nor the Parties' Settlement Agreement and submissions nor any of their contents, nor the fact of Defendant's willingness to enter into a class action settlement, may be used to support certification of a litigation class in this or any other proceeding.

19. All costs incurred in notifying members of the Settlement Class, as well as administering the Settlement, shall be paid as set forth in the Settlement Agreement.

20. Certification of the Settlement Class is a conditional certification for settlement purposes only. If the Settlement Agreement is terminated or not consummated for any reason whatsoever, the conditional certification of the Settlement Class shall be void and the Defendant, pursuant to the terms of the Settlement Agreement, shall have reserved all of its rights to oppose any and all class certification motions in this Action, or in any other class action under Rule 23 of the Massachusetts Rules of Civil Procedure or any other applicable rule, statute, law or provision, on any grounds.

Dated:

9/20/21


Associate Justice of the Superior Court

EDWARD J. McDONOUGH JR.

COMMONWEALTH OF MASSACHUSETTS
HAMPDEN SUPERIOR COURT

BONITA JOYNER,

Plaintiff,

v.

BEHAVIORAL HEALTH NETWORK,
INC.,

Defendant.

Case No. 2079CV00629

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CLERK OF COURTS

Sym 9/28/21
~~PROPOSED~~

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

WHEREAS, this proposed class action is pending before the Court;

WHEREAS, Bonita Joyner (also referred to as “Plaintiff” or “Settlement Class Representative” for purposes of the Settlement Agreement), individually and on behalf of the Settlement Class, and Behavioral Health Network, Inc. (“BHN” or “Defendant”), have agreed to settle Plaintiff’s claims related to a Data Security Incident suffered by BHN (the “Data Security Incident”);

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 final judgment resolving the Settlement Class’s claims against BHN upon the terms and conditions set forth in the Settlement Agreement;

This matter coming before the Court upon the agreement of the Parties and the motion of Plaintiff 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.

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

Settlement Class Certification.

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

- a. **Settlement Class:** All individuals to whom a notification was sent by or on behalf of Behavioral Health Network, Inc. regarding the Data Security Incident.

4. Excluded from the Settlement Class are Defendant, their officers and directors during the Settlement Class Period, the members of their immediate families, and their respective representatives, heirs, successors, and assigns.

5. The Court hereby appoints Plaintiff as Settlement Class Representative.

6. The Court hereby appoints Cohen & Malad, LLP, Branstetter, Stranch, & Jennings, PLLC, and Turke & Strauss LLP as Settlement Class Counsel.

Preliminary Approval

7. Plaintiff has 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 final judgment resolving this Action. 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 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 BHN. 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 Morton Denlow (ret.) of JAMS Resolution Center; (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 Massachusetts Rule of Civil Procedure 23; and (d) is not a finding or admission of liability by BHN.

Notice and Administration

KCC CLASS ACTION SERVICES, LLC

*Ejmd
9/27/21*

9. A 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. 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, D, and E 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 the Preliminary Approval Order (the "Notice Date"), and subject to the requirements of the Settlement Agreement and this Preliminary Approval Order, Settlement Class Counsel and BHN 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 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 Settlement Class Members' mailing addresses, as ascertained by BHN's 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 Summary 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 credit monitoring and identity restoration coverage and a valid Reimbursement Form for reimbursement of documented economic losses and/or lost time fairly traceable to the Data Security Incident. All Election Forms must be postmarked or received by the Settlement Administrator not later than 90 days from the Notice Date. All Reimbursement Claim Requests must be received by the Settlement

Administrator by six months after the Settlement Offering is first instituted.

Objections

14. Any member of the Settlement Class 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.

15. Any written objection to the Settlement must include: (i) the name of the Action; (ii) the objector's full name, address, telephone number, and e-mail address; (iii) a statement of the basis on which the objector claims to be a Settlement Class Member; (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection, and any evidence the objecting Settlement Class Member wishes to introduce in support of the objection; (v) 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 to the Settlement or the Fee Application; (vi) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing and the identification of any counsel representing the objector who intends to appear at the Final Approval Hearing; (vii) a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection; (viii) the objector's signature signed under oath and penalty of perjury or, if legally incapacitated, the signature of their duly authorized representative (along with documentation setting forth such legal incapacitation and representation) (an attorney's signature is not sufficient); and (ix) must be submitted to the Court either by: (a) mailing it to the Clerk of the Court, or; (b) filing the objection in person with the Clerk of the Court. Mailed objections must be filed or postmarked thirty (30) days following the Notice Date.

16. 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.

Final Approval Hearing

17. A final approval hearing (the "Final Approval Hearing") shall be held before this Court on December 14, 2021
@ 2:00 p.m. 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 Representative and in what amount. The Court may adjourn the Final Approval Hearing without further notice to Settlement Class Members.

18. 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.

19. 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 Final Approval Hearing.

Miscellaneous Provisions

20. To protect its jurisdiction to consider the fairness of the Settlement Agreement and to enter a final order and judgment having binding effect on all Settlement Class Members, the Court hereby enjoins all members of the Settlement Class, and anyone who acts or purports to act on their behalf, from pursuing all other proceedings in any state or federal court that seeks to address rights or claims of any Released Party or Settlement Class Member relating to, or arising out of, any of the Released Claims.

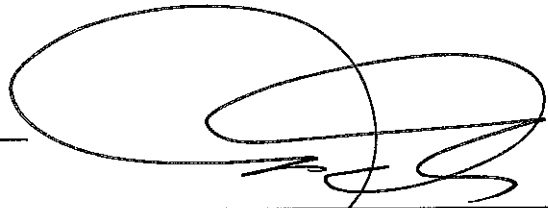
21. Settlement Class Members shall be bound by all determinations and judgments concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

22. 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.

23. 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 the day before the Settlement Agreement was executed, 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 Massachusetts 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 Massachusetts Rules of Civil Procedure.

IT IS ORDERED.

Dated: 9/28/21



EDWARD J. MCPHEE, JR.
Justice of the Superior Court