

1 **AUER RYAN, P.C.**
2 Elaine A. Ryan (State Bar No. 012870)
3 20987 N. John Wayne Parkway, B104-374
4 Maricopa, Arizona 85139
5 Telephone: (520) 705-7332
6 Email: eryan@auer-ryan.com

7 **MORGAN & MORGAN**
8 John Yanchunis (*pro hac vice*)
9 Patrick Barthle (*pro hac vice*)
10 201 N. Franklin Street, 7th Floor
11 Tampa, Florida 33602
12 Telephone: (813) 275-5272
13 Email: JYanchunis@forthepeople.com
14 Pbarthle@forthepeople.com
15 [Additional counsel in signature block.]
16 *Counsel for Plaintiff*

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,)
21) **ORDER CERTIFYING A**
22) **SETTLEMENT CLASS,**
23) **PRELIMINARILY APPROVING**
24) **CLASS ACTION SETTLEMENT,**
25) **AND DIRECTING NOTICE TO**
26) **SETTLEMENT CLASS**
27) (Assigned to the Honorable Connie
28) Contes)
29)

30 This matter came before the Court on the Plaintiff’s Unopposed Motion for
31 Preliminary Approval of Class Action Settlement and Certification of Class (“Motion for
32 Preliminary Approval”).

33 Plaintiff Carol Dearing brought this putative class action on behalf of herself and all
34 others similarly situated against Defendants Magellan Health, Inc. and Magellan RX

1 Management, LLC in this Court on October 26, 2020 for damages allegedly suffered by
2 Plaintiff and the Class arising from a phishing incident wherein a Magellan employee
3 clicked on a phishing email that potentially resulted in a third party gaining unauthorized
4 access to that employee's emails and attachments containing the personally identifiable
5 information ("PII") and/or protected health information ("PHI") of approximately 273,000
6 individuals.
7

8 The incident, alleged to have occurred in May 2019, may have resulted in the
9 compromise of information, including: names, Social Security Numbers, member IDs,
10 health plans, provider names, and the name of the drugs that members have been prescribed
11 of these individuals (the "Data Incident").
12

13 In her Complaint, Plaintiff asserted claims against the Defendants for (1) negligence;
14 (2) negligence per se; (3) breach of implied contract; (4) unjust enrichment; (5) Arizona
15 Consumer Fraud Act, Ariz. Rev. Stat. §§ 44-1521, et seq.; and (6) injunctive and declaratory
16 relief, seeking to require that Defendants adopt security practices to safeguard patient PII
17 and PHI that remains in their custody.
18

19 The parties, through their counsel, have entered into a Settlement Agreement
20 following good faith, arm's-length negotiations and a mediation overseen by Mr. Rodney
21 A. Max, a respected mediator who is extremely experienced in this type of litigation. The
22 parties have agreed to settle this action, pursuant to the terms of the Settlement Agreement,
23 and subject to the approval and determination of the Court as to the fairness, reasonableness,
24 and adequacy of the settlement which, if approved, will result in dismissal of this action
25 with prejudice, and a mutual release of claims.
26
27
28

1 Having reviewed the Settlement Agreement, including the exhibits attached thereto
2 (together, the “Settlement Agreement” or “Settlement”), the Motion for Preliminary
3 Approval of Class Action Settlement (“Motion”), the Memorandum In Support of Motion
4 for Preliminary Approval, the Declarations of Class Counsel, and the entire record in this
5 case, and all prior proceedings herein, and for good cause shown, it is hereby ordered that
6 the Plaintiff’s Motion for Preliminary Approval is granted as set forth herein.¹
7

8 **I. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**
9

10 For settlement purposes only and pursuant to Rule 23 of the Arizona Rules of Civil
11 Procedure, the Court provisionally certifies a class in this matter defined as follows:

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

16 The Court provisionally finds, pursuant to the standards outlined in the Rules of Civil
17 Procedure, for settlement purposes only, that: (a) the Settlement Class is so numerous that
18 joinder of all Settlement Class Members would be impracticable; (b) there are issues of law
19 and fact common to the Settlement Class; (c) the claim of the Settlement Class
20 Representative is typical of, and arises from, the same operative facts and seeks similar
21 relief as the claims of the Settlement Class Members; (d) the Settlement Class
22 Representative and Settlement Class Counsel will fairly and adequately protect the interests
23 of the Settlement Class as the Settlement Class Representative has no interest antagonistic
24
25

26
27 ¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as
28 defined in the Settlement Agreement, which was filed with Plaintiff’s Motion for
Preliminary Approval.

1 to or in conflict with the Settlement Class and has retained experienced and competent
2 counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or
3 fact common to Settlement Class Members predominate over any questions affecting only
4 individual members; and (f) a class action and class settlement is superior to other methods
5 available for a fair and efficient resolution of this case.
6

7 **II. SETTLEMENT CLASS REPRESENTATIVE AND SETTLEMENT CLASS**
8 **COUNSEL**

9 Carol Dearing, who alleges that she is a TennCare beneficiary and former member
10 of a pharmacy benefits program administered by Defendants, as more specifically described
11 in the Complaint filed in this action, is hereby provisionally designated and appointed as
12 the Settlement Class Representative. The Court provisionally finds that the Settlement Class
13 Representative is similarly situated to absent Settlement Class Members, and therefore
14 typical of the Class, and she will be an adequate Settlement Class Representative.
15

16 The Court finds that Elaine A. Ryan of Auer Ryan, P.C.; Joel R. Rhine and Martin
17 A. Ramey of the Rhine Law Firm, P.C.; and John Yanchunis of Morgan & Morgan are
18 experienced and adequate counsel and are provisionally designated as Settlement Class
19 Counsel.
20

21 **III. PRELIMINARY SETTLEMENT APPROVAL**

22 Upon preliminary review, the Court finds that the proposed Settlement is fair,
23 reasonable, and adequate to warrant providing notice of the Settlement to the Settlement
24 Class and accordingly is preliminarily approved, subject to the Final Approval Hearing and
25 further consideration by the Court at the Final Approval Hearing.
26

27 **IV. JURISDICTION**
28

1 The Court finds that it has subject matter jurisdiction and personal jurisdiction over
2 the Parties before it for the purposes of the Settlement pursuant to A.R.S. § 12-123.
3 Additionally, venue is proper in this Court pursuant to A.R.S. § 12-401.
4

5 **V. FINAL FAIRNESS HEARING**

6 A Final Approval Hearing shall be held on **November 7, 2022 at 10:15 a.m.** in the
7 Superior Court of the State of Arizona in and for the County of Maricopa, Old Courthouse,
8 Room 201, 125 W. Washington, Phoenix, AZ 85003 and/or via remote videoconferencing
9 to be as noticed on the Settlement Website, to determine, among other things, whether: (1)
10 this matter should be finally certified as a class action for settlement purposes pursuant to
11 the Arizona Rules of Civil Procedure; (2) the Settlement should be finally approved as fair,
12 reasonable, and adequate; (3) the action should be dismissed with prejudice pursuant to the
13 terms of the Settlement Agreement; (4) Settlement Class Members should be bound by the
14 releases set forth in the Settlement Agreement; (5) the application of Settlement Class
15 Counsel for an award of attorneys' fees, costs, and expenses (the "Fee Request") should be
16 approved; and (6) the application of the Settlement Class Representative for a Service
17 Award (the "Service Award Request") should be approved.
18
19
20

21 Plaintiff's Motion for Final Approval of the Settlement shall be filed with the Court
22 by [14 days prior to Final Fairness Hearing] Plaintiff's Service Award Request, and Fee
23 Request shall also be filed with the Court by [21 days prior to the Opt-Out and Objections
24 Deadline]. By no later than [7 days prior to Final Fairness Hearing], the Parties shall file
25 responses, if any, to any objections, and any replies in support of final approval of the
26 Settlement and/or the Service Award Request and Fee Request.
27
28

1 **VI. ADMINISTRATION**

2 The Court appoints Epiq Class Action & Claims Solutions, Inc. (“Epiq”), as the
3 Claims Administrator, with responsibility for class notice and claims administration.
4 Defendants shall pay all costs and expenses associated with providing notice to Settlement
5 Class Members including, but not limited to, the Claims Administrator’s fees and costs.
6 These payments shall be made separate and apart from the Settlement Fund.
7

8 **VII. NOTICE TO THE CLASS**

9 The Proposed Notice Program set forth in the Settlement Agreement, including the
10 Claim Form, Postcard Notice and Long Form Notice, attached to the Settlement Agreement
11 as Exhibits A, B, and C, respectively, satisfy the requirements of Rule 23 of the Arizona
12 Rules of Civil Procedure, provide the best notice practicable under the circumstances, and
13 are hereby approved. Non-material modifications to these Exhibits may be made without
14 further order of the Court. The Claims Administrator is directed to carry out the Notice
15 Program in conformance with the Settlement Agreement.
16
17

18 By [60 days from entry of PAO] the Claims Administrator shall complete the Notice
19 Program, which shall be completed in the manner set forth in the Settlement Agreement.
20

21 **VIII. FINDINGS CONCERNING NOTICE**

22 The Court finds that the form, content, and method of giving notice to the Settlement
23 Class as described in Section VII of this Order and the Settlement Agreement (including
24 the exhibits thereto): (a) will constitute the best practicable notice to the Settlement Class;
25 (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the
26 action, the terms of the proposed settlement, and their rights under the proposed settlement,
27
28

1 including but not limited to their rights to object to or exclude themselves from the proposed
2 settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable
3 and constitute due, adequate, and sufficient notice to all Class Members and other persons
4 entitled to receive notice; and (d) meet all applicable requirements of law, including the
5 Arizona Rules of Civil Procedure, Rule 23, and the Due Process Clause(s) of the Arizona
6 Constitution.
7

8 The Court further finds that the Notice is written in plain language, uses simple
9 terminology, and is designed to be readily understandable by Class Members.
10

11 **IX. EXCLUSION FROM CLASS**

12 Any Settlement Class Member who wishes to be excluded from the Settlement Class
13 must mail a written notification of the intent to exclude himself or herself from the
14 Settlement Class to the Claims Administrator at the address provided in the Notice,
15 postmarked no later than [60 days from NOTICE DATE]. The written notification must
16 include the individual's name and address; a statement that he or she wants to be excluded
17 from the Action; and the individual's signature.
18

19 The Claims Administrator shall provide the Parties with copies of all completed opt-
20 out notifications, and a final list of all who have timely and validly excluded themselves
21 from the Settlement Class. If Final Judgment is entered, any Settlement Class Member who
22 has not submitted a timely, valid written notice of exclusion from the Settlement Class shall
23 be bound by the terms of the Settlement, all proceedings, orders, and judgments in this
24 matter, including but not limited to the Release set forth in the Final Judgment, including
25 Settlement Class Members who have previously initiated or who subsequently initiate any
26
27
28

1 litigation against any or all of the Released Parties relating to the claims and transactions
2 released in the Settlement Agreement. All Settlement Class Members who submit valid and
3 timely notices of exclusion from the Settlement Class shall not be entitled to receive any
4 benefits of the Settlement.
5

6 **X. OBJECTIONS AND APPEARANCES**

7 A Settlement Class Member who complies with the requirements of this paragraph
8 may object to the Settlement, the Service Award Request, or the Fee Request, and must do
9 so no later than [60 days from NOTICE DATE].
10

11 No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or
12 other documents submitted by any Settlement Class Member shall be received and
13 considered by the Court, unless the objection is (a) filed with the Court by the Objection
14 Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, Plaintiff's Counsel,
15 and Defendants' Counsel, at the addresses listed in the Notice, and postmarked by no later
16 than [60 days from NOTICE DATE], as specified in the Notice. For an objection to be
17 considered by the Court, the objection must also substantially comply with this format:
18

- 19
- 20 a. The objector's full name, address, telephone number, and email address;
 - 21 b. information identifying the objector as a Settlement Class Member;
 - 22 c. a written statement of all grounds for the objection, accompanied by any
23 legal support the objector cares to submit;
 - 24 d. the identity of all lawyers (if any) representing the objector;
 - 25 e. the identity of all of the objector's lawyers (if any) who will appear at the
26 Final Fairness Hearing;
27
28

- f. a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection;
- g. a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; and
- h. the objector's signature or the signature of the objector's duly authorized lawyer or other duly authorized representative.

In addition to the foregoing, objections should also provide the following information:

- a. a list, by case name, court, and docket number, of all other cases in which the objector (directly or through a lawyer) has filed an objection to any proposed class action settlement within the last three (3) years and
- b. a list, by case number, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative.

COURT	CLASS COUNSEL	MAGELLAN'S COUNSEL
Honorable Connie Contes Maricopa County Superior Court Old Court House 125 W. Washington Street, Suite 201 Phoenix, AZ 85003	Joel Rhine RHINE LAW FIRM, P.C. 1612 Military Cutoff Road Suite 300 Wilmington, NC 28403	Paul Karlsgodt BAKER HOSTETLER LLP 1801 California Street Suite 4400 Denver, CO 80202

Any Settlement Class Member who fails to substantially 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,

1 orders, and judgments in this matter, including, but not limited to, the Release in the
2 Settlement Agreement if Final Judgment is entered. The Court retains the right to allow
3 objections in the interest of justice.
4

5 Any Settlement Class Member, including a Settlement Class Member who files and
6 serves a written objection, as described above, may appear at the Final Fairness Hearing,
7 either in person or through counsel hired at the Settlement Class Member's expense, to
8 object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the
9 Service Award Request, or the Fee Request.
10

11 If Final Judgment is entered, any Settlement Class Member who fails to object in the
12 manner prescribed herein shall be deemed to have waived his or her objections and shall be
13 forever barred from making any such objections in this action or in any other proceeding or
14 from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the
15 Settlement Agreement, the Service Award Request, or the Fee Request.
16

17 **XI. CLAIMS PROCESS AND DISTRIBUTION AND ALLOCATION PLAN**

18 The Settlement Class Representative and Defendants have created a process for
19 assessing and determining the validity and value of claims and a payment methodology to
20 Settlement Class Members who submit a timely, valid claim form. The Court preliminarily
21 approves the settlement benefits to the Class and plan for remuneration described in Section
22 III of the Settlement Agreement and directs that the Claims Administrator effectuate the
23 distribution of settlement consideration according to the terms of the Settlement Agreement,
24 should Settlement be finally approved.
25
26
27
28

1 Settlement Class Members who qualify for and wish to submit a claim form shall do
2 so in accordance with the requirements and procedures specified in the Notice and the Claim
3 Form. If Final Judgment is entered, all Settlement Class Members who qualify for any
4 benefit under the Settlement but fail to submit a claim in accordance with the requirements
5 and procedures specified in the Notice and the Claim Form shall be forever barred from
6 receiving any such benefit, but will in all other respects be subject to and bound by the
7 provisions in the Settlement Agreement, the Release included in the Settlement Agreement,
8 and the Final Judgment.
9
10

11 **XII. TERMINATION OF THE SETTLEMENT**

12 This Order shall become null and void and shall be without prejudice to the rights of
13 the Parties, all of whom shall be restored to their respective positions existing immediately
14 before April 21, 2022 (the date the parties participated in mediation), if the Settlement is
15 not finally approved by the Court or is terminated in accordance with the Settlement
16 Agreement. In such event, the Settlement and Settlement Agreement shall become null and
17 void and be of no further force and effect, and neither the Settlement Agreement nor the
18 Court's orders, including this Order, relating to the Settlement shall be used or referred to
19 for any purpose whatsoever.
20
21

22 **XIII. USE OF ORDER**

23 This Order shall be of no continuing force or effect if Final Judgment is not entered
24 or there is no Effective Date and shall not be construed or used as an admission, concession,
25 or declaration by or against Defendants of any fault, wrongdoing, breach, liability, or the
26 certifiability of any class. Nor shall this Order be construed or used as an admission,
27
28

1 concession, or declaration by or against the Settlement Class Representative or any other
2 Settlement Class Member that his or her claims lack merit or that the relief requested is
3 inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims
4 he, she, or it may have in this litigation or in any other lawsuit.
5

6 **XIV. STAY OF PROCEEDINGS**

7 Except as necessary to effectuate this Order, all proceedings and deadlines in this
8 matter are stayed and suspended pending the Final Approval Hearing and issuance of the
9 Final Judgment, or until further order of this Court.
10

11 **XV. CONTINUANCE OF HEARING**

12 The Court reserves the right to adjourn or continue the Final Fairness Hearing and
13 related deadlines without further written notice to the Class. The Court may also conduct
14 the Final Approval Hearing remotely by videoconferencing software or services, such as
15 via Webex, Zoom or by similar means. If the Court alters any of those dates or times, the
16 revised dates and times shall be posted on the website maintained by the Claims
17 Administrator.
18

19 **XVI. SUMMARY OF DEADLINES**

20 The preliminarily approved Settlement shall be administered according to its terms
21 pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement
22 and this Order include but are not limited to:
23

- 24 1. Notice Deadline: [60 days from entry of PAO]
- 25 2. Motion for Final Approval: [14 days prior to Final Fairness Hearing]
- 26
- 27
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 3. Motion for Service Award, Attorneys’ Fees, Costs, and Expenses: [21 days prior to Opt-Out and Objection Deadlines]
- 4. Claims Deadline: [90 days from NOTICE DATE]
- 5. Opt-Out and Objection Deadlines: [60 days from NOTICE DATE]
- 6. Final Fairness Hearing: [DATE] before the undersigned judge, in the Superior Court of the State of Arizona in and for the County of Maricopa, Old Courthouse, Room 201, 125 W. Washington, Phoenix, AZ 85003 [and/or by remote videoconferencing].

The dates set in this Order should be used as appropriate in the Notices to the Class.

IT IS SO ORDERED this 1st day of August, 2022.

Honorable Connie Contes, Senior Commissioner
Maricopa County Superior Court

eSignature Page 1 of 1

Filing ID: 14635686 Case Number: CV2020-013648
Original Filing ID: 14552563

Granted with Modifications



/S/ Connie Contes Date: 8/1/2022
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2020-013648

SIGNATURE DATE: 8/1/2022

E-FILING ID #: 14635686

FILED DATE: 8/2/2022 8:00:00 AM

ELAINE RYAN

JOHN C GRAY