

IN THE IOWA DISTRICT COURT FOR MARSHALL COUNTY

ROBERT MYSHKA and DANIEL STUMME,
*individually and on behalf of all others similarly
situated,*

Plaintiffs,

v.

WOLFE CLINIC, P.C. d/b/a WOLFE EYE
CLINIC,

Defendant.

Case No. 02641 CVCI011151

PRELIMINARY APPROVAL ORDER
GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

This matter came before the Court on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, for Certification of a Settlement Class and for Permission to Disseminate Class Notice (the "Motion"). Plaintiffs Robert Myshka and Daniel Stumme, individually and on behalf of the proposed Settlement Class, and Defendant Wolfe Clinic, P.C. d/b/a Wolfe Eye Clinic ("Wolfe" or "Defendant") have entered into a Settlement Agreement (the "Settlement Agreement") that settles the above-captioned litigation on a class-wide basis.

On June 22, 2021, Wolfe announced that it was the victim of a ransomware attack that occurred on or about February 8, 2021 (the "Notice"). According to Wolfe's "Notice of Data Incident," hackers gained access to its systems and used ransomware to encrypt files. The attackers exfiltrated records of approximately 500,000 affected persons (current and former patients) from Wolfe's systems.

Plaintiffs filed their Class Action Petition and Demand for Jury Trial on July 9, 2021, asserting causes of action for: (1) Negligence; (2) Breach of Implied Contract; (3) Unjust Enrichment; and (4) Breach of Confidence (the "Litigation"). On September 10, 2021, Wolfe filed

its Answer and Affirmative Defenses by which it denied (and continues to deny) any and all liability, as well as asserted twenty-eight affirmative and other defenses.

The Parties, through their counsel, have entered into a Settlement Agreement following good faith, arm's-length negotiations and a mediation overseen by Hon. Wayne Andersen (Ret.) of JAMS. The Parties have agreed to settle this action, pursuant to the terms of the Settlement Agreement, and subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the Settlement which, if approved, will result in dismissal of this action with prejudice.

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

1. Class Certification for Settlement Purposes Only. For settlement purposes only and pursuant to Iowa Rule of Civil Procedure 1.262, the Court provisionally certifies a Settlement Class in this matter defined as follows:

All persons whose Private Information was maintained on Defendant Wolfe's computer systems and/or network that was potentially compromised in a targeted cyberattack disclosed by Wolfe on or about June 29, 2021.

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 common to the Settlement Class; (c) the claims of the Settlement Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Settlement Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Settlement Class Representatives have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of

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

the Settlement Class; (e) 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 controversy.

2. Settlement Class Representatives and Settlement Class Counsel.

Robert Myshka and Daniel Stumme are hereby provisionally designated and appointed as the Settlement Class Representatives. The Court provisionally finds that the Settlement Class Representatives are similarly situated to absent Class Members and therefore typical of the Class and that they will be adequate Settlement Class Representatives.

The Court finds that the following counsel are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel: Mason Lietz & Klinger LLP.

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 the purposes of the Settlement. Additionally, venue is proper in this court.

5. Final Approval Hearing. A Final Approval Hearing shall be held on June 17, 2022, at 9:00 a.m. in the temporary Marshall County Courthouse, The Orpheum Theater, 220 East Main Street, Marshalltown, Iowa, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes; (b) the Settlement should be finally approved as fair, reasonable, and adequate; (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 the Settlement Class Representative for a Service Award (the "Service Award

Request”) should be approved. As this hearing is scheduled on a court service day, the hearing shall be limited to a total of 30 minutes.

Plaintiffs’ Motion for Attorneys’ Fees, Costs, and a Service Award shall be filed **14 Days prior to Settlement Class Members’ Deadlines to object to or exclude** themselves from the Settlement Agreement. By no later than **14 Days prior to the Final Approval Hearing**, the Parties shall file responses, if any, to any objections, and any replies in support of Plaintiff’s Motion for Attorneys’ Fees, Costs, and a Service Award.

Plaintiff’s Motion for Final Approval of the Settlement shall be filed with the Court at least **14 Days prior to the Final Approval Hearing**. By no later than **7 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 Service Award Request and Fee Request.

6. **Administration**. The Court appoints Kroll Business Services (“Kroll”) as the Settlement Administrator, with responsibility for Class Notice and claims administration and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. Defendant shall pay 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.

7. **Notice to the Class**. The Notice Program described in the Settlement Agreement includes the following proposed Notice and Claim Forms:

Exhibit A: Short-Form (Postcard) Notice²

Exhibit B: Long-Form Notice

Exhibit C: Claim Form

The proposed Notice Program set forth in the Settlement Agreement, and the Postcard Notice, Longform Notice, and Claim Form attached to the Settlement Agreement as Exhibits A, B, and C satisfy the requirements of Iowa Rules of Civil Procedure 1.266 and 1.271, provide the best notice

² Referred to in the Memorandum in Support of Plaintiffs’ Motion as the “Short 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 **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 VIII. 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 in this Order and in Section VIII of 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 Iowa Rules of Civil Procedure 1.266 and 1.271, and the Due Process Clause(s) 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 a 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 **60 Days after the Notice Deadline** (the “Opt-Out Period”). The written notification must include the individual’s full name, and current address; an unequivocal statement that he or she wants to be excluded from the Settlement Class; and the original signature of the individual or a person previously authorized by law, to act on behalf of the individual with respect to the claims asserted in this Action.

The Settlement Administrator shall provide the Parties 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, which Settlement Class Counsel may move to file under seal with the Court no later than **10 Days prior to the Final Approval Hearing**.

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 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, 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 and transactions released in the Settlement Agreement. 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 Service Award Request, or the Fee Request. No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is postmarked and mailed to the Settlement Administrator by no later than **60 Days after the Notice Deadline** (the “Objection Deadline”). For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 56 of the Settlement Agreement, which is as follows:

- (i) the name of the proceedings;
- (ii) the Settlement Class Member’s full name, current mailing address, telephone number, and email address;
- (iii) a statement of the specific grounds for the objection, as well as any legal basis and documents supporting the objection;

- (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class;
- (v) the identity of any attorneys representing the objector;
- (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing;
- (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney; and
- (viii) a list by case name, court and docket number or case number of all other cases in which the objector and/or the objector's attorney has filed an objection to any proposed class action settlement within the last three (3) years.

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 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 submits a timely 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 object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Award Request, or the Fee Request.

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. Settlement Class Representatives and Defendant have created 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 V 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 Defendants 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 Settlement Class Representative or any other Settlement Class Member that his or her 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 Completion Deadline: 30 Days after Preliminary Approval

Motion for Final Approval: 14 Days before Final Approval Hearing

Motion for Service Award, Attorneys' Fees and Costs: 14 Days before the deadline for Class Members to Opt-Out or Object

Opt-Out Deadline: 60 Days after Notice Deadline

Objection Deadline: 60 Days after Notice Deadline

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

Claim Deadline: 90 Days after Notice Completion Deadline

Final Approval Hearing: June 17, 2022, at 9:00 a.m. (at least 90 Days after Preliminary Approval)



State of Iowa Courts

Case Number
CVCI011151

Case Title
ROBERT MYSHKA ET AL V. WOLFE CLINIC PC DBA
WOLFE EYE CLINIC
ORDER SETTING HEARING

Type:

So Ordered

A handwritten signature in cursive script, appearing to read "Amy M Moore", written over a horizontal line.

Amy M Moore, District Court Judge
Second Judicial District of Iowa

Electronically signed on 2022-02-14 10:16:52