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17 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**

18 **IN AND FOR THE COUNTY OF MARICOPA**

19 Carol Dearing, On Behalf of Herself and)	Case No.: CV2020-013648
20 All Others Similarly Situated,)	
)	DECLARATION OF ELAINE A.
21 Plaintiff,)	RYAN IN SUPPORT OF
)	PLAINTIFF'S MOTION FOR
22 v.)	AWARD OF ATTORNEYS' FEES
)	AND EXPENSES AND
23 Magellan Health, Inc. and Magellan RX)	PLAINTIFF'S INCENTIVE
24 Management, LLC,)	AWARD
)	
25 Defendants.)	(Assigned to the Hon. Connie Contes)
)	

26 I, Elaine A. Ryan, hereby declare and state as follows:

27 1. I am an attorney with Auer Ryan, P.C., and I have personal knowledge of the
28 statements herein or have gained such knowledge through my active participation in the case, my
consultation with co-counsel and my review of relevant records and documents.

29 2. I have been licensed to practice law in the State of Arizona since 1989, and I, along
with John A. Yanchunis of Morgan & Morgan and Joel R. Rhine and Martin A. Ramey of the Rhine

1 Law Firm, P.C. (collectively, “Class Counsel”), represent Plaintiff Carol Dearing on behalf of
2 herself and all others similarly situated in this putative class action. A description of the class action
3 experience of Class Counsel is set forth in the concurrently filed Declaration of Class Counsel.

4 3. In this action, Plaintiff alleges that during May 2019, Magellan Health, Inc. and
5 Magellan RX Management, LLC experienced an email phishing incident wherein an employee of
6 Magellan clicked open a phishing email, potentially resulting in a third party gaining unauthorized
7 access to Plaintiff’s personally identifiable information (“PII”) and protected health information
8 (“PHI”), along with that of approximately 273,000 other individuals (the “Data Incident”).

9 4. Defendants are two large healthcare service companies, with headquarters in the
10 Phoenix metropolitan area, who provide and directly manage pharmaceutical benefits for their
11 member health care plans and providers. At the time of the Data Incident, Plaintiff was a beneficiary
12 of TennCare, the State of Tennessee’s Medicaid program, whose pharmacy benefits program was
13 administered by Defendants.

14 5. On or about November 8, 2019, Magellan publicly announced that an employee,
15 who manages member data for various health plans, clicked open a phishing email that potentially
16 compromised his/her email and may have resulted in the exposure of the personal information of
17 tens of thousands of individuals. The Notice also announced that there was no evidence that the
18 unauthorized third party ever viewed any of the emails, and Magellan had determined the third
19 party’s intent was to send spam. Plaintiff alleges that the Data Incident impacted approximately
20 273,000 individuals whose information, including their names, Social Security numbers, member
21 IDs, health plans, provider names and the names of the drugs they had been prescribed, was
22 potentially accessed by an unauthorized party.

23 6. Magellan notified individuals, such as Plaintiff, of the Data Incident in May 2019.

24 7. On April 17, 2020, the Plaintiff filed a class action complaint in the United States
25 District Court for the District of Arizona.

26 8. In that Complaint, Plaintiff alleged several causes of action including, but not
27 limited to: (1) negligence; (2) negligence per se; (3) breach of implied contract; (4) unjust
28

1 enrichment; (5) Arizona Consumer Fraud Act, Ariz. Rev. Stat. §§ 44-1521, *et seq.*; and (6)
2 injunctive and declaratory relief.

3 9. In the following months, Defendants moved to dismiss the pleadings, arguing *inter*
4 *alia* that the Court lacked subject matter jurisdiction over the case because Plaintiff did not have
5 standing under Article III of the U.S. Constitution. Defendants also argued that even if Plaintiff
6 established standing, the Court should nonetheless dismiss her action under Rule 12(b)(6) of the
7 Federal Rules of Civil Procedure because she could not allege any plausible damages to maintain
8 her negligence action; she could not allege a viable breach of implied contract claim given she had
9 paid no money to Defendants; and she could not maintain any of the other claims brought for
10 various reasons.

11 10. During the summer of 2020, while counsel was involved in briefing the matters for
12 the Court, both sides mutually agreed to engage in early mediation with mediator Rodney Max of
13 Upchurch, Watson, White & Max.

14 11. Mr. Max is a well-known mediator from Florida who has extensive experience in
15 the mediation of similar data breach cases throughout the country.

16 12. Due to restrictions on travel and other concerns related to the COVID-19 pandemic,
17 a virtual mediation session was set for August 27, 2020.

18 13. After a full day of mediation and considerable progress, the Parties agreed to resume
19 the mediation within a matter of weeks.

20 14. In the meantime, though, while the Parties were working on counterproposals, the
21 District Court dismissed the action on September 3, 2020 based on Art. III standing, effectively
22 ending the efforts to reach a non-litigated resolution.

23 15. On September 17, 2020, Plaintiff filed a motion for reconsideration with the Court,
24 which was denied.

25 16. On October 26, 2020, Plaintiff filed a putative class action against the Defendants –
26 this time in the Superior Court of Maricopa County, asserting similar claims as those she had
27 alleged in the federal action.
28

1 17. On December 20, 2020, Defendants moved this Court to dismiss Plaintiff's
2 complaint based on: (i) the doctrines of claim preclusion and issue preclusion; (ii) for lack of
3 standing pursuant to Arizona Rule of Civil Procedure 12(b)(1); and (iii) for failure to state a claim
4 upon which relief could be granted pursuant to Arizona Rule of Civil Procedure 12(b)(6).

5 18. On May 3, 2021, the Superior Court denied Defendants' motion to dismiss on all
6 grounds.

7 19. On July 9, 2021, Magellan filed a special action petition with the Arizona Court of
8 Appeals asserting that the trial court had erred in denying Defendants' motion to dismiss by failing
9 to give full faith and credit to the federal district court's dismissal with prejudice.

10 20. On July 27, 2021, the Parties fully briefed Defendants' petition for special action.

11 21. On October 12, 2021, the Court granted the Parties' joint motion to stay the action
12 pending the outcome of Defendants' special action petition.

13 22. On December 14, 2021, the Arizona Court of Appeals accepted jurisdiction over
14 Defendants' special action petition but denied the requested relief.

15 23. At nearly all of these stages, there was substantial research and briefing of the issues
16 by counsel for both sides.

17 24. In the months that followed, as the Parties began to prepare for discovery and
18 continued litigation, they also resumed their efforts to reach a mediated resolution.

19 25. On April 21, 2022, utilizing Mr. Max, the Parties were able to reach an agreement
20 on all matters except the amount of attorneys' fees and expenses to be awarded. After another long
21 day, the Parties agreed to consider a mediator's proposal on this one remaining issue. A few days
22 later, on April 26, the Parties mutually agreed to accept that proposal, which set the amount to be
23 sought at no more than \$280,000, inclusive of expenses, on subsequent motion to the Court.

24 26. Besides the research that went into preparing the Complaint, and the work involved
25 in responding to Defendants' motions to dismiss and the special action petition, a great deal of work
26 went into preparing for the mediations. In particular, before beginning mediation, Plaintiff's
27 Counsel engaged in substantial research surrounding the facts of the Data Incident, and with the
28 assistance of their data breach experts, issued informal written requests for information to

1 Defendants, who produced voluminous documents allowing counsel to evaluate the circumstances
2 surrounding the Data Incident.

3 27. Counsel for both parties are well-versed in data breach litigation, having experience
4 representing clients on similar matters throughout the country. In addition to understanding the
5 nature of the Data Incident and its scope, counsel did not wait for the opening session of mediation
6 to begin proposing advance terms via a Term Sheet. Defendants likewise responded with their own
7 proposals. Counsel participated in multiple phone calls with one another, briefed the issues and
8 provided each other with supporting legal authorities and arguments for their proposals – all with
9 the purpose of informing their mediation efforts to ensure both efficiency and productivity.

10 28. In the weeks since April 26th, the Parties have continued to work together to
11 negotiate, draft, and finalize the Settlement Agreement, its Notice forms, and to come to an
12 agreement on a claims process and administrator. After many rounds of revisions, the Settlement
13 Agreement was finalized and executed by the Parties on June 23, 2022. A copy of the Settlement
14 Agreement, and well as the various Notices and Claims Form related to it, are attached as Exhibit
15 1 to the Affidavit and Declaration of Elaine A. Ryan in Support of Preliminary Approval of Class
16 Action Settlement and Certification of Class, previously attached as Exhibit A to Plaintiff's
17 Unopposed Motion for Preliminary Approval of Class Action Settlement and Certification of Class
18 ("Preliminary Approval Motion").

19 29. In summary, the Settlement benefits negotiated on behalf of the Class provide for
20 the following types of relief: (1) Reimbursement for Ordinary Out-of-Pocket Expenses and Lost
21 Time; and (2) Reimbursement for Extraordinary Out-of-Pocket Expenses and Lost Time. The
22 Settlement provides for relief for a Settlement Class defined as:

23 The approximately 273,000 individuals who were mailed a
24 notification that their personally identifiable information and/or
25 personal health information may have been exposed to unauthorized
26 third parties as a result of the Data Incident experienced by
Magellan on or around May 2019.

27 [See "Settlement Agreement," attached my Affidavit anujd Declaration in Support of Preliminary
28 Approval of Class Action Settlement and Certification of Class as Exhibit 1 (hereinafter "Agr.,"
at ¶¶1, 19-dd)].

1 30. Under the terms of the Settlement Agreement, Defendants will pay to provide
2 reimbursements for both ordinary and extraordinary expenses, including the costs of purchasing
3 credit monitoring and fraud resolution services, incurred between November 2019 and the Claims
4 Deadline, as a result of the Data Incident. (*Id.*, at ¶¶20-21).

5 31. In order to receive a payment for these reimbursements, Settlement Class Members
6 must submit a valid Claim Form, which may be completed in writing or online, prior to the Claims
7 Deadline of 90 days from the Notice Date. (*Id.*).

8 32. Each Settlement Class Member who submits a Claim Form is eligible for up to
9 \$225.00 in reimbursements for their ordinary out-of-pocket expenses. Expenses that qualify to be
10 reimbursed include: (i) long distance telephone charges; (ii) cell phone minutes (if charged by the
11 minute); (iii) internet usage charges (if either charged by the minute or incurred solely as a result
12 of the Data Incident); (iv) costs of credit monitoring services and/or fraud resolution services
13 purchased between November 2019 and the Claims Deadline; (v) other losses incurred by
14 Settlement Class Members determined to be fairly traceable to the Data Incident; and (vi)
15 compensation for attested-to lost time spent dealing with the Data Incident, at the rate of \$15 per
16 hour for up to two (2) hours of lost time (attestation requires at least a narrative description of the
17 activities performed during the time claimed and their connection to the Data Incident). No
18 attestation or verification requires notarization. (*Id.* at ¶20).

19 33. To be reimbursed for costs associated with the purchase of credit monitoring and/or
20 fraud resolution services, Claimants must submit: (1) a statement that the monitoring or service was
21 purchased primarily because of the Data Incident and not for other purposes; and (2) documentation
22 supporting the cost of the service purchased. These instructions are provided in the Long Form
23 Notice to be posted on the Settlement Website and listed in the FAQs that is also available there.
24 (*Id.* at ¶20-a).

25 34. The total aggregate amount allocated to pay Ordinary Out-of-Pocket Expenses and
26 Lost Time is \$430,000. In the event that the actual amount exceeds this amount, Settlement Class
27 Members' Settlement benefits will be reduced by a pro-rata share. (*Id.* at ¶20-c).

28

1 35. In addition, Settlement Class Members are eligible to be reimbursed for additional
2 expenses for up to \$2,500 including for: (1) documented expenses directly associated with dealing
3 with identity theft or identity fraud related to the Data Incident; and (ii) attested-to lost time dealing
4 with documented identity theft and/or fraud from the Data Incident, at the rate of \$15 per hour, up
5 to an additional three (3) hours of lost time (attestation requires at least a narrative description of
6 the activities performed during the time claimed and their connection to the Data Incident). (*Id.* at
7 ¶21).

8 36. The total aggregate amount allocated to pay Extraordinary Out-of-Pocket Expenses
9 and Lost Time is \$1,000,000. In the event that the actual amount exceeds this amount, Settlement
10 Class Members' Settlement benefits will be reduced by a pro-rata share. (*Id.* at ¶21-a).

11 37. The Settlement also includes a mutual release of claims that have been submitted or
12 could have been submitted in this case. Settlement Class Members who do not exclude themselves
13 from the Settlement Agreement will release claims against Defendants and their Released Parties,
14 as detailed in the Settlement Agreement. (*Id.*, at ¶¶25-26).

15 38. For the Claims process, the Parties agreed to use Epiq Class Action & Claims
16 Solutions, Inc. ("Epiq") as the Notice specialist and Claims Administrator. (Agr. at ¶19-f).

17 39. The notice plan implemented by Epiq provides for individual notice to be provided
18 to Settlement Class Members directly via first class mail. (Agr., ¶28). Epiq also established a
19 dedicated settlement website and has maintained and updated the website throughout the claim
20 period, with the Postcard Notice, Long Form Notice, Claim Form as approved by the Court, the
21 Settlement Agreement, and FAQs. (Agr., at ¶28-c).

22 40. Class Members are able to submit Claim Forms through the website and there is a
23 toll-free help line available to provide Settlement Class Members with additional information about
24 the Settlement. (*Id.*, at ¶28-d).

25 41. The timing of the claims process is structured to ensure that all Class Members have
26 adequate time to review the terms of the Settlement Agreement, compile documents supporting
27 their claim, and decide whether they would like to opt-out or object. Class Members will have until
28 ninety (90) days after the Notice Date to complete and submit their Claim Form to the Claims

1 Administrator, either by mail or online. (*Id.*, at ¶19-g). The Claims Administrator will review the
2 Claim Forms and determine if they are complete and valid, and will communicate to Class Counsel
3 and Defendants' Counsel regarding the number of Claims since the prior reporting period, the total
4 number of Claims received to date, the number of any Claims approved and denied since the prior
5 reporting period, the total number of Claims approved and denied to date, and other pertinent
6 information as requested by Class Counsel or Defendants' Counsel. (*Id.*, at ¶31).

7 42. Settlement Class Members will have up to and including sixty (60) days after the
8 Notice Date to object to or to submit a request for exclusion from the Settlement. (Agr., at ¶¶36,
9 42). Similar to the timing of the claims process, the timing with regard to objections and requests
10 for exclusion is structured to give Settlement Class Members sufficient time to access and review
11 the Settlement documents-including Plaintiffs' Motion for Attorneys' Fees, Costs, and Service
12 Awards, which will be filed prior to the deadline for Settlement Class Members to object or exclude
13 themselves from the Settlement.

14 43. Any Settlement Class Member who wishes to exclude him/herself from the
15 Settlement must make the request in writing, and include their name, address, telephone number, a
16 statement that he or she wants to be excluded from the Settlement, and a signature. (*Id.*).

17 44. Any member of the Settlement Class who elects to be excluded shall not receive any
18 benefits of and/or be bound by the terms of the Settlement Agreement. (*Id.*, at ¶37).

19 45. Any Settlement Class Member who wishes to object shall file notice of his/her
20 objection with the Court, Class Counsel, and Defendants' Counsel at the addresses provided on the
21 Settlement Website and postmarked no later than the Objection Deadline. (*Id.* at ¶¶40-42).

22 46. Although the deadline for objections and opt-outs to the Settlement has not yet
23 passed, Epiq has only received three requests to be excluded from the Settlement. See Declaration
24 of Cameron R. Azari, Esq. On Implementation and Adequacy of Notice Plan, at ¶20. There have
25 been no objections to date. *Id.*, at ¶21.

26 47. The Settlement Agreement also calls for a reasonable service/incentive award to the
27 Plaintiff in the amount of \$2,500. (*Id.*, at ¶54). Defendants have agreed to pay the award outside
28 of and separate from the Settlement benefits. The award is meant to compensate Plaintiff for her

1 efforts on behalf of the Settlement Class, including maintaining contact with counsel over the last
2 two-plus years, assisting in the investigation of the case, and remaining available for consultation
3 throughout two sessions of mediation and multiple law and motion battles.

4 48. After agreeing to the terms of the Settlement on behalf of the Class, Counsel for
5 Plaintiff negotiated their fees and costs separate from the benefit to Class Members, up to an amount
6 not to exceed \$280,000 for fees and costs combined, well below their lodestars. (*Id.* at 53).

7 49. Like the service/incentive award, costs and fees are to be paid by the Defendants
8 outside of the Settlement benefits available to Settlement Class Members and only after Court
9 approval of such. (Agr., at ¶¶54, 56).

10 50. Consistent with the terms of the Settlement Agreement, Class Counsel is submitting
11 a separate motion seeking attorneys' fees, costs, and Plaintiff's service/incentive award prior to
12 Settlement Class Members' deadline to exclude themselves from or object to the Settlement
13 Agreement.

14 51. Class Counsel has furthermore satisfied the requirements for appointment as Class
15 Counsel under Rule 23(g)(1), having diligently and competently prosecuted the claims alleged on
16 behalf of the Settlement Class to date, including identifying and investigating the potential class
17 claims for months prior to commencing the lawsuits; preparing the detailed class action complaints
18 and an amended complaint; researching and briefing several motions; and successfully negotiating
19 a global settlement that protects the interests of all members of the Settlement Class.

20 52. Through this stage of the litigation, Plaintiff has been able to complete an
21 independent investigation of the facts to reach a full understanding of the value of the case, as well
22 as the attendant risks of continued litigation. It is the strong opinion of proposed Settlement Class
23 Counsel that the Settlement presents a favorable result for the Class.

24
25 I declare under penalty of perjury under the laws of the United States of America that the
26 foregoing is true and correct.

1 EXECUTED on October 25, 2022, in Maricopa, Arizona.

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/s/Elaine A. Ryan
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 25th day of October, 2022, I electronically filed the foregoing
3 with the Clerk of the Court using the AZTurboCourt system which will send notification of such
4 filing to the following:

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