

STATE OF MINNESOTA
COUNTY OF ANOKA

DISTRICT COURT
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 AND JUDGMENT GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT AND CERTIFYING SETTLEMENT CLASS**

WHEREAS, this matter has come before the Court pursuant to the Plaintiff's Motion for Order and Judgment Granting Final Approval of Class Action Settlement and Certifying Settlement Class (the "Motion");

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

WHEREAS, on September 3, 2021, the Court granted Plaintiff Jason Zimmerman's Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of Class, and Directing Distribution of Notice of Proposed Settlement (the "Preliminary Approval Order");

WHEREAS, the Settlement Class conditionally certified in the Preliminary Approval Order has been appropriately certified for settlement purposes only;

WHEREAS, the Court held a hearing on March 25, 2022 to consider the fairness, reasonableness and adequacy of the settlement, and has been advised of all objections to the settlement and has given fair consideration to such objections;

WHEREAS, the Court has considered (1) the Motion, accompanying Memorandum, and all files and exhibits thereto; (2) the Settlement Agreement and Release as of June 25, 2021 (“Settlement Agreement”) entered into between Plaintiff on behalf of himself and all others similarly situated and Riverplace Counseling Center (“Riverplace”), and the exhibits thereto, and (3) the objections to the settlement, if any;

WHEREAS, the Court is otherwise fully advised and has considered the record of these proceedings and the applicable law;

IT IS HEREBY ORDERED THAT:

I. Final Approval of the Settlement Agreement

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

B. The terms of the Settlement Agreement are approved. The Settlement is in all respects fair, reasonable, adequate and proper, and in the best interest of the Settlement Class. In reaching this conclusion, the Court has considered factors that include: (1) an assessment of the likelihood that the Plaintiff would prevail at trial; (2) the range of possible recovery available to the Plaintiff and the Settlement Class; (3) the consideration provided to Settlement Class members pursuant to the Settlement Agreement as compared to the range of possible recovery discounted for the inherent

risks of litigation; (4) the complexity, expense and possible duration of the Lawsuit in the absence of a settlement; (5) the nature and extent of the objections to the Settlement, if any; and (6) the stage of proceedings at which the Settlement was reached.

C. Under the terms of the Settlement Agreement, Riverplace shall establish Relief to the Settlement Class in a claims-made settlement. Settlement Class members may submit claims with a \$950 cap for any individual member's recovery, and an overall \$300,000 cap on all claims payments for all Settlement Class members cumulatively (or a \$275,000 cap if Class notice costs exceed \$45,000), with a *pro rata* reduction for each Settlement Class member's recovery if the \$300,000 cap (or \$275,000 cap if Class notice costs exceed \$45,000) is exceeded. If cumulative claims payments do not exceed the \$300,000 cap (or \$275,000 cap if Class notice costs exceed \$45,000), Riverplace's payment obligation will equal, and shall not exceed, the total cumulative claims payments. Settlement Class members may submit a claim for the relief offered as follows:

(1) Credit Monitoring. Settlement Class members may submit a claim to choose between (a) two years' credit monitoring or (b) a \$30 cash payment for reimbursement of credit monitoring coverage the Settlement Class member purchased during the period of April 1, 2020 through February 18, 2021, with a requirement that Settlement Class members submit written documentation of their purchase of credit monitoring coverage during the April 1, 2020-February 18, 2021 period.

(2) Compensatory relief for documented out-of-pocket costs, up to a total of \$950 per Settlement Class member, upon submission of a claim together with

supporting documentation are eligible to receive reimbursement for documented out-of-pocket expenses, to establish that the expenses were incurred as a result of the cybersecurity incident for any of the following: (i) costs and expenses spent addressing identity theft or fraud, including long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, and gasoline for travel; (ii) losses caused by restricted access to funds (*i.e.*, costs of taking out a loan, ATM withdrawal fees); (iii) preventative costs including placing security freezes on credit reports, or requesting copies of credit reports for review; (iv) late fees, declined payment fees, overdraft fees, returned check fees, customer service fees, and/or card cancellation or replacement fees; (v) documented losses that were not reimbursed; or (vi) fees paid to purchase credit monitoring coverage during the April 1, 2020-February 18, 2021 period that exceed the \$30 referenced in the immediately preceding paragraph.

(3) If, under penalty of perjury, a Settlement Class member affirms spending a minimum of at least one full hour exclusively dealing with the cybersecurity incident announced by Riverplace on or about April 11, 2019, \$20 per Settlement Class member per hour for a maximum of two hours.

D. Riverplace shall pay all claims and costs of Claims Administration Costs as outlined in the Settlement Agreement. If Class notice costs exceed \$45,000, the \$300,000 cap on all claims payments for all Settlement Class members cumulatively shall be accordingly reduced to an amount not to be below a \$275,000 cap.

E. The Settlement Agreement was entered into by experienced counsel after extensive, arm's length negotiations. The Settlement is not the result of collusion. The Settlement was entered into in good faith. Class Counsel and the Plaintiff have fairly and adequately represented the Settlement Class for purposes of entering into and implementing the Settlement.

F. The Court finds that there is no just reason for delay in entering the Final Order and Judgment Approving Settlement pursuant to Minn. R. Civ. P. 54.02, because (1) delay would not be in the best interests of the Settlement Class members, who will be able to receive benefits shortly after entry of the Final Order and Judgment Approving Settlement; and (2) judicial economy and administration would be served by the efficient resolution of the claims of Settlement Class members by means of the Settlement.

II. Class Certification

A. The Court conditionally certified the following Settlement Class in the Preliminary Approval Order: 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 were: (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 made 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.

B. The Court 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.

C. The Court further 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. 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 settlement of the Lawsuit only. Moreover, for purposes of settlement of the Lawsuit only, 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.

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

III. Notice

A. The Court finds that the Notice program: (1) satisfied the requirements of Minn. R. Civ. P. 23.03(b) and due process; (2) was the best practicable notice under the circumstances; (3) reasonably apprised Settlement Class members of the pendency of the Lawsuit and their right to object to the settlement or opt-out of the Settlement Class; and (4) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice.

B. The Court further finds, pursuant to Minn. R. Civ. P. 23.03(b), that the Notice of Proposed Settlement adequately informed Settlement Class members of their rights with respect to the Lawsuit.

IV. Dismissal With Prejudice

The Court hereby enters a judgment of dismissal of the Complaint in the Lawsuit with prejudice and without costs (except as specified herein), pursuant to Minn. R. Civ. P. 54.02.

V. Attorneys' Fees and Expenses and Incentive Awards

A. The Court hereby grants Class Counsel's application for an award of reasonable attorneys' fees and costs in the amount of One Hundred Fifty Thousand

Dollars (\$150,000.00) to be paid by Riverplace in accordance with the terms of the Settlement Agreement.

B. The Court further grants Class Counsel's application for a Service Award, in the amount of Five Thousand Dollars (\$5,000.00) to be paid to Jason Zimmerman by Riverplace in accordance with terms of the Settlement Agreement.

C. The Court approves the manner of Claims Payments outlined in the Settlement Agreement.

VI. Releases

A. The Court finds that, pursuant to the terms of the Settlement Agreement, each Releasing Party shall be deemed to have released and forever discharged each Released Party of and from liability for any and all Released Claims as defined in the Settlement Agreement.

B. The Court further finds that, pursuant to the terms of the Settlement Agreement, each Released Party shall be deemed to have fully, finally and forever released, relinquished and discharged the Plaintiff and members of the Settlement Class, and their attorneys, accountants, experts, consultants, insurers and agents, from all claims of every nature and description, known or unknown, relating to the initiation, assertion or prosecution of the Lawsuit and/or the Released Claims.

VII. Opt-Outs

A list of those members of the Settlement Class who have timely and validly elected to opt-out of the Settlement Class, and who therefore are not bound by the Settlement, the provisions of the Settlement Agreement, and this Order and Judgment,

has been submitted to the Court and is attached to this Order and Judgment as Exhibit A and incorporated herein by reference. All other Settlement Class members (as finally certified by this Order and Judgment) shall be subject to all of the provisions of the Settlement Agreement and this Order and Judgment.

VIII. Continuing Jurisdiction

Without in any way affecting the finality of this Order and Judgment, the Court hereby retains jurisdiction over the Parties to the Settlement, including all Settlement Class members, to construe and enforce the Settlement Agreement in accordance with its terms for the mutual benefit of the Parties.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: _____

 Hon. Jonathan N. Jasper
 Anoka County District Court Judge

EXHIBIT A

No individuals requested exclusion from this Lawsuit.