

**THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY, MONTANA**

NICOLE DOWNEY and SARAH SUZANNE
SULLIVAN, on behalf of her minor child
M.S., individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

INTERMOUNTAIN PLANNED
PARENTHOOD, INC. d/b/a PLANNED
PARENTHOOD OF MONTANA,

Defendant.

Cause No. DV-56-2025-0000836-OC

Judge: Rod E. Souza

**ORDER CERTIFYING SETTLEMENT CLASS AND GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AND NOTICE PROGRAM**

THIS CAUSE comes before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law ("Motion"), filed September 2, 2025.¹ Plaintiffs' unopposed Motion requests entry of an order (a) granting Preliminary Approval of the Settlement; (b) provisionally certifying the Settlement Class for settlement purposes; (c) appointing Plaintiffs as Class Representatives; (d) appointing John Heenan as Class Counsel for the Settlement Class; (e) approving the forms of Notice and the Notice Program; (f) approving the Claim Form and the Claim process; (g) appointing the Settlement Administrator; (h) establishing procedures for members of the Settlement Class to opt-out of or object to the Settlement; and (i) scheduling a Final Approval Hearing on whether to grant Final Approval of the Settlement and Class Counsel's Application for Attorneys' Fees, Costs, and Service Awards.

¹ All capitalized terms used herein have the same meanings as those defined in Section II of the Settlement Agreement, attached to the Motion for Preliminary Approval as ***Exhibit A***.

Having carefully reviewed the proposed Settlement and its exhibits, all relevant filings, and the record, the Court finds that the proposed Settlement satisfies the criteria for Preliminary Approval, the proposed Settlement Class should be preliminarily certified, the proposed Notice Program and Claim Process should be approved, and Class Representatives, Class Counsel, and the Settlement Administrator should be appointed. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Motion is **GRANTED** as set forth herein.

Background

This Action arises from an August 28, 2024 Data Incident in which a criminal third party gained unauthorized access to Defendant's networks and potentially accessed Private Information pertaining to Plaintiffs and the proposed Settlement Class. After identifying the suspicious activity on August 28, 2024, Defendant mailed notification letters to the individuals whose information may have been impacted, and posted substitute notice on its website and to various news outlets. Thereafter, two lawsuits were filed against the Defendant in the Thirteenth Judicial District Court for Yellowstone County. Defendant was served in the first lawsuit, filed by Plaintiff Nicole Downey, and removed the action to the United States District Court for the District of Montana.

Shortly after removal, the Parties decided to explore early resolution and scheduled a mediation with experienced class action mediator, Bruce Friedman of JAMS. During the course of the negotiations, the Parties agreed to proceed with settlement, and resolve the actions in state court. Consequently, the two previously filed lawsuits were dismissed and Plaintiffs filed the Action in this Court.

The Settlement Agreement provides Settlement Class Member Benefits of (a) Cash Payments to Settlement Class Members who submit Valid Claims for reimbursement of documented out-of-pocket losses up to \$5,000 per person, and for lost time at \$20/hour up to four

hours per person at; and (b) two years of free Medical Data Monitoring for all Settlement Class Members. Agreement ¶ 58. Additionally, Defendant shall be solely responsible for the payment of all reasonable Settlement Administration Costs. *Id.* ¶ 59. Defendant also agrees to pay the Court-awarded attorneys' fees and costs to Class Counsel and Service Awards to the Class Representatives not to exceed \$400,000 for attorneys' fees and costs, or exceed \$2,500 for each Service Award. *Id.* ¶ 57.

Plaintiffs now seek preliminary approval of the Settlement Agreement on behalf of the proposed Settlement Class. Defendant does not oppose the Motion and agrees that the Court should grant Preliminary Approval and allow Notice to issue to the Settlement Class. As further discussed below, the Settlement falls within the range of judicial approval and includes a comprehensive Notice Program and Claims Process. As such, the proposed Settlement satisfies the criteria for Preliminary Approval, the proposed Settlement Class should be preliminarily certified, and the proposed Notice Program, Notices, Claims Process, and Claim Forms should be approved.

Preliminary Certification of the Settlement Class

1. The Court provisionally and preliminarily certifies the following Settlement Class for Settlement purposes only, finding the Court is likely to finally certify it at Final Approval:

All living individuals in the United States who received Notice, including notice of the Settlement, that their Private Information may have been impacted in the Data Incident.

Excluded from the Settlement Class are (a) all persons who are directors, officers, and agents of Defendant; (b) governmental entities; and (c) the Judge assigned to the Action, that Judge's immediate family, and Court staff.

2. The Court determines that for Settlement purposes only, the proposed Settlement Class meets all the requirements of Montana Rule of Civil Procedure 23(a) and (b)(3), namely that

the class is so numerous that joinder of all members is impractical; there are common issues of law and fact; the claims of the proposed Class Representatives are typical of absent Settlement Class members; the Class Representatives will fairly and adequately protect the interests of the Settlement Class, as they have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent Class Counsel to prosecute the Action; common issues predominate over any individual issues; and a class action is the superior means of adjudicating the controversy. Class Counsel is also adequate.

3. Nicole Downey and Sarah Suzanne Sullivan are designated and appointed as the Class Representatives.

4. The Court finds that John Heenan is an experienced attorney and will adequately protect the interests of the Settlement Class and designates him as Class Counsel pursuant to Montana Rule of Civil Procedure 23(g).

Preliminary Approval of the Proposed Settlement

5. Upon preliminary review, pursuant to Montana Rule of Civil Procedure 23(e)(2) and applying the factors of *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004),² the Court finds the proposed Settlement is likely to be approved as fair, reasonable, and adequate at the Final Approval Hearing, otherwise meets the criteria for Preliminary Approval, and warrants issuance of Notice to the Settlement Class. Accordingly, the proposed Settlement is preliminarily approved.

Final Approval Hearing

² “Federal authority on the issue of class certification is instructive because the Montana version of Rule 23 is identical to the corresponding federal rule.” *Chipman v. Nw. Healthcare Corp.*, 2012 MT 242, ¶ 43, 366 Mont. 450, 464–65, 288 P.3d 193, 205.

6. A Final Approval Hearing shall take place before the Court to determine, among other things, whether (a) the proposed Settlement Class should be finally certified for settlement purposes pursuant to Montana Rule of Civil Procedure 23; (b) the Settlement should be finally approved as fair, reasonable and adequate and, in accordance with the Settlement's terms, all claims in the Class Action Complaint against Defendant should be dismissed with prejudice; (c) Settlement Class Members should be bound by the Releases set forth in the Settlement; (d) the proposed Final Approval Order and final judgment should be entered; and (e) the Application for Attorneys' Fees, Costs, and Service Awards should be granted. Any other matters the Court deems necessary and appropriate will also be addressed at the Final Approval Hearing.

7. Class Counsel intends to seek up to \$400,000 for attorneys' fees and litigation costs and up to \$2,500 in Service Awards for the Class Representatives. Class Counsel shall file a Motion for Final Approval and Application for Attorneys' Fees, Costs, and Service Awards no later than 45 days before the original Final Approval Hearing date.

8. Any Settlement Class Member that has not timely and properly opted- out from the Settlement in the manner described below may appear at the Final Approval Hearing in person or by counsel and be heard, to the extent allowed by the Court, regarding the proposed Settlement and/or the Application for Attorneys' Fees, Costs, and Service Awards; provided, however, no member of the Settlement Class that has elected to opt out of the Settlement shall be entitled to object or otherwise appear, and no Settlement Class Member shall be heard in opposition to the Settlement unless the Settlement Class Member complies with the requirements of this Order pertaining to objections, which are described below.

Settlement Administration

9. Simpluris, Inc. is appointed as the Settlement Administrator, with responsibility for implementing and completing the Notice Program, overseeing the Claims Process, and performing all other acts necessary for Settlement Administration. All reasonable Settlement Administration Costs will be by Defendant separately and in addition to all other Settlement Class Member Benefits, as provided in the Settlement.

Notice to the Settlement Class

10. The Notice Program and forms of Notice, including the Email Notice, Postcard Notice, Long Form Notice, Settlement Website, and toll-free Settlement phone number, along with the Claim Form, attached as exhibits to the Agreement, are approved. Non-material modifications to the Notices and Claim Form may be made by written agreement of the Parties without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program and to perform all other tasks the Settlement requires.

11. The Court finds that the form, content, and method of the Notices (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Montana Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by members of the Settlement Class.

Opting-Out of the Settlement Class

12. Members of the Settlement Class may opt-out of the Settlement Class at any time prior to the Opt-Out Deadline (60 days after Notice is transmitted) by mailing a request to opt-out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Deadline. The opt-out request must be personally signed by the Settlement Class Member and contain the requestor's name, address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the Settlement Class. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement, including the Releases and Released Claims, even if that Settlement Class Member does not submit a Valid Claim.

13. Any member of the Settlement Class who timely and validly opts-out from the Settlement Class shall, provided the Court grants Final Approval, (a) be excluded from the Settlement Class by Order of the Court; (b) not be a Settlement Class Member; (c) not be bound by the terms of the Settlement; and (d) have no right to the Settlement Class Member Benefits.

Objecting to the Settlement

14. A Settlement Class Member that complies with the requirements of this Preliminary Approval Order and the Agreement may object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards. Objections must be filed with the Court, and sent by U.S. Mail to Class Counsel, Defendant's Counsel, and the Settlement Administrator.

15. For an objection to be considered by the Court, the relevant Settlement Class Member must submit the objection no later than the Objection Deadline, as specified in the Notice, and the relevant Settlement Class Member must not have excluded themselves from the Settlement Class. 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.

16. For an objection to be considered by the Court, it must also set forth the following:
 - a. the objector's full name, mailing address, phone number, and email address (if any);
 - b. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
 - c. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
 - d. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards;
 - e. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;

- f. the identity of all counsel (if any) representing the objector, and whether they will appear at the Final Approval Hearing;
 - g. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);
 - h. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
 - i. the objector's signature (an attorney's signature is not sufficient).
17. Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel, including taking depositions and propounding document requests.
18. Any Settlement Class Member who fails to object to the Settlement in the manner described herein shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be precluded from seeking any review of the Settlement or of this Preliminary Approval Order by appeal or any other means.

Claims Process and Distribution Plan

19. The Settlement establishes a Claims Process for assessing and determining the validity of Claims and a methodology for paying Settlement Class Members who submit Valid Claims. The Court preliminarily approves this process.
20. Settlement Class Members that qualify for and wish to submit a Claim shall do so in accordance with the requirements and procedures specified in the Settlement, as set forth in the Claim Form. If the Settlement is finally approved, all Settlement Class Members that qualify for any Settlement Class Member Benefits, but who fail to submit a Claim in accordance with the requirements and procedures specified in the Settlement, including the Claim Form requirements,

shall be forever barred from receiving any such benefit. Such Settlement Class Members will in all other respects be subject to and bound by the provisions of the Settlement, including the Releases, and the Final Approval Order and final judgment.

Termination of the Settlement Agreement and Use of this Preliminary Approval Order

21. This Preliminary Approval Order shall become null and void and shall be without prejudice to the rights of the Parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Preliminary Approval Order, if the Settlement is not finally approved by the Court, the Settlement is terminated in accordance with its terms, or there is no Effective Date. In such event, the Settlement shall become null and void and be of no further force and effect, and neither the Settlement (including any Settlement-related filings) nor the Court's orders, including this Preliminary Approval Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

22. If the Settlement is not finally approved by the Court, the Settlement is terminated in accordance with its terms, or there is no Effective Date, then this Preliminary Approval Order shall be of no force or effect; shall not be construed or used as (a) an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability or (b) to support a claim for class certification; shall not be construed or used as an admission, concession, or declaration by or against any Class Representative or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable; and shall not constitute a waiver by any party of any defense (including without limitation any defense to class certification) or claims he or she may have in this Action or in any other lawsuit.

Stay of Proceedings

23. Except as necessary to effectuate this Preliminary Approval Order, this Action and any Court deadlines set in this Action are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order, or until further order of this Court.

Jurisdiction Pending Settlement Approval

24. The Court has subject matter jurisdiction and personal jurisdiction over the Action, Plaintiffs, Settlement Class Members, Defendant, and any party to any agreement that is part of or related to the Settlement Agreement.

25. 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.

Summary of Deadlines

26. The Settlement as preliminarily approved shall be administered according to its terms pending the Final Approval Hearing. The Court hereby sets the following schedule of events:

Event	Date
Notice Date (Notice Program Begins)	30 days after Preliminary Approval
Notice Program Complete	45 days following Preliminary Approval
Deadline to File Motion for Final Approval, and Application for Attorneys' Fees and Costs	45 days before the initial scheduled Final Approval Hearing
Opt-Out Deadline	60 days following the Notice Date
Objection Deadline	60 days following the Notice Date
Deadline to Submit Claim Forms	90 days following the Notice Date
Final Approval Hearing	December 15, 2025, at 1:30 pm

Electronically Signed and Dated Below