

DISTRICT COURT, WELD COUNTY STATE OF COLORADO Court Address: 901 9th Avenue Greeley, CO 80631 CHERYL MCCULLEY, REBECCA BLOUNT, CINDY FRERIKS, JILL SCHREIDL, DEMETRIA ANN SANTIAGO-LABOY, OSCAR IRAZABA, FAITH ROBESON, and TAMI CARROLL, individually and on behalf of all others similarly situated, Plaintiffs, v. BANNER HEALTH Defendant.	DATE FILED May 5, 2026 10:04 AM CASE NUMBER: 2026CV30182 ▲ COURT USE ONLY ▲
ATTORNEYS FOR PLAINTIFFS AND THE CLASS: Carolyn Cuneo (CO Bar No. 52041) MILBERG PLLC 800 S. Gay Street, Suite 1100 Knoxville, TN 37929 T: (866) 252-0878 cjcuneo@milberg.com Hart L. Robinovitch (<i>pro hac vice</i> granted) ZIMMERMAN REED LLP 14648 N. Scottsdale Road, Suite 130 Scottsdale, AZ 85254 T: (480) 348-6400 Facsimile: (480) 348-6415 Hart.robinovitch@zimmreed.com David S. Almeida (<i>pro hac vice</i> granted) ALMEIDA LAW GROUP LLC 849 W. Webster Avenue Chicago, IL 60614 T: (708) 529-5418 david@almeidalawgroup.com	Case Number: 2026CV30182 Div.: 3

Joseph M. Lyon THE LYON FIRM 2754 Erie Ave. Cincinnati, OH 45208 T: (513) 381-2333 Facsimile: (513) 766-9011 jlyon@thelyonfirm.com	
PROPOSED PRELIMINARY APPROVAL ORDER	

WHEREAS, Plaintiffs Cheryl McCulley, Rebecca Blount, Cindy Freriks, Jill Schreidl, Demetria Ann Santiago-Laboy, Oscar Irazaba, Faith Robeson, and Tami Carroll, on behalf of themselves and others similarly situated, and Defendant Banner Health have entered into a Settlement Agreement that fully and finally settles the above-captioned litigation and provides for a complete dismissal with prejudice for all claims arising out of Defendant's use of Tracking Technologies that have been or could have been asserted against Defendant in the Action on the terms and conditions set forth in the Settlement Agreement, subject to and contingent on the approval of the Court;¹

WHEREAS, Plaintiffs have moved, pursuant to Rule 23 of the Colorado Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with the Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only, appointing Plaintiffs as Class Representatives, appointing Class Counsel as counsel for the Settlement Class, appointing Kroll Settlement Administration, LLC ("Kroll") as Settlement Administrator, and allowing Notice to Settlement Class Members as more fully described herein;

WHEREAS, the Court has read and considered: (a) Plaintiffs' Unopposed Motion for

¹ All capitalized terms shall have the meanings defined in the Settlement Agreement, which is attached as Exhibit 1 to the Joint Declaration of Class Counsel in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement.

Preliminary Approval of Class Action Settlement and Memorandum of Law in Support; (b) the Joint Declaration of Class Counsel in Support of the Unopposed Motion for Preliminary Approval of Class Action Settlement and exhibits attached thereto; and (c) all prior pleadings and proceedings heretofore.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only, the Court certifies a Settlement Class defined as follows:

Settlement Class: All individuals who had a Banner Health Patient Account (formerly the MyBanner patient portal) and who logged into this account using one of Banner's web properties or applications on or between June 1, 2020 and November 22, 2023.

SA ¶ 1.30. Excluded from the Settlement Class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant's affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, and assigns; (ii) any judge, justice, or judicial officer presiding over the litigation and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement. *Id.*

2. **Class Findings.** The Court provisionally finds, for settlement purposes only, that the requirements of Colorado Rule of Civil Procedure 23 have been met, including: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims of the Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Class Representatives and Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Class Representatives has no interest antagonistic to or in conflict with the Settlement Class and has retained experienced and competent counsel to prosecute this matter on behalf of the Settlement

Class; (e) questions of law or fact common to the Settlement Class Members predominate over any questions affecting only individual class members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of the controversy.

3. **Settlement Class Representatives and Class Counsel.** Cheryl McCulley, Rebecca Blount, Cindy Freriks, Jill Schreidl, Demetria Ann Santiago-Laboy, Oscar Irazaba, Faith Robeson, and Tami Carroll are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Class Members and therefore typical of the Class and that they will be adequate Class Representatives.

The Court finds that Carolyn Cuneo and Gary M. Klinger of Milberg PLLC; Hart L. Robinovitch of Zimmerman Reed LLP; David S. Almeida of Almeida Law Group LLC; and Joseph M. Lyon of The Lyon Firm, LLC are experienced and adequate counsel and are hereby provisionally designated as Class Counsel.

4. **Preliminary Settlement Approval.** The Court hereby preliminarily approves the Settlement, as embodied in the Settlement Agreement, as being fair, reasonable, and adequate to the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described below.

TBD-Counsel to contact clerk and file Notice of Setting

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on ____, 2026 at ____am/pm in Courtroom ____ of the District Court, Weld County, State of Colorado, 901 9th Avenue, Greeley, Colorado 80631 for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class; (b) to determine whether a proposed Judgment should be entered dismissing the Action with prejudice against Defendant; (c) to determine whether the motion of Class Counsel for a Fee Award should be approved; (d) to determine whether

the motion of the Class Representatives for Service Awards should be approved; and (e) to consider any other matters that may be properly brought the Court in connection with the Settlement. Notice of the Settlement and the Final Approval Hearing shall be given to the Settlement Class Members as set forth in Paragraph 8 of this Order.

6. The Court may adjourn the Final Approval Hearing without further notice to the Settlement Class Members and may approve the proposed Settlement with such modifications as the Parties may agree, if appropriate, without further notice to the Settlement Class Members.

7. **Retention of Settlement Administrator.** Class Counsel is hereby authorized to retain Kroll to supervise and administer the Notice procedure in connection with the proposed Settlement as well as the processing of Claims as set forth more fully in the Settlement Agreement.

8. **Approval of Form and Content of Notice.** The Court (a) approves, as to form and content, the Claim Form and Notices, attached to the Settlement Agreement as Exhibits A, B, C, and D; and (b) finds that the mailing and distribution of the Notice as set forth in the Settlement Agreement (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases to be provided thereunder), of Class Counsel's request for the Fee Award and Class Representatives' request for Service Awards, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Final Approval Hearing; (iii) constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of C.R.C.P. 23, the Colorado and United States Constitutions (including the Due Process Clause and other provisions guaranteeing due process of law), and all other applicable law

and rules. The date and time of the Final Approval Hearing shall be included in the Notice before they are distributed.

9. **Participation in the Settlement.** Settlement Class Members must submit a Claim Form in order to qualify for benefits under the Settlement. All Settlement Class Members who do not exclude themselves from the Settlement may submit a Claim Form to receive, after Final Judgment is entered, reimbursement for a cash payment in the amount of \$20.00. All Settlement Class Members will also automatically receive access to twelve months of CyEx Privacy Shield Pro.

10. Settlement Class Members who do not submit a valid request for exclusion, pursuant to Paragraph 12 of this Order, will be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Judgment, even if they do not submit a claim.

11. **Distribution and Allocation Plan.** Settlement Class Representatives and Defendant have created a process through which Settlement Class Members can submit claims to the Settlement Administrator. The Court preliminarily approves the process described in the Settlement Agreement and directs that the Settlement Administrator effectuate the evaluation of submitted claims and distribution of Settlement benefits according to the terms of the Settlement Agreement, should the Settlement be finally approved.

12. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than sixty (60) Days from the date of Notice and posted to the Settlement Website.

Any Settlement Class Member who does not timely and validly excuse herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If Final Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Judgment, including Settlement Class Members who have previously litigated or who subsequently initiate any litigation against any or all the Released Persons relating to the claims and transactions released in the Settlement. All Settlement Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

13. **Objections and Appearances.** No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection includes all of the information set forth in Paragraph 4.3 of the Settlement Agreement, which provides: any Settlement Class Member who intends to object to this Agreement must present the objection in writing, must be personally signed by the objector, and must include: (1) the objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection (the "Objecting Attorney"); and (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who file an appearance with the Court in accordance with the Local Rules). This objection shall be filed with the Court and also sent to the undersigned counsel by U.S. Mail or email so that it is received before the Objection

Deadline: David A. Carney, Baker & Hostetler LLP, 127 Public Square, Ste. 2000, Cleveland, OH 44114 for Defendant Banner; and Joseph M. Lyon, The Lyon Firm, 2754 Erie Ave., Cincinnati, Ohio, 45208 for the Settlement Class. Objections received after the Objection Deadline shall be invalid and not considered by the Court.

14. Any Settlement Class Member who fails to comply with the provisions in Paragraphs 9 and 10 shall waive and forfeit any and all rights he or she may have to object, and shall be bound by all terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if Final Judgment is entered. If Final Judgment is entered, any Settlement Class Member who fails to object in the matter prescribed herein shall be deemed to have waived his or her objections and shall forever be barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the service award request, or the fee award request.

15. **Termination of Settlement.** In accordance with the Settlement Agreement, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement, then this Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further notice and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to any purpose of whatsoever.

16. **Use of Order.** This Order shall be of no force or effect if Final Judgment is not entered or there is no Effective Date, and, as outlined in Paragraph 10.5 of the Settlement

Agreement, it shall not be construed or used as an admission, concession, evidence of, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, the certifiability of the class, or any of the points items outlined in Paragraph 10.5 of the Settlement Agreement. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Class Representatives or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

17. **Stay of Proceedings and Temporary Injunction.** Unless otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs, and any and all other members of the Settlement Class, from commencing or prosecuting any and all of the Released Claims against the Release Entities.

18. **Settlement Administration Fees and Expenses.** All reasonable costs incurred with notifying Settlement Class Members of the Settlement and administering the Settlement shall be paid by the Defendant as set forth in the Settlement Agreement.

19. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

20. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and/or this Order include, but are not limited to, the following:

Commencement of Notice Program

Notice Date: 60 Days after Preliminary Approval is Granted

Motion for Final Approval Deadline: 14 Days prior to the Final Approval Hearing

Motion for Service Awards, Attorneys' Fees, and Costs Deadline: 14 Days prior to the Objection & Opt-Out Deadline

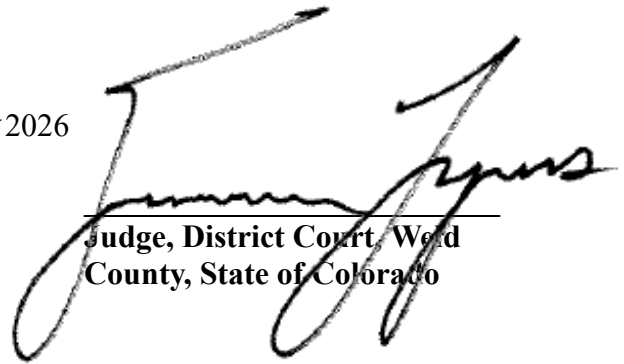
Exclusion Deadline: 60 Days after issuance of Notice

Objection Deadline: 60 Days after issuance of Notice

Claims Deadline: 60 Days after issuance of Notice

Final Approval Hearing: at least 120 Days after Preliminary Approval is Granted

IT IS SO ORDERED this 5th day of May 2026



Judge, District Court, Weld
County, State of Colorado