

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT

Case Type: Personal Injury

JASON ZIMMERMAN, on behalf of
himself and all others similarly situated,

Civil File No. 02-CV-19-6522
Honorable Jonathan N. Jasper

Plaintiff,

v.

CLASS ACTION

RIVERPLACE COUNSELING
CENTER, INC.

Defendant.

**~~PROPOSED~~ ORDER GRANTING PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, CONDITIONALLY CERTIFYING SETTLEMENT
CLASS, DIRECTING DISTRIBUTION OF NOTICE OF PROPOSED
SETTLEMENT, APPOINTING COUNSEL FOR THE SETTLEMENT CLASS,
AND SETTING HEARING FOR DETERMINATION OF FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

WHEREAS, Plaintiff Jason Zimmerman and Defendant Riverplace Counseling Center, Inc. (“Riverplace”), have entered into a Settlement Agreement and Release, dated as of [DATE] (“Settlement Agreement”), which is intended to resolve the above-entitled consolidated class action litigation (the “Lawsuit”);

WHEREAS, the Court finds that it has jurisdiction over the Lawsuit; and

WHEREAS, the Settlement Agreement, together with the exhibits thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Lawsuit with prejudice; and

WHEREAS, the Court has before it Plaintiff Jason Zimmerman's Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of Class, and Approval of Notice and supporting Memorandum of Law, together with the Settlement Agreement and the exhibits thereto; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm's length settlement negotiations between competent and experienced counsel, and is further satisfied that the requirements for granting preliminary approval of the Settlement are otherwise satisfied;

IT IS HEREBY ORDERED as follows:

I. Preliminary Approval of the Settlement Agreement

A. Unless otherwise provided herein, the terms used in this Order are defined in accordance with the definitions of such terms set forth in the Settlement Agreement.

B. The terms of the Settlement Agreement are hereby preliminarily approved, subject to further consideration at the Final Approval Hearing provided for herein. The Court finds that the Settlement Agreement and the Settlement terms set forth therein are sufficiently within the range of reasonableness, and that such Settlement Agreement and Settlement merit possible final approval. The Court further finds that notice of the proposed Settlement should be given to members of the Settlement Class in the manner provided for in this Order and pursuant to the Notice of Proposed Settlement plan set forth in the Settlement Agreement.

II. Conditional Certification of the Settlement Class

A. The Court conditionally finds that: (1) Plaintiff is a member of the Settlement Class; (2) Plaintiff can fairly and adequately represent the interests of the Settlement Class; and (3) Plaintiff's claims are typical of the claims of the Settlement Class. The Court conditionally appoints Plaintiff as Class Representative for the Settlement Class.

B. The Court conditionally determines that the Settlement Class meets all applicable requirements of Minn. R. Civ. P. 23, and the Court conditionally certifies, for settlement purposes only, the following Settlement Class: All persons whose personally identifiable information and protected health information ("PII") was potentially compromised in a cybersecurity incident announced by Riverplace on or about April 11, 2019. In addition, specifically excluded from the Settlement Class are: (i) Riverplace's officers, directors, and employees; (ii) any entity in which Riverplace has a controlling interest; (iii) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Riverplace, and (iv) all persons who make a timely election to be excluded from the Class. Also excluded from the Settlement Class are members of the judiciary to whom this case is assigned, their families and members of their staff.

C. The Court conditionally finds that, for purposes of settlement of the Lawsuit only, the Settlement Class satisfies the requirements of Minn. R. Civ. P. 23.01, as follows:

(1) In accordance with Minn. R. Civ. P. 23.01(a), the Settlement Class members are so numerous that joinder of all such persons is impracticable.

(2) In accordance with Minn. R. Civ. P. 23.01(b), there are questions of law and/or fact common to the Settlement Class members.

(3) In accordance with Minn. R. Civ. P. 23.01(c), the claims of the Class Representative are typical of the claims of the Settlement Class.

(4) In accordance with Minn. R. Civ. P. 23.01(d), the Class Representative will fairly and adequately represent the interests of the Settlement Class, and does not have interests that are antagonistic to the Settlement Class.

D. The Court further conditionally finds that, for purposes of settlement of the Lawsuit only, the Settlement Class satisfies the requirements of Minn. R. Civ. P. 23.02(c), in that (1) questions of fact and/or law common to Settlement Class members predominate over any questions affecting only individual Settlement Class members, and (2) a class action is superior to other available methods for fairly and efficiently adjudicating the dispute. In addition, the Court conditionally finds that the Parties' ability to resolve the Lawsuit on terms applicable to all Settlement Class members establishes the predominance of common legal and factual questions for purposes of the Settlement, and that a class action is the superior means of resolving the dispute because individual Settlement Class members have demonstrated no interest in prosecuting separate actions, and the cost of litigation far outpaces any individual recovery available to any Settlement Class member.

E. The Court therefore conditionally certifies, for settlement purposes only, the Settlement Class as defined in Section II(A) of this Order.

III. Appointment of Class Counsel

A. The Court hereby appoints the following as Class Counsel for the Settlement Class:

Kate M. Baxter-Kauf
Lockridge Grindal Nauen P.L.L.P
100 Washington Avenue South
Suite 2200
Minneapolis, MN 55401
(612) 339-6900

Jean Sutton Martin
Morgan & Morgan Complex Litigation Group
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
(813) 223-5505

B. In appointing Class Counsel for the Settlement Class, the Court has considered the work that such counsel have performed in representing Plaintiff. The Court finds, pursuant to Minn. R. Civ. P. 23.07, that such counsel: (1) has adequate experience in handling class actions, other complex litigation, and the types of claims asserted in this Lawsuit; (2) has demonstrated knowledge of the applicable law; and (3) has committed, and will continue to commit, adequate resources to representing the Settlement Class.

IV. Final Approval Hearing and Related Deadlines

A. The Court hereby sets a Final Approval Hearing to: (1) finally determine whether the Settlement Class satisfies the requirements of Minn. R. Civ. P. 23 and should be finally certified for settlement purposes only; (2) review objections, if any, to the Settlement Agreement and the Settlement terms set forth therein; (3) consider the fairness, reasonableness and adequacy of the Settlement; (4) consider Class Counsel's application for an award of attorneys' fees and expenses; (5) consider Class Counsel's application for a Service Award for Plaintiff; (6) determine the validity of any Requests for Exclusion from the Settlement Class, and exclude from the Settlement Class those persons who

submitted a valid and timely Request for Exclusion; and (7) consider whether the Court shall issue a final order and judgment approving the settlement and dismissing the Lawsuit with prejudice pursuant to Minn. R. Civ. P. 54.02.

B. The Final Approval Hearing is scheduled for 9:00 a.m./~~p.m.~~ on March 11, 2022, ~~2021~~ (“Final Approval Hearing Date”) in Courtroom TBD, Anoka County Government Center, 2100 3rd Avenue, Anoka, MN 55303. This date shall be at least one hundred thirty-five (135) days after the date of this Order. The Court may issue instructions for the Final Approval Hearing to be held remotely consistent with COVID-19 or other public health and safety guidance from the Minnesota and Anoka County Courts.

C. The Court further sets the following additional deadlines:

(1) Notice of Proposed Settlement shall be provided to the Settlement Class no later than forty-five (45) days after entry of this Order (the “Notice Date”), which shall be, in no event, less than 65 days before the Final Approval Hearing;

(2) Requests for Exclusion from the Settlement Class and Objections to the Settlement shall be delivered to the Claims Administrator at the address provided in the Notice and/or postmarked no later than sixty (60) days after the Notice Date (the “Opt-Out and Objection Deadline”);

(3) All Claim Forms shall be delivered to the Claims Administrator at the address provided in the Notice and/or postmarked or submitted via the Settlement website no later than ninety (90) days after the Notice Date (the “Claims Deadline”);

(4) Any applications for attorneys' fees and expenses and Service Award shall be filed at least fourteen (14) days before the Opt-Out and Objection Deadline;

(5) All briefing and/or other papers to be submitted in support of any Objection to the Settlement shall be filed at least thirty (30) days before the Final Approval Hearing Date; and

(6) All briefing and/or other papers to be submitted in support of final approval of the Settlement, or in opposition to any Objection to the Settlement, shall be filed at least fourteen (14) days before the Final Approval Hearing Date;

D. The Final Approval Hearing Date shall be subject to adjournment by the Court without further notice to the members of the Settlement Class, other than that which may be posted by the Court.

V. Notice to Settlement Class

A. The Court finds that the Notice Program (1) meets the requirements of Minn. R. Civ. P. 23.03(b) and due process; (2) is the best practicable notice under the circumstances; (3) is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Lawsuit and their right to object to the Settlement or opt-out of the Settlement Class; and (4) is reasonable and constitutes due, adequate and sufficient notice to all those entitled to receive notice of the Settlement.

B. The Court further finds, pursuant to Minn. R. Civ. P. 23.03(b), that the proposed Notice of Proposed Settlement informs members of the Settlement Class of their rights in the Lawsuit. The Notice of Proposed Settlement clearly and concisely states (1) the nature of the Lawsuit; (2) the class definition; (3) the class claims; (4) that the

Settlement Class member may appear through counsel; (5) that the Court shall exclude from the Settlement Class any potential member who requests exclusion; (6) the time and manner for requesting exclusion from the Settlement Class; and (7) the binding effect of a class judgment on Settlement Class members.

C. The Court hereby approves the Notice Program, Notice of Proposed Settlement, and Claim Form as set forth in the Settlement Agreement and as attached as Exhibits to the Settlement Agreement. The Parties shall cause the Notice of Proposed Settlement and Claim Form to be disseminated in the manner set forth in the Notice Program on the Notice Date. Prior to the Final Approval Hearing, the Parties, through their counsel, shall file with the Court a sworn statement attesting to compliance with the Notice Program.

VI. Opt-Out Provision

A. Potential Settlement Class members are permitted to opt-out of the settlement by requesting exclusion from the Settlement Class. Any potential Settlement Class member who wishes to be excluded from the Settlement Class must comply with the terms for requesting exclusion from the Settlement Class as set forth in the Settlement Agreement, by forwarding a written Request for Exclusion to the Claims Administrator on or before the Opt-Out and Objection Deadline. Any such Request for Exclusion must fully comply with the requirements for such document as set forth in the Settlement Agreement. Settlement Class members may not file mass or class-wide Requests for Exclusion, and must do so individually.

B. Any potential Settlement Class member who does not validly and timely request exclusion from the Settlement Class shall be bound by all proceedings, orders and judgments in the Lawsuit, whether or not such person objected to the Settlement and whether or not such person sought or received an Award pursuant to the Settlement Agreement.

VII. Objection to Settlement

A. Any member of the Settlement Class may, but need not, submit comments or objections concerning the Settlement. Any Settlement Class member may object to the fairness, reasonableness or adequacy of (1) any of the terms of the Settlement; (2) entry of a Final Order and Judgment approving the Settlement; (3) Class Counsel's application for attorneys' fees and expenses; and/or (4) Class Counsel's application for a Service Award for Plaintiff. To do so, any Settlement Class member must comply with the terms for objections to the settlement as set forth in the Settlement Agreement, by filing with the Court and mailing to Class Counsel and Riverplace's counsel written objections that include: (1) the title of the case; (2) the Class Member's name, address, and telephone number; (3) the approximate date when the Class Member was a patient at Riverplace; (4) all legal and factual bases for any objection; and (5) copies of any documents that the Class Member wants the Court to consider.

B. Should the Class Member wish to appear at the final approval hearing, the Class Member must so state, and must identify any documents or witnesses the Class Member intends to call on his or her behalf. In addition, any Class Member objecting to the settlement shall provide a list of all other objections submitted by the objector, or the

objector's counsel on behalf of the objector, to any class action settlement in the United States in the previous five years.

C. Only members of the Settlement Class who served valid and timely objections in accordance with the terms of the Settlement Agreement shall be entitled to be heard at the Final Approval Hearing. Any Settlement Class member who does not timely serve a valid and timely objection shall be deemed to have waived any such objection.

VIII. Additional Orders

A. All applicable pre-trial deadlines in the Lawsuit shall be continued indefinitely so that the Parties shall in no way be prejudiced by their efforts to resolve the Lawsuit through the Settlement Agreement.

B. If the Settlement Agreement is terminated and/or the Settlement is not consummated for any reason, the conditional certification of the Settlement Class shall be void, Riverplace having reserved all of its rights to (1) oppose any and all class certification motions, (2) contest the adequacy of Plaintiff as typical or adequate representative of any putative class, (3) contest the merits of Plaintiff's claims, and (4) contest the adequacy of Class Counsel. Similarly, Plaintiff reserves all of his rights, including the right to continue with the Lawsuit, if the Settlement Agreement is terminated and/or the Settlement is not consummated for any reason.

IT IS SO ORDERED.

Dated: _____



Jasper, Jonathan (Judge)
2021.09.01 15:28:07
-05'00'

Hon. Jonathan N. Jasper

Anoka County District Court Judge