

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

KELLY KINGSBURY and ERIN YATES,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

EVERNORTH HEALTH, INC. and
MDLIVE, INC.,

Defendants.

Case No.: 26-CA-006880

CLASS REPRESENTATION

**AMENDED ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND CERTIFICATION OF THE SETTLEMENT
CLASS**

Plaintiffs Kelly Kingsbury and Erin Yates (“Plaintiffs”), individually and on behalf of all others similarly situated, and Evernorth Health, Inc. and MDLIVE, Inc. (“Defendants”) have agreed to settle this Action pursuant to the terms and conditions set forth in an executed Settlement Agreement and Release (hereinafter, “Settlement” or “Settlement Agreement” or “SA”). The Parties reached the Settlement through months of arm’s-length negotiations between experienced counsel and a full-day mediation facilitated by a third-party neutral. Under the Settlement Agreement, subject to the terms and conditions therein and subject to Court approval, Plaintiffs and the proposed Settlement Class will fully, finally, and forever resolve, discharge, and release their claims.

The Settlement Agreement has been filed with the Court, and Plaintiffs and proposed Class Counsel have filed an Unopposed Motion for Preliminary Approval of Class Settlement. Upon considering the Motion, the Settlement Agreement and all exhibits thereto, the record in these proceedings, the representations and recommendations of counsel, and the requirements of

law, the Court finds that: (1) this Court has jurisdiction over the subject matter and the Parties to this Action; (2) the proposed Settlement Class meets the requirements of Florida Rule of Civil Procedure 1.220 and should be certified for settlement purposes only; (3) the person and entities identified below should be appointed Class Representative and Class Counsel; (4) the Settlement is the result of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel, and is not the result of collusion; (5) the Settlement is within the range of reasonableness and should be preliminarily approved; (6) the proposed Notice program and proposed forms of Notice satisfy Florida Rule of Civil Procedure 1.220 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, Class Counsel's application for an award of attorneys' fees and expenses ("Fee Application") and request for Service Awards for Plaintiffs, and their rights to opt-out of the Settlement Class or object to the Settlement; (7) good cause exists to schedule and conduct a Final Approval Hearing, to assist the Court in determining whether to grant Final Approval of the Settlement and enter the Final Approval Order, and whether to grant Class Counsel's Fee Application and request for Service Awards for Plaintiffs; and (8) the other related matters pertinent to the Preliminary Approval of the Settlement should also be approved.

Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. As used in this Preliminary Approval Order, unless otherwise noted, capitalized terms shall have the definitions and meanings accorded to them in the Settlement Agreement.
2. The Court has jurisdiction over the subject matter and Parties to this proceeding pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2).
3. Venue is proper in this Court.

Provisional Class Certification and Appointment of Class Representatives and Class Counsel

4. It is well established that “[a] class may be certified solely for purposes of settlement [if] a settlement is reached before a litigated determination of the class certification issue.” *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 671 (S.D. Fla. 2006) (internal quotation marks omitted). In deciding whether to provisionally certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class – *i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied – except that the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *Id.* at 672; *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

5. The Court finds, for settlement purposes, that the Florida Rule of Civil Procedure 1.220 factors are present, and that certification of the proposed Settlement Class is appropriate under Rule 1.220. The Court therefore provisionally certifies the following Settlement Class: “All MDLIVE users who accessed MDLIVE’s portal, patient.mdlive.com, and engaged in any activity on the portal after signing in from May 30, 2023, through August 11, 2025.” The Settlement Class excludes the following: (a) any Judge or Magistrate presiding over this Action, any members of their families, or any staff, employees or law clerks that directly work for the Judge or Magistrate presiding over this Action; (b) the Defendants, their subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (c) persons who properly execute and file a timely request for exclusion from the class; and (d) the legal representatives, successors or assigns of any such excluded persons.

6. Specifically, the Court finds, for settlement purposes and conditioned on final certification of the proposed class and on the entry of the Final Approval Order, that the Settlement Class satisfies the following factors of Florida Rule of Civil Procedure 1.220:

a. Numerosity: In the Action, approximately hundreds of thousands of individuals are members of the proposed Settlement Class. The proposed Settlement Class is thus so numerous that joinder of all members is impracticable.

b. Commonality: “[C]ommonality requires the plaintiff to demonstrate that the class members ‘have suffered the same injury,’” and the plaintiff’s common contention “must be of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (citation omitted). Here, the commonality requirement is satisfied at the settlement stage. Questions of law and fact centering on Defendants’ alleged class-wide practices are common to the Plaintiffs and the Settlement Class, are alleged to have affected all members of the Settlement Class in the same way and could be capable of generating common answers central to the viability of the claims were this case to proceed to trial.

c. Typicality: The Plaintiffs’ claims are typical of the Settlement Class because they concern the same alleged practices by Defendants, arise from the same legal theories, allege the same types of claimed harm, and seek the same type of relief. Florida Rule of Civil Procedure 1.220 is therefore satisfied at the settlement stage. *See Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984) (typicality satisfied where claims “arise from the same event or pattern or practice and are based on the same legal theory”); *Murray v. Auslander*, 244

F.3d 807, 811 (11th Cir. 2001) (named plaintiffs are typical of the class where they “possess the same interest and suffer the same injury as the class members”).

d. Adequacy: Adequacy under Rule 1.220 relates to: (1) whether the proposed class representative has interests antagonistic to the class; and (2) whether the proposed class counsel has the competence to undertake the litigation at issue. *See Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 314 (S.D. Fla. 2001). Here, adequacy is satisfied because there are no conflicts of interest between the Plaintiffs and the Settlement Class, and Plaintiffs have retained competent counsel to represent them and the Settlement Class. Class Counsel regularly engages in consumer class litigation, complex litigation, and other litigation like this Action, and have dedicated substantial resources to the prosecution of the Action. Moreover, Plaintiffs and Class Counsel have vigorously and competently represented the Settlement Class in the Action. *See Lyons v. Georgia-Pacific Corp. Salaried Employees Rel. Plan*, 221 F.3d 1235, 1253 (11th Cir. 2000).

e. Predominance and Superiority: Rule 1.220 is satisfied at the settlement stage because the common alleged legal and alleged factual issues here predominate over individualized issues, and resolution of the common issues for the members of the Settlement Class in a single, coordinated proceeding is superior to numerous individual lawsuits addressing the same legal and factual issues. With respect to predominance, “[c]ommon issues of fact and law . . . ha[ve] a direct impact on every class member’s effort to establish liability that is more substantial than the impact of individualized issues in resolving the claim or claims of each class member.” *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1170 (11th Cir. 2010) (internal quotation marks omitted). Here, common alleged questions present a significant aspect of the case and may be resolved for all members of the

Settlement Class in a single adjudication at the settlement stage. Moreover, each member of the Settlement Class has claims that arise from the same or similar alleged practices as well as the same alleged legal theories.

7. The Court appoints Plaintiffs Kelly Kingsbury and Erin Yates as Class Representatives.

8. The Court appoints Alec M. Leslie and Stephen Beck of Bursor & Fisher, P.A. as Class Counsel.

9. The Court recognizes that Defendants' agreement to certification of the Settlement Class is solely for purposes of effectuating the Settlement and that Defendants deny any wrongdoing and deny that any claims asserted against them have merit. The Court also recognizes that Defendants reserve all defenses, arguments, and objections with respect to class certification and the merits if the proposed Settlement does not become Final for any reason.

Preliminary Approval of the Settlement

10. At the preliminary approval stage, the Court's task is to evaluate whether the Settlement is within the "range of reasonableness." 4 NEWBERG ON CLASS ACTIONS § 11.26. "Preliminary approval is appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason." *Smith v. Wm. Wrigley Jr. Co.*, 2010 WL 2401149, at *2 (S.D. Fla. Jun. 15, 2010). Settlement negotiations that involve arm's length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See* Manual for Complex Litigation, Third, § 30.42 (West 1995) ("A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.") (internal quotation marks omitted).

11. The Court preliminarily approves the Settlement, together with all exhibits attached to the Settlement Agreement, as fair, reasonable, and adequate. The Court finds that the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel. The Court further finds that the Settlement, including the exhibits attached to the Settlement Agreement, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement Agreement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant Final Approval to the Settlement and enter a Final Approval Order.

Approval of Class Notice and the Claims Process

12. The Court approves the form and content of the Class notices, substantially in the forms attached to the Settlement Agreement, as well as the Claim Form attached thereto. The Court further finds that the Class Notice program described in the Settlement Agreement is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Class of the pendency of the Action, certification of a Settlement Class, the terms of the Settlement, Class Counsel's Fee Application and the request for Service Awards for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement. The Class notices and Class Notice program constitute sufficient notice to all persons entitled to notice. The Class notices and Class Notice program satisfy all applicable requirements of law, including, but not limited to, Florida Rule of Civil Procedure 1.220 and the Constitutional requirement of Due Process.

13. Kroll shall serve as the Administrator of the Settlement ("Administrator").

14. The Administrator shall implement the Class Notice program, as set forth below and in the Settlement Agreement, using the Class notices substantially in the forms attached to the Settlement Agreement and approved by this Preliminary Approval Order. Notice shall be provided to the members of the Settlement Class pursuant to the Class Notice program, as specified in the Settlement Agreement and approved by this Preliminary Approval Order. The Class Notice program shall include e-mail Notice and, where a valid email address is not available, mail Notice, as well as the Long-Form Notice on the Settlement Website, as set forth in the Settlement Agreement and below.

Notice

15. The Administrator shall administer Notice as set forth in the Settlement Agreement. The Notice shall be completed no later than 45 days after this Preliminary Approval Order (the “Notice Date”).

Settlement Website

16. The Administrator shall establish a Settlement Website as a means for Settlement Class members to obtain notice of, and information about, the Settlement. The Settlement Website shall be established as soon as practicable following Preliminary Approval, but no later than before commencement of the Class Notice program. The Settlement Website shall include the Settlement Agreement, the Long-Form Notice, the Preliminary Approval Order, and other such documents as Class Counsel and counsel for Defendants agree to include.

17. The Administrator is directed to perform all substantive responsibilities with respect to effectuating the Class Notice program, as set forth in the Settlement Agreement.

Final Approval Hearing, Opt-Outs, and Objections

18. A Final Approval Hearing shall be held before this Court at 9:30 a.m. on January 6, 2027, to determine whether to grant Final Approval to the Settlement and to enter a Final Approval Order, and whether Class Counsel's Fee Application and request for Service Awards for the Class Representatives should be granted. The hearing will be held via ZOOM with meeting ID: 923-3319-0791.

19. Any person within the Settlement Class who wishes to be excluded from the Settlement Class may exercise their right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Settlement Agreement and in the Notices at any time during the Opt-Out Period. To be valid and timely, opt-out requests must be received by all those listed in the Long-Form Notice on or before the last day of the Opt-out Period, which is 45 days after the Notice Date provided that the Objection/Exclusion Deadline shall be no sooner than fourteen (14) days after papers supporting the Fee Award and Final Approval are filed with the Court and posted to the Settlement Website ("Objection/Exclusion Deadline"), and mailed to the addresses indicated in the Long Form Notice.

20. Any Settlement Class Member may object to the Settlement, Class Counsel's Fee Application, or the request for Service Awards for Plaintiffs. Any such objections must be mailed to the Clerk of the Court, Class Counsel, and Defendants' Counsel, at the addresses indicated in the Long-Form Notice. For an objection to be considered by the Court, the objection must be postmarked no later than the Objection/Exclusion Deadline, as set forth in the Notice. To be valid, an objection must include the following information:

- a. the objector's name and address;

- b. an explanation of the basis upon which the objector claims to be a Settlement Class Member, including information sufficient to confirm that the objector was a Settlement Class Member during the Class Period;
- c. all grounds for the objection, including all citations to legal authority and evidence supporting the objection;
- d. 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 or who may profit from the pursuit of the objection (the “Objecting Attorneys”);
- e. a list identifying all class action settlements to which the objector or any of the Objecting Attorneys has filed an objection within the preceding five (5) years, including the case name, court, and case number for each such objection;
- f. a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules); and
- g. if the objector or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, without any modification to the settlement, a statement identifying each such case by full case caption and amount of payment received.

Further Papers in Support of Settlement and Attorney’s Fee Application

21. Plaintiffs and Class Counsel shall file their Motion for Final Approval of the Settlement, Fee Application and request for Service Awards for Plaintiffs, no later than 30 days

after the Notice Date.

Effect of Failure to Approve Settlement

22. If the Settlement is not finally approved by the Court, or for any reason the Parties fail to obtain a Final Approval Order as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the Parties shall be restored to their respective positions in the Actions as of the date of the signing of the Settlement Agreement, and the following shall apply:

- a. All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purpose whatsoever, and shall not be admissible or discoverable in any other proceeding;
- b. Nothing in this Preliminary Approval Order or in the Settlement Agreement is, or may be construed as, any admission or concession by or against Defendants or Plaintiffs on any point of fact or law; and
- c. Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders and public statements, may be used as evidence. In addition, neither the fact of, nor any documents relating to, either Party's withdrawal from the Settlement, any failure of the Court to approve the Settlement and/or any objections or interventions may be used as evidence.

Stay/Bar of Other Proceedings

23. All proceedings in the Action are stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of

whether the Settlement should be approved, Plaintiffs, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Parties any action or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

24. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing and the actions which must take place before and after it:

EVENT	PROPOSED DEADLINE
Deadline to Provide Settlement Administrator with Class List	30 Days After Preliminary Approval Order
Notice Date	45 Days After Preliminary Approval Order
Motion for Attorney's Fees, and Service Awards	30 Days After Notice Date
Objection/Exclusion Deadline	45 Days After Notice Date
Claims Deadline	60 Days After Notice Date
Motion for Final Approval	75 Days After Notice Date
Final Approval Hearing	85 Days After Notice Date

DONE and **ORDERED** in Chambers at Hillsborough County, Florida, this 28 of August, 2026.

Electronically Conformed 8/28/2026
Christine Marlewski

Hon. Christine Marlewski

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished using the Florida Court's E-Filing E-Portal, via U.S. Mail, and/or Electronic Mail in accordance with the corresponding addresses listed therein. Counsel for the Plaintiffs shall provide copies to all parties not listed for service below:

Counsel for Plaintiffs:

Alec Leslie - aleslie@bursor.com

Stephen Beck - sbeck@bursor.com

Counsel for Defendants:

Tiffany Cheung - tcheung@mofo.com

Adam J. Hunt - adamhunt@mofo.com

Linda Clark – lindaclark@mofo.com