

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

IN DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

**In re Dakota Eye Institute Data Security
Litigation**

Case No. 08-2023-cv-02710

**[PROPOSED]
ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT
AND FOR CERTIFICATION OF SETTLEMENT CLASS**

[¶ 1] This Litigation¹ comes before the Court on the motion of Plaintiffs Leo Bitterman, Dion Wolbaum II, Amy Ebel-Delorme, Dennis Johnston, and Vhonda Condry, on behalf of themselves and the Settlement Class they seek to represent, for an order granting Preliminary Approval of the class action Settlement between Plaintiffs and Defendant, Dakota Eye Institute LLP (“DEI”).

[¶ 2] Having considered the Plaintiffs' Unopposed Motion for Preliminary Approval, the declaration filed in support thereof, and having heard argument of counsel or otherwise reviewed the record, with good cause appearing therefore,

IT IS HERERY ORDERED THAT:

[¶ 3] The Parties have agreed to settle this Litigation upon the terms and conditions set forth in the Settlement Agreement, which has been filed with the Court. The Settlement Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable, and adequate. Class Counsel has investigated the facts and law relating to the matters alleged in the Consolidated Class Action Complaint, legal research as to the sufficiency of the claims, an evaluation of the risks

¹ All capitalized terms used throughout this memorandum have the same meanings as those defined in the Settlement Agreement.

associated with continued litigation, trial, and/or appeal. The Settlement was reached as a result of arm's length negotiations between Class Counsel and counsel for DEI. The Settlement confers substantial benefits upon the Settlement Class, without the costs, uncertainties, delays, and other risks associated with continued litigation, trial, and/or appeal and is fair, adequate, and reasonable. Nothing in this Order, the Settlement Agreement, or any related documents or proceedings shall be construed as or deemed to be evidence of an admission or concession by Defendant Dakota Eye Institute LLP of any liability, wrongdoing, or unlawful conduct. The Settlement is a compromise of disputed claims and is entered into solely to avoid the burden, expense, and uncertainty of continued litigation. The Settlement is structured on a claims-made basis, such that only those Class Members who submit valid and timely claims will receive settlement benefits.

[¶ 4] The Court conditionally certifies, for settlement purposes only, the following Settlement Class:

All natural persons residing in the United States whose Private Information was compromised in the Data Breach of Dakota Eye Institute LLC, which was disclosed to the public on or about October 31, 2023 (the “Class”).

The Class specifically excludes: (i) the Judge assigned to evaluate the fairness of this settlement (including any members of the Court’s staff assigned to this case); (ii) Defendant’s officers and directors; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Breach or who pleads nolo contendere to any such charge.

[¶ 5] The Court conditionally finds, for settlement purposes only and conditioned upon the entry of this Order and the Final Approval Order, that the prerequisites for a class action under N.D. R. Civ. P. 23(a)-(c) have been satisfied in that: (a) the number of members of the Settlement Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law

and fact common to the Settlement Class; (c) a class action will allow for the fair and efficient adjudication of the controversy at hand; and (d) the representative parties, Plaintiffs as Class Representatives and their experienced Class Counsel, have fairly and adequately represented the interests of the Settlement Class and will continue to do so. In making these findings, the Court has exercised its discretion in conditionally certifying the Settlement Class.

[¶ 6] The Court approves, as to form and content, the Notices, including the Postcard Notice and Long Form Notice, attached to the Agreement as Exhibits B and C. The Notices contain all of the essential elements necessary to satisfy the requirements of N.D. R. Civ. P. 23(g) and state due process provisions, including a description of the Settlement's material terms; a date by which members of the Settlement Class may opt-out of the Settlement; a date by which Settlement Class Members may object to the Settlement; the Final Approval Hearing date; and Settlement Website address where the members of the Settlement Class may access the Agreement, Long Form Notice, and other related documents.

[¶ 7] The Court approves the Notice Program, as described in the Agreement. As soon as possible after the entry of this order, and no later than 60 days prior to Final Approval Hearing, the Settlement Administrator will complete the Notice Program as provided in the Agreement. The Postcard Notice and Long Form Notice shall be updated by Class Counsel and DEI to include the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court herein. The Court finds that the Notice Program is reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to receive Notice, and that it meets the requirements of due process and N.D. R. Civ. P. 23.

[¶ 8] The Notice will identify the opt-out and objection deadline at least 30 days prior to the Final Approval Hearing.

[¶ 9] Any member of the Settlement Class may, upon request, opt-out of the Settlement pursuant to N.D. R. Civ. P. 23(h) by submitting to the Settlement Administrator at the physical address listed in the Notice, an opt-out request letter. The written notice must (i) identify the case name and docket number, *In re Dakota Eye Institute Data Security Litigation*, Case No. 08-2023-cv-02710, in the District Court of Burleigh County, South Central Judicial District, North Dakota; (ii) identify the name and address of the individual seeking exclusion from the Settlement; (iii) be personally signed by the individual seeking exclusion; (iv) include a statement clearly indicating the individual's intent to be excluded from the Settlement; and (v) request exclusion only for that one individual whose personal signature appears on the request. To be effective, the written notice shall be postmarked no later than the Opt-Out Deadline. All those persons submitting valid and timely notices of exclusion shall not be entitled to receive any benefits of the Settlement.

[¶ 10] Any member of either or both of the Settlement Class, and who does not opt-out from the Settlement, may object to the terms of the proposed Settlement as reflected in the Agreement, the certification of the Settlement Class the entry of the Final Approval Order the amount of attorneys' fees and costs requested by Class Counsel, and/or the amount of the Service Awards requested for the Class Representatives. To be valid and considered by the Court, an objection must include: : (i) the objector's full name and address; (ii) the case name and docket number, *In re Dakota Eye Institute Data Security Litigation*, Case No. 08-2023-cv-02710, in the District Court of Burleigh County, South Central Judicial District, North Dakota; (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., copy of the objector's settlement notice, copy of original notice of the Data Breach, or a statement explaining why the objector believes they are a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v)

the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or their counsel will appear at the Final Fairness Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. Objections must be mailed to Clerk of the Court, Class, Counsel, Defendant's counsel, and the Settlement Administrator at the at the physical addresses listed in the Long Form Notice. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period (30 days before the Final Approval Hearing), as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g. Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

[¶ 11] Any Settlement Class Member who does not make his or her objection in the manner and by the date set forth in this Order shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

[¶ 12] Plaintiffs and DEI may file responses to any objections that are submitted. Any Settlement Class Member who timely files and serves an objection in accordance with this order may appear at the Final Approval Hearing either in person or through an attorney.

[¶ 13] For purposes of settlement only, the Court finds and determines that it will likely find at the final approval stage that Plaintiffs will fairly and adequately represent the interests of the Settlement Class in enforcing their rights in the Litigation, and appoints them Class

Representatives, and the following attorneys are preliminarily appointed as Class Counsel for the Settlement Class:

HELLMUTH & JOHNSON PLLC

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[¶ 14] The Parties have selected Verita Global, LLC to serve as the Settlement Administrator. The Court hereby approves of and appoints Verita Global, LLC as the Settlement Administer and directs Verita Global, LLC to commence the Notice Program and to otherwise comply with all obligations of the Settlement Administrator as outlined in the Agreement.

[¶ 15] Pleadings in support of Final Approval, inclusive of Class Counsel's application for attorneys' fees and costs and for Service Awards for the Class Representatives, shall be filed no later than 15 days before the last day of the Opt-Out Period. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees and costs, and for Service Awards for the Class Representatives. In the Court's discretion, the Court will also hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement, to Class Counsel's application for attorneys' fees and costs, or the Service Awards application, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement and this Order.

[¶ 16] The dates of performance contained herein may be extended by order of the Court, for good cause shown, without further notice to the Settlement Class.

[¶ 17] The Settlement will not become effective unless the Court enters a Final Approval Order finally approving the Settlement. If the Agreement does not become effective in accordance with the Agreement, or if the Agreement is not finally approved, then the Agreement shall become null and void, and this Preliminary Approval Order shall be null and void and shall be vacated. In such a case, the Parties shall proceed in all respects as if the Agreement had not been executed and the Parties shall in no way be prejudiced in proceeding with or defending this Litigation, the provisional class certification effected herein will be null and void, and DEI shall have the right to oppose and object, on any and all grounds, to certification of the Settlement Class or any other classes at any future time.

[¶ 18] The Final Approval Hearing will be conducted in _____, North Dakota on 2025, at _:_ a.m./p.m. The hearing may be in person or virtually and the Court will advise the Parties at least 15 days prior to the hearing date. No later than 10 days before the hearing, the Settlement Administrator shall post to the Settlement Website the manner in which the hearing shall be held.

[¶ 19] All pretrial proceedings in this Litigation are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Agreement and this Preliminary Approval Order.

[¶ 20] Upon the entry of this Order, the Class Representatives and all members of the Settlement Class shall be provisionally enjoined and barred from asserting any claims against DEI and the Released Parties arising out of, relating to, or in connection with the Released Claims prior to the Court's decision as whether to grant Final Approval of the Settlement.

[¶ 21] This Settlement, and any and all negotiations, statements, documents, and/or proceedings in connection with the Settlement, shall not be construed or deemed to be evidence of an admission or concession by DEI of any liability or wrongdoing by DEI or any of its affiliates, agents, representatives, vendors, or any other person or entity acting on its behalf with respect to the conduct alleged in the Litigation or that the case was properly brought as a class action, and shall not be construed or deemed to be evidence of an admission or concession that any person suffered compensable harm or is entitled to any relief with respect to the conduct alleged in the Litigation. DEI may file the Agreement in any action or proceeding that may be brought against it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

[¶ 22] For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of this Court.

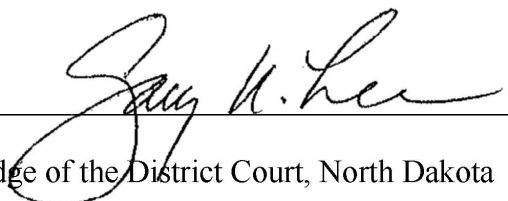
[¶ 23] Class Counsel and counsel for DEI are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Preliminary Approval Order or the Agreement, including making, without further approval of the Court minor changes to the form or content of the Notices that they jointly agree are reasonable or necessary.

[¶ 24] The Court confirms the following schedule (which the Court, upon showing of good cause by the Parties, may extend any of the deadlines):

Deadline to Complete Notice Program	60 days prior to the Final Approval Hearing
Deadline for Class Counsel to File the Motion for Final Approval of the Settlement, Application for Attorneys Fees, Costs, and Service Awards	45 days prior to the Final Approval Hearing
Deadline for Members of the Settlement Class to Opt-Out of the Agreement	30 days prior to the Final Approval Hearing
Deadline for Settlement Class Members to Object to the Settlement	30 days prior to the Final Approval Hearing
Deadline to Respond to Objections	15 days prior to the Final Approval Hearing
Final Approval Hearing	_____, 2025 at _____ a.m/p.m.

IT IS SO ORDERED.

Date: 8/20/2025



 Judge of the District Court, North Dakota