

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited	Entered by:
TITLE OF CASE: Narek Avetisyan vs. United Health Centers of the San Joaquin Valley / COMPLEX / CLASS ACTION	
LAW AND MOTION MINUTE ORDER	Case Number: 22CECG00285

Hearing Date: **September 14, 2022** Hearing Type: **Motion - Prelim Approval Class Settlement**
Department: **403** Judge: **Culver Kapetan, Kristi**
Court Clerk: **Alvarado, Estela** Reporter: **Not Reported**

Appearing Parties:	
Plaintiff:	Defendant:
Counsel:	Counsel:

Off Calendar

Continued to Set for ___ at ___ Dept. ___ for ___

Submitted on points and authorities with/without argument. Matter is argued and submitted.

Upon filing of points and authorities.

Motion is granted in part and denied in part. Motion is denied with/without prejudice.

Taken under advisement

No Oral Argument requested as required per Local Rule 2.2.6 & CRC 3.1308(a)(1).

Plaintiff's Motion for Preliminary Approval of Class Settlement is GRANTED.

Tentative ruling becomes the order of the court, see attached copy.

Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

Service by the clerk will constitute notice of the order.

Judgment debtor ___ sworn and examined.

Judgment debtor ___ failed to appear.
Bench warrant issued in the amount of \$ ___

JUDGMENT:

Money damages Default Other ___ entered in the amount of:
Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___
 Claim of exemption granted denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:

Monies held by levying officer to be released to judgment creditor. returned to judgment debtor.
 \$___ to be released to judgment creditor and balance returned to judgment debtor.
 Levying Officer, County of ___, notified. Writ to issue
 Notice to be filed within 15 days. Restitution of Premises
 Other: ___

(27)

Tentative Ruling

Re: **Narek Avelisyan v. United Health Centers of the San Joaquin Valley**
Superior Court Case No. 22CECG00285

Hearing Date: September 14, 2022 (Dept. 403)

Motion: by Plaintiffs for Preliminary Approval of Class Settlement

If oral argument is timely requested, the matter will be heard on Wednesday, September 21, 2022 at 3:30 p.m. in Dept. 403.

Tentative Ruling:

To grant plaintiffs' motion for preliminary approval of the class settlement. Moving counsel shall contact the calendaring clerk to set the final approval hearing.

Explanation:

1. Class Certification

A precertification settlement may stipulate that a defined class be conditionally certified for settlement purposes. The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (Cal. Rules of Court, rule 3.769(d).) Before the court may approve the settlement, however, the settlement class must satisfy the normal prerequisites for a class action. (*Amchem Products, Inc. v. Windsor* (1997) 521 US 591, 625-627; see also Newberg, *Newberg and Rubenstein on Class Actions* (Westlaw, 2017) Section 7:3 ["The parties' representation of an uncontested motion for class certification does not relieve the Court of the duty of determining whether certification is appropriate."])

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. [Citations.] In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089.)

Numerosity and Ascertainability

"Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271.) In essence, to determine the identity of potential class members, the court will look to whether there are any objective criteria to describe them and whether they can be found without

unreasonable expense or effort through business or official records. (*Lewis v. Robinson Ford Sales, Inc.* (2007) 156 Cal.App.4th 359, 369-370, citing *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 706 [proposed class action of taxi cab users from 1960 to 1964 who paid by coupons identifiable where they could be identified by serial numbers which were kept manually, not in computerized form].)

The Settlement Class is defined as defendant's patients whose personal health information and personal identification information was exposed as a result of the subject data breach. There are 113,365 patients whose information was so compromised. Therefore, the numerosity and ascertainability requirements are satisfied.

Community of Interest

"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.' " (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.) Common issues predominate when they would be "the principal issues in any individual action, both in terms of time to be expended in their proof and of their importance." (*Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 810.) Common questions need only be "sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits." (*Id.*)

In addition, the class representative must be able to represent the class adequately. (*Caro v. Procter & Gamble* (1993) 18 Cal.App.4th 644, 669.) "[I]t has never been the law in California that the class representative must have identical interests with the class members . . . The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Counsels' "joint declaration" provides evidence that, in mediating the claims, "defendant disclosed to plaintiff information necessary to evaluate his and the Settlement Class's claims, including how the Data Breach happened, how many patients it affected, who they were, what [information] [was] involved, Defendant's insurance coverage, and Defendant's financials." (See Joint Decl., ¶ 13.) With this information, and through the mediation of a retired federal magistrate, the parties reached the subject settlement. (*Id.* at ¶¶ 15, 16.) Furthermore, like the other class members, the complaint alleges the representative plaintiff was a patient within defendant's system and whose information was compromised in the subject data-breach. Therefore, the community of interest requirement is satisfied.

2. Settlement

The court "bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a

settlement agreement . . . The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; see also *Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F.3d 1071, 1079 ["When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair."].)

"[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished . . . [therefore] the factual record must be before the . . . court must be sufficiently developed." (*Id.* at p. 130.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id.* at p. 129.)

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Counsels' joint declaration states that defendant provided plaintiff with information concerning how the data-breach occurred, in addition to insurance coverage and defendant's financials. (Joint, Decl. ¶ 13.) This information was reviewed in plaintiffs' consideration to mediate. (*Id.* at ¶ 14.) At mediation with a retired federal magistrate, the risks, uncertainties, costs, and delays were evaluated, and the subject settlement was reached. (*Id.* at ¶ 16.)

The terms of the agreement address the harms caused by the data-breach, including a verification that defendant has improved its security. It also provides the affected patients with monitoring services and allows limited reimbursement. It also establishes those protections relatively soon, as opposed to awaiting the completion of prolonged litigation. Therefore, the settlement appears reasonable.

Proposed Class Notice

The proposed notice appears to be adequate, as the class administrator will mail out notices to the class members based on the defendant's records. The notices will provide the class members with information regarding their time to opt out or object, the nature and amount of the settlement, the impact on class members if they do not opt

out, the amount of attorney's fees and costs, the service award to the named class representative, and the settlement administrator's fees and costs.

Finally, the provisions subject to future application (attorney fees, service award, Cy Pres payment) appear reasonable. Therefore, plaintiff's motion is granted.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: **KCK** **on** **09/13/22** .

(Judge's initials)

(Date)

<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000</p>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE: Narek Avetisyan vs. United Health Centers of the San Joaquin Valley / COMPLEX / CLASS ACTION</p>	
<p style="text-align: center;">CLERK'S CERTIFICATE OF MAILING</p>	<p>CASE NUMBER: 22CECG00285</p>

I certify that I am not a party to this cause and that a true copy of the:

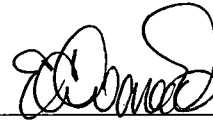
[Minute Order & Tentative Ruling, dated 9/14/22]

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: Fresno, California 93724-0002

On Date: 09/14/2022

Clerk, by _____, Deputy



E. Alvarado

<p>Matthew R. Wilson Meyer Wilson Co., LPA 305 W. Nationwide Blvd Columbus, OH 43215</p>

<p>James F. Monagle Mullen Coughlin LLC 309 Fellowship Road, Suite 200 Mt. Laurel, NJ 08054</p>

Clerk's Certificate of Mailing Additional Address Page Attached