

IN THE CIRCUIT COURT FOR
ANDERSON COUNTY AT
CLINTON TENNESSEE

MSA 2023 JUL 7 AM 10:06
FILED AC CIRCUIT COURT

K.B. (minor) through Joan Blank, next friend; J.M. (minor) through Mary Murray, next friend; T.D. (minor) through Shelbie Dempsey, next friend; Jacob Mason; Whitney Sprouls; Meagan Jones; Miguel Cadenas; M.C. and T.C. (minors) through Lynne Cadenas, next friend; B.P., J.P. and C.P. (minors) through Judi Parris, next friend; C.J.J. (minor) through Craig Juneau, next friend; Michael McCarter; C.G.C. (minor) through Beth Catron, next friend; and K.C.U. (minor) through Robert Ulucan, next friend, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

EAST TENNESSEE CHILDREN'S
HOSPITAL ASSOCIATION, INC.,

Defendant.

Case No. C2LA0081

[PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

The Court having held a Preliminary Approval Hearing on JUL 7th, 2023, at 9:00am., in the Courtroom of [], Anderson County at 100 N. Main Street, Suite 301, Clinton, TN 37716 and having considered all 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:

MSA 2023 APR 11 AM 8:50
REC'D AC CIRCUIT COURT

PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

1. The Settlement Agreement, which is attached to Plaintiffs' Unopposed Motion for Preliminary Approval ("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 this lawsuit, (b) Plaintiffs K.B., a minor child through parent/legal guardian Joan Blank, next friend; J.M., a minor child through parent/legal guardian Mary Murray, next friend, T.D., a minor child through parent/legal guardian Shelbie Dempsey, next friend; Jacob Mason; Whitney Sprouls; Meagan Jones; Miguel Cadenas; M.C. and T.C., minor children through parent/legal guardian Lynne Cadenas, next friend; B.P., J.P., and C.P., minor children through parent/legal guardian Judi Parris, next friend; C.J.J., a minor child through parent/legal guardian Craig Juneau, next friend; Michael McCarter; C.G.C., a minor child through parent/legal guardian Beth Catron, next friend; and K.C.U., a minor child through parent/legal guardian Robert Ulucan, next friend (collectively "Plaintiffs"), individually and on behalf of all others similarly situated ("Plaintiffs"), and (c) Defendant East Tennessee Children's Hospital Association, Inc. ("ETCH" or "Defendant" and, together with Plaintiffs, the "Parties").

3. This Order is based on Tennessee 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 ETCH relating to a Data Breach in which an unauthorized actor potentially accessed the Private Information of approximately 422,531 of ETCH's current and former patients, 255,000 of which are minors (the "Minor Subclass"). ETCH announced the Data Breach in a notice sent to current and former patients on or about May 19, 2022.

6. In light of the multiple individual complaints filed by Plaintiffs, an Amended Class Action Complaint (the "Amended Complaint") was filed. In the Amended Complaint, Plaintiffs alleged the following six causes of action: (1) negligence; (2) negligence *per se*; (3) breach of implied contract; (4) unjust enrichment; (5) violation of Tennessee Consumer Protection Act; and (6) violation of the ITDA under Tenn. Code Ann. § 47-18-2104.

7. Plaintiffs and Defendant agreed that an early mediation of the litigation was warranted and agreed to use respected mediator Judge Fansler. After an exchange of pertinent information, the Parties submitted extensive mediation briefs in preparation for the mediation.

8. On December 6, 2022, the Parties attended the in-person mediation with Judge Fansler in Knoxville, Tennessee. By the end of the day, and with the assistance of Judge Fansler, the Parties were able to come to an agreement on the central terms of a settlement.

SETTLEMENT BENEFITS

9. The Settlement negotiated on behalf of the Class provides for monetary relief to be paid by ETCH to eligible claimants of a Settlement Class that includes 422,531 persons whose Private Information was compromised as a result of the ETCH Data Breach, and who were sent written notice thereof.

10. Defendant shall create a non-reversionary Settlement Fund totaling one million five hundred fifty thousand and no/100 (\$1,550,000.00) in cash, which will be used to pay for: (1)

Settlement Class Member Benefits, as set forth herein; (2) notice and administration costs; and (3) Plaintiffs' service awards and attorneys' fees and expenses awarded by the Court.

11. Specifically, Settlement Class Members who were not minors at the time of the Data Breach may be eligible to receive the following Settlement Benefits:

a. Reimbursement of Ordinary Out-of-Pocket Losses:

Settlement Class Members can submit a claim form for reimbursement of documented out-of-pocket losses that are fairly traceable to the Data Breach up to \$500 per individual ("Out-of-Pocket Losses"). Out-of-Pocket Losses will include, without limitation and by way of example, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after mailing of the notice of data breach, through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. Settlement Class Members with Out-of-Pocket Losses must submit documentation supporting their claims. This may include receipts or other documentation not "self-prepared" by the claimant that document the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support other submitted documentation.

b. Reimbursement for Attested Lost Time:

Members of the Settlement Class may make a claim for either documented time or self-certified time spent remedying issues related to the Data Breach. Members of the Settlement Class may claim up to 5 hours of self-certified time spent mitigating the effects of the Data Breach. Members of the Settlement Class will be compensated for lost time at a rate

of \$15/hour. Claims made for time can be combined with reimbursement for ordinary Out-of-Pocket Losses subject to the \$500 aggregate individual cap on out-of-pocket losses.

c. Reimbursement for Extraordinary Losses:

Defendant will provide up to \$5,000.00 in compensation to each Claimant for proven monetary loss if:

- The loss is an actual, documented, and unreimbursed monetary loss;
- The loss was more likely than not caused by the Data Breach;
- The loss occurred during a specified time period;
- The loss is not already covered by one or more of the out-of-pocket reimbursement examples above; and the settlement class member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

d. Identity Theft Protection:

Defendant will pay for additional credit monitoring services as follows: All Settlement Class Members shall be offered on a claim-in basis a 3-year membership of 1B credit monitoring with at least \$1 million in fraud protection.

e. Alternative Cash Payment:

In lieu of the benefits outlined in subparagraphs a, b, c and d above, Settlement Class Members may make a claim on the common fund for an Alternative Cash Payment of \$50 to be prorated according to the number of claims made by Settlement Class members. Any Settlement Class member who elects to receive the Alternative Cash Payment will not be eligible to receive reimbursement for ordinary Out of Pocket or Lost Time losses,

Extraordinary Losses, or Identity Theft Protection described above. Minor Subclass Members are not eligible for this alternative cash payment.

12. Minor Subclass Benefits: Settlement Class Members who were minors at the time of the Data Breach shall be automatically provided with a code to activate ten (10) years of Pango's Identity Defense Minor Service, which codes will be live after the Effective Date of the Settlement, and Minor Subclass Members will have a one-year enrollment period in which to enroll in this coverage. This shall be the sole benefit offered to Minor Subclass Members. Funding for the Minor Subclass benefits shall precede funding of all other aforementioned Settlement Class Benefits.

13. Business Practice Changes: ETCH has adopted and implemented significant data security measures following the Data Breach. Costs associated with these data security measures are separate and apart from the settlement benefits set forth in subparagraphs 11(a) – (e) above.

14. In the event the amount claimed by Settlement Class Members exceeds the amount remaining in the Settlement Fund after paying for claimed credit monitoring, payment of court approved attorneys' fees, 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.

15. In the event residual funds remain after payment of all valid claims, credit monitoring, payment of court approved attorneys' fees, costs, service awards and payment of costs for Notice and Claims Administration, residual funds will not revert to the Defendant but will rather be paid to a *cy pres* recipient, to be agreed to by the parties.

16. Hon. Daryl Fansler (Ret.) is hereby named as the claims referee in this matter. If any dispute is submitted to the claims referee, the claims referee may approve the Claims Administrator's determination by making a ruling within fifteen (15) days of the claims referee's receipt of the submitted dispute. The claims referee may make any other final determination of the dispute or request further supplementation of a claim within thirty (30) days of the claims referee's receipt of

the submitted dispute. The claims referee's determination shall be based on whether the claims referee is persuaded that the claimed amounts are reasonably supported in fact and were more likely than not caused by the Data Incident. The claims referee shall have the power to approve a claim in full or in part. The claims referee's decision will be final and non-appealable. Any claimant referred to the claims referee shall reasonably cooperate with the claims referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the claims referee to verify the claim through third-party sources, and failure to cooperate shall be grounds for denial of the claim in full. The claims referee shall make a final decision within thirty (30) days of the latter of the following events: its receipt of the submitted dispute and receipt of all supplemental information requested.

CLASS CERTIFICATION

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

All persons whose Private Information was compromised in the Data Breach and were sent a notice of the Data Breach from Defendant (the "Settlement Class Members").

18. The Settlement Class specifically excludes: (1) any judge or magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, affiliated entities, and any entity in which Defendant or its parent has a controlling interest, and their current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

19. 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.

SETTLEMENT CLASS REPRESENTATIVES, CLASS COUNSEL, AND CLAIMS ADMINISTRATOR

20. K.B., a minor child through parent/legal guardian Joan Blank, next friend; J.M., a minor child through parent/legal guardian Mary Murray, next friend, T.D., a minor child through parent/legal guardian Shelbie Dempsey, next friend; Jacob Mason; Whitney Sprouls; Meagan Jones; Miguel Cadenas; M.C. and T.C., minor children through parent/legal guardian Lynne Cadenas, next friend; B.P., J.P., and C.P., minor children through parent/legal guardian Judi Parris, next friend; C.J.J., a minor child through parent/legal guardian Craig Juneau, next friend; Michael McCarter; C.G.C., a minor child through parent/legal guardian Beth Catron, next friend; and K.C.U., a minor child through parent/legal guardian Robert Ulucan, next friend J. Paul McHenry 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.

21. The Court hereby appoints Stranch, Jennings & Garvey PLLC as Interim Lead Counsel, and Milberg Coleman Bryson Phillips Grossman, PLLC; Migliaccio & Rathod, LLP; Morgan & Morgan; Hellmuth & Johnson, PLLC; The Lyon Firm, LLC; Cohen & Malad, LLP; Turke & Strauss LLP; Mason LLP, and; Arnold Law Firm as Settlement Class Counsel.

NOTICE TO SETTLEMENT CLASS

22. Notice to the Settlement Class and the Costs of Claims Administration in accordance with the Preliminary Approval Order shall be paid from the Settlement Fund. Any attorneys' fees, costs, and expenses of Plaintiffs' Counsel, and service award to the Class Representative, as approved by the Court, shall also be paid from the Settlement Fund.

23. The Notice Plan set forth in the Settlement Agreement satisfies Rule 23, provides the best notice practicable under the circumstances and adequately notifies Settlement Class Members of their rights, and is hereby approved.

24. The Claim Form, Short Notices, and Long Notice, attached as **Exhibits A, B-1, B-2, and 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 Rule 23, the United States Constitution, and other applicable laws.

25. 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.

26. The Claims Administrator is directed to carry out Notice and the Notice Plan, as set forth in the Settlement Agreement.

27. Within forty-five (45) days after entry of this Order (the "Notice Commencement Date") and to be substantially completed no later than sixty (60) days after entry of this Preliminary

Approval Order (the “Notice Completion Date”), the Settlement Administrator shall e-mail or mail the Short Notice to all Settlement Class members in the manner set forth in the Settlement Agreement. Contemporaneously with the mailing, the Settlement Administrator shall cause copies of the Settlement Agreement, Short Notice, Long-Form Notice, and Claim Form, in forms available for download, to be posted on a website developed for the Settlement (“Settlement Website”).

CLAIMS, OPT-OUTS, AND OBJECTIONS

28. The timing of the claims process is structured to ensure that all Settlement Class members have adequate time to review the terms of the Settlement Agreement, make a claim, or decide whether they would like to object.

29. Settlement Class Members who seek to be excluded from the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. The written notice must clearly manifest a person’s intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than sixty (60) days after the date on which the Court enters a Preliminary Approval Order. 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 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 Judgment entered thereon.

30. 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 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 Breach); (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 Approval Hearing, and; (vi) 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).

31. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court and contain the case name and docket number, by no later than the Objection Date, and served concurrently therewith upon Plaintiffs' Counsel, J. Gerard Stranch, IV, Stranch, Jennings & Garvey, PLLC, 223 Rosa L. Parks Avenue, Ste. 200, Nashville, TN 37203; and counsel for ETCH Partners, Inc., Claudia McCarron, MULLEN COUGHLIN LLC, 426 W. Lancaster Avenue, Suite 200, Devon, PA 19333

32. Any Settlement Class Member who does not make their objections in the manner and by the date set forth in the last paragraph shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

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

ADMINISTRATION OF SETTLEMENT

34. The Class Representatives, Settlement Class Counsel, and ETCH have created a process for assessing the validity of claims and a payment methodology to Settlement Class Members who submit timely, valid Claim Forms. The Court hereby preliminarily approves the

Settlement Benefits to the Settlement Class and the plan for distributing the Settlement Benefits as described in the Settlement Agreement.

35. The Court appoints Kroll Settlement Administration LLC as Claims Administrator.

36. The Court directs that the Claims Administrator effectuate the distribution of Settlement Benefits according to the terms of the Settlement Agreement, should the Settlement be finally approved.

37. 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.

38. If the Final Approval Order and 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 set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained therein and the Final Approval Order and Judgment.

FINAL APPROVAL HEARING

39. A Final Approval Hearing shall be held on Dec. 12th 2023 at ^{at 9:00am} the Anderson County Courthouse noticed on the Settlement Website. 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.

40. 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 to Rule 23; (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; and (6) the Class Representatives' requests for Service Awards should be approved.

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

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

43. 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, if the Settlement is not finally approved by the Court or is terminated in accordance with paragraph 11.1 of the Settlement Agreement.

44. 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.

45. In the event the Settlement Agreement is not approved by any court, or is terminated for any reason, or if the Settlement set forth in the Settlement Agreement is declared null and void, or in the event that the Effective Date does not occur, Settlement Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any expenses, including costs of


notice and administration associated with the Settlement or the Settlement Agreement, except that each Party shall bear its own attorneys' fees and costs.

46. In the event the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, the Court's orders, including this Order, shall not be used or referred to for any purpose whatsoever (except as necessary to explain the timing of the procedural history of the Action).

47. This order shall have no continuing force or effect if Final Judgment is not entered and shall not be construed or used as an admission, concession, or declaration by or against ETCH of any fault, wrongdoing, breach, liability, or the certifiability of any class.

48. 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 Commencement Date	No later than 45 days after entry of the Preliminary Approval Order
Notice Completion Date	No later than 60 days after entry of the Preliminary Approval Order
Deadline for Class Members to Opt-Out of Settlement	60 days after the Notice Commencement Date
Deadline for Class Members to Object to Settlement	60 days after the Notice Commencement Date
Deadline for Class Members to Submit Timely, Valid Claims for Monetary Relief	180 days after the date on which the notice

program commences. 

Deadline for Plaintiffs to File Motion for Attorneys' Fees, Expenses and Service Awards for Class Representatives	14 days prior to the Objection Deadline
Deadline for Plaintiffs to File Motion for Final Approval and Judgment	14 days prior to the Final Approval Hearing
Final Approval Hearing	No earlier than 150 days after the entry of the Preliminary Approval Order

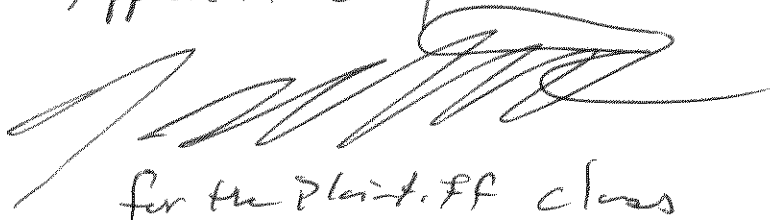
IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: July 7th, 2023



 CIRCUIT COURT JUDGE
 RYAN M. SPITZER

Approved for Entry:



for the Plaintiff class

Claudia M. McCarron

for the defendant
 East Tenn. Children's Hospital

P.C.

J. Gerard Stanch IV, Esq.

Lynn A. Toops, Esq.

Samuel J. Strauss, Esq.

Rocklan W. King, III, Esq.

Sam D. Jones, Esq.

Claudia Drennan McCarron, Esq.