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THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

In re: Valley Anesthesiology Consultants, Inc.
Data Breach Litigation

Case No. CV2016-013446

This Order Relates to:

Becher, et al. v. Valley Anesthesiology
Consultants, Inc. (CV2016-013446)

ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE

Manz, et al. v. Valley Anesthesiology
Consultants, Inc. (CV2016-052906)

(Assigned to Honorable Daniel Martin)

1 WHEREAS, a class action is pending before this Court (the “Action”).

2 WHEREAS, the Court has reviewed the Unopposed Motion for and Memorandum of
3 Points and Authorities in Support of Preliminary Approval of Class Action Settlement and
4 Certification of Settlement Class (the “Motion for Preliminary Approval”) filed by Cade
5 Becher, Melanie R. Chaignot, Janice E. Manz, and Megan F. Thomas (“Settlement Class
6 Representatives”).

7 WHEREAS, the Motion for Preliminary Approval (together with the exhibits attached
8 thereto) sets forth the terms and conditions for a settlement and dismissal of the Action against
9 Defendant Valley Anesthesiology Consultants, Inc. (the “Settlement”);

10 WHEREAS, the Settlement Class Representatives have made an application under
11 Arizona Rule of Civil Procedure 23(e) for an order preliminarily approving the Settlement, and
12 the Court has read and considered the Motion for Preliminary Approval and submissions made
13 relating to the Settlement; and

14 WHEREAS, all capitalized terms used, but not defined herein, shall have the same
15 meaning as set forth in the Stipulation and Settlement Agreement attached to the Motion for
16 Preliminary Approval as Exhibit 1 (the “Settlement Agreement”);

17 NOW, THEREFORE, IT IS HEREBY ORDERED, that:

18 **A. Preliminary Approval of Class Certification**

19 1. The Court finds that the following Class and Subclass are certified for settlement
20 purposes under Arizona Rule of Civil Procedure 23:

21 **Injunctive Relief Class**

22 All persons whose personally identifiable information, health information, bank
23 account information, financial information, or health provider information was
24 stored on Valley’s electronic data systems before August 12, 2016.
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1 **Monitoring Subclass**

2 All Injunctive Relief Class members whose social security, Medicare, or Medicaid
3 number were potentially exposed during the Breach.¹

4 2. The Court finds that certification of the Injunctive Relief Class and Monitoring
5 Subclass is appropriate under Arizona Rule of Civil Procedure 23 because: (a) the Class is so
6 numerous that joinder of all members is impractical; (b) there are questions of law and fact
7 common to the Class; (c) those common questions of law and fact predominate over questions
8 affecting only individual members of the Class; (d) Settlement Class Representatives' claims
9 are typical of the claims of the members of the Class; (e) Settlement Class Representatives and
10 their Counsel will adequately represent the claims of the members of the Class; (f) a class
11 action is superior to all other available methods for fairly and efficiently adjudicating the
12 Action; and (g) the Action is manageable as a class action.

13 **B. Preliminary Approval of Settlement**

14 3. The Court finds that: (a) the Settlement resulted from good faith, arm's-length
15 negotiations; and (b) the Settlement is sufficiently fair, reasonable, and adequate to the Class
16 members to warrant providing notice of the Settlement to the Class members and holding a
17 Settlement Hearing. Accordingly, the terms of the Settlement are hereby approved on a
18 preliminary basis.

19 **C. Date and Time of Final Fairness Hearing**

20 4. The Final Fairness Hearing shall be held before the Honorable Daniel Martin on
21 Friday, February 15, 2019, at 9:00 a.m., at the Maricopa County Superior Court for the State
22 of Arizona, 101 West Jefferson, Phoenix, Arizona 85003, Courtroom 412, to determine
23 whether the proposed Settlement of the Action on the terms and conditions provided for in the
24 Settlement Agreement is fair, reasonable and adequate to the Class and should be approved by
25 the Court; whether a Final Judgment and Order of Dismissal with Prejudice ("Final
26 Judgment") should be entered; to consider and approve the amount of fees and expenses that

27 ¹ The Monitoring Subclass includes at least 209,000 individuals who were previously offered
28 one year of identity or theft protection services by Valley following the Data Breach.

1 should be awarded to Class Counsel and Settlement Class Representatives; and to rule upon
2 such other matters as the Court may deem appropriate. The Court may adjourn the Final
3 Fairness Hearing without further notice to Class members.

4 **D. Approval of Co-Lead Class Counsel and Settlement Class Representatives**

5 5. The Court appoints Hagens Berman Sobol Shapiro LLP and Bonnett, Fairbourn,
6 Friedman & Balint, P.C., as Co-Lead Class Counsel for the Injunctive Relief Class and
7 Monitoring Subclass.

8 6. The Court appoints Cade Becher, Melanie R. Chaignot, Janice E. Manz, and
9 Megan F. Thomas as Settlement Class Representatives, on behalf of themselves and the
10 Injunctive Relief Class and Monitoring Subclass.

11 **E. Approval of Settlement Provider**

12 7. The Court appoints Epiq Systems (“Epiq”) as the Settlement Administrator to
13 supervise and administer the notice procedure and the distribution of credit monitoring codes
14 to Monitoring Subclass members, as described below.

15 8. All reasonable expenses incurred in identifying and notifying Settlement Class
16 members, as well as in administering the Settlement, shall be paid as set forth in the Motion
17 for Preliminary Approval.

18 **F. Approval of Form and Manner of Class Notice**

19 9. The Court finds that the form and methods of notifying Class members of the
20 Settlement and its terms and conditions set forth in the Motion for Preliminary Approval meet
21 the requirements of Rule 23 of the Arizona Rules of Civil Procedure. The form and methods
22 proposed constitute the best notice practicable under the circumstances and constitute due and
23 sufficient notice to all persons entitled thereto. Accordingly, the Court approves, as to form
24 and content, the Postcard Notice and the Long Form Notice attached as Exhibits 1-A and 1-B,
25 respectively, to the Motion for Preliminary Approval.

26 **G. Administration of Notice**

27 10. The Court Orders Epiq, under the supervision of Valley’s Counsel and Co-Lead
28 Class Counsel, to administer the procedures to provide Notice to Class members as follows:

1 (a) No later than thirty (30) days after the date of this Order, Epiq shall cause the
2 Motion for Preliminary Approval, this Preliminary Approval Order, and a copy of the Long
3 Form Notice to be posted on the settlement website; and

4 (b) No later than thirty (30) days after the date of this Order, Epiq shall cause a copy
5 of the Postcard Notice, substantially in the form attached as Exhibit 1-A to the Motion for
6 Preliminary Approval, to be mailed by first class mail to all Monitoring Subclass members
7 who can be identified with reasonable effort under the procedures set forth in the Motion for
8 Preliminary Approval.

9 **H. Motion for Attorneys' Fees and Costs and Incentive Awards**

10 11. Any application for attorneys' fees and costs and incentive awards shall be filed
11 and served no later than 45 days after the date of this Order.

12 **I. Motion for Final Approval of Settlement**

13 12. The Settlement Class Representatives' motion for final approval of the
14 Settlement, and all supporting briefing and exhibits in support of the Settlement shall be filed
15 and served no later than 110 days after the date of this Order.

16 **J. Binding Effect of Settlement**

17 13. All Settlement Class members shall be bound by all determinations and
18 judgments in this Action concerning the Settlement, unless such persons request exclusion
19 from the Class in a timely and proper manner as set forth in the notices.

20 **K. Objections to Settlement**

21 14. Any Class member may appear and object that: (a) the proposed Settlement
22 should not be approved as fair, reasonable, and adequate; or (b) attorneys' fees and
23 reimbursement of expenses should not be awarded to Class Counsel. However, any such
24 objection will only be valid if it is filed with the Clerk of the Maricopa County Superior Court
25 for the State of Arizona no later than ninety (90) days after this Order, and copies of any such
26 objections are mailed to the Court, Co-Lead Class Counsel, and Valley's Counsel identified in
27 the Notice on or before such date. To be valid, an objection must state: (i) the objector's full
28 name, address, telephone number, and e-mail address (if any); (ii) information identifying the
objector as a Settlement Class member; (iii) a written statement of all grounds for the

1 objection, accompanied by any legal support the objector cares to submit; (iv) the identity of
2 all lawyers (if any) representing the objector; (v) the identity of all the objector's lawyers (if
3 any) who will appear at the Final Fairness Hearing; (vi) a list of all persons who will be called
4 to testify at the Final Fairness Hearing in support of the objection; (vii) a statement confirming
5 whether the objector intends to personally appear and/or testify at the Final Fairness Hearing;
6 and (viii) the objector's signature or the signature of the objector's duly authorized lawyer or
7 other duly authorized representative (along with documentation setting forth such
8 representation). Any Class member who does not make an objection in this manner shall be
9 deemed to have waived such objection and shall forever be foreclosed from making any such
10 objection, unless otherwise ordered by the Court. In addition to the foregoing, objections
11 should also provide the following information: (i) a list, by case name, court, and docket
12 number, of all other cases in which the objector (directly or through a lawyer) has filed an
13 objection to any proposed class action settlement within the last 3 years; (ii) a list, by case
14 name, court, and docket number, of all other cases in which the objector's lawyer (on behalf of
15 any person or entity) has filed an objection to any proposed class action settlement within the
16 last 3 years; and (iii) a list, by case name, court, and docket number, of all other cases in which
17 the objector has been a named plaintiff in any class action or served as a lead plaintiff or class
18 representative. Any response papers shall be filed and served no later than one hundred and ten
19 (110) days after this Order.

20 **L. Exclusion from the Class**

21 15. Any Person falling within the definition of the Class may, upon request, be
22 excluded from the Settlement. Any request for exclusion must be in the form of a written,
23 signed statement (the "Request for Exclusion") and received by the Settlement Administrator
24 at the address designated in the Notice no later than ninety (90) days after this Order (the
25 "Exclusion Deadline"). In order to be valid, each such Request for Exclusion must include: (a)
26 the name, address, email address, and telephone number of the Person seeking exclusion; and
27 (b) that the sender requests exclusion from the Settlement in *In re: Valley Anesthesiology*
28

1 *Consultants, Inc., Data Breach Litigation*, CV2016-013446, in the Superior Court of
2 Maricopa, State of Arizona.

3 16. A Request for Exclusion shall not be valid or effective unless it provides the
4 required information and is made within the time stated above, or the exclusion is otherwise
5 accepted by the Court. The Settlement Administrator shall provide all Requests for Exclusion
6 and supporting documentation submitted therewith (including untimely requests received
7 before the final fairness hearing date) to Co-Lead Class Counsel and Valley's Counsel as they
8 are received. No later than ten (10) calendar days after the final date for mailing requests for
9 exclusion, the Settlement Administrator shall provide Co-Lead Counsel and Valley's Counsel
10 a complete and final list of all known Monitoring Subclass members who have excluded
11 themselves from the Settlement. Co-Lead Counsel shall provide this information to the Court
12 before the final approval hearing. The Class will not include any Person who delivers a valid
13 and timely Request for Exclusion.

14 17. Any Class member who submits a Request for Exclusion shall not be deemed to
15 have submitted to the jurisdiction of any Court in the United States for any matter, on account
16 of such submission, and any Class member who submits a Claim thereby submits to the
17 jurisdiction of this Court with respect only to the subject matter of such Claim and all
18 determinations made by this Court thereon and shall not be deemed to have submitted to the
19 jurisdiction of this Court or of any court in the United States for any other matter on account of
20 such submission.

21 18. All Persons who submit a valid, timely and unrevoked Request for Exclusion
22 will be forever barred from receiving any relief under the Settlement.

23 **M. Termination of Settlement**

24 19. Defendant may elect to terminate the Settlement only as provided in the
25 Settlement Agreement. In such event, or in the event the Settlement does not become effective
26 in accordance with the terms of the Settlement Agreement, then the Settlement and this Order
27 (including any amendment(s) thereof, and except as expressly provided in the Settlement or by
28 order of the Court) shall be rendered null and void, of no further force or effect, and without

1 prejudice to party, and may not be introduced as evidence or used in any action or proceeding
2 by any person against the parties, and each shall be restored to his, her or its respective
3 litigation positions as they existed prior to the execution of the Settlement Agreement.

4 **N. Stay of Litigation**

5 20. Pending final determination of whether the Settlement should be approved or
6 further order of the Court, the Court hereby stays all litigation of claims and related discovery
7 in the Action, except as provided in the Settlement Agreement and as necessary to carry out
8 the terms and conditions of the Settlement Agreement. Notwithstanding the foregoing, the
9 Court expressly permits the parties to conduct discovery related to any class member who files
10 an objection to the Settlement.

11 Dated: _____

Honorable Daniel Martin
Maricopa County Superior Court Judge

eSignature Page 1 of 1

Filing ID: 9832694 Case Number: CV2016-013446
Original Filing ID: 9800951

Granted with Modifications



/S/ Daniel Martin Date: 10/25/2018
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2016-013446

SIGNATURE DATE: 10/25/2018

E-FILING ID #: 9832694

FILED DATE: 10/29/2018 8:00:00 AM

ELAINE RYAN

KEITH BEAUCHAMP

ROBERT B CAREY