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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO**

14 R. O., a minor by and through CARA O., parent
15 and guardian ad litem, individually and on behalf
of all others similarly situated,

16 Plaintiff,

17 vs.

18 RADY CHILDREN'S HOSPITAL-SAN
DIEGO, a California Corporation; and DOES 1
19 through 100, inclusive;

20 Defendants.

21 JOSE OROZCO, a minor, by and through
Guardian ad Litem, JOANNA VEGA,
22 individually and on behalf of all others similarly
situated,

23 Plaintiff,

24 vs.

25 RADY CHILDREN'S HOSPITAL-SAN
DIEGO, a California Corporation; and DOES 1
26 through 100, inclusive;

27 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/29/2021 at 08:07:00 PM

Clerk of the Superior Court
By Richard Day, Deputy Clerk

Lead Case No.: 37-2020-00011841-CU-BT-CTL
(Consolidated with Case No.:
37-2020-00023102-CU-NP-CTL)

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF
PATRICK N. KEEGAN IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
PROPOSED CLASS ACTION
SETTLEMENT; CONDITIONAL
CERTIFICATION OF SETTLEMENT
CLASS; APPROVAL OF CLASS NOTICE;
AND APPOINTMENT OF CLASS
COUNSEL**

Date: December 10, 2021

Time: 1:30 p.m.

Place: Department C-69

Judge: Hon. Katherine Bacal

1 I, Patrick N. Keegan, hereby declare as follows:

2 1. I am an attorney admitted to practice in the State of California. I am a Partner of the
3 law firm of Keegan & Baker, LLP, co-counsel of record for Plaintiff Jose Orozco, a minor, by and
4 through Guardian ad Litem, Joanna Vega, and Class Counsel for the proposed Class in the above-
5 captioned Consolidated Action. I am over the age of 18 and fully competent to make this
6 declaration. This declaration is based upon my personal knowledge, except where expressly noted
7 otherwise, and if called as a witness, I would competently testify thereto.

8 2. I submit this supplemental declaration pursuant to the Court’s Tentative Ruling
9 (ROA #120) published on November 10, 2021, and in support of the supplemental brief submitted
10 by Plaintiffs R.O., a minor by and through Cara O., parent and Guardian ad Litem, and Jose Orozco,
11 a minor, by and through Joanna Vega, parent and Guardian ad Litem (collectively “Plaintiffs”) in
12 further support of the unopposed motion for preliminary approval of the proposed Class Action
13 Settlement¹ between Plaintiffs and Rady Children’s Hospital – San Diego (“Rady” or “Defendant”),
14 to provisionally certify a settlement class pursuant to Code of Civil Procedure (“CCP”) § 382, and
15 for approval of the form and manner of notice for the proposed settlement to be provided to
16 members of the Class.

17 **Response to the Court’s November 10, 2021 Tentative Ruling**

18 3. In response to the Court’s November 10, 2021 Tentative Ruling, Plaintiffs and
19 Defendant (collectively “Parties”) have met and conferred over and have agreed to changes to the
20 release language, the proposed Class Notice and Claim Form. Specifically, on Friday, November
21 12, 2021, I proposed a change to the release claims definition in the Class Action Settlement
22 Agreement via email to Jon Kardassakis and Whitney Betts, counsel of record for Defendant, in
23 light of *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521 [284 Cal.Rptr.3d
24 566, 577–579], and requested a response by November 17, 2021. On Monday, November 15, 2021,
25 Mr. Kardassakis respond to my email with an alternative proposed change to the release defined in
26 Section XII(a) of the Class Action Settlement Agreement via email. In response, also on Monday,
27 November 15, 2021, I responded to Mr. Kardassakis’s email with an alternative proposed change to
28 the the release defined in Section XII(a) of the Class Action Settlement Agreement via email. On
Thursday, November 18, 2021, Mr. Kardassakis respond to my email with an alternative proposed
change to the the release defined in Section XII(a) of the Class Action Settlement Agreement via

¹ The proposed Settlement’s terms are reflected in the Class Action Settlement Agreement attached as **Exhibit 1** to the Declaration of Alreen Haeggquist (ROA #111) submitted on October 15, 2021, concurrently with Plaintiffs’ motion for preliminary approval (ROA #110).

1 email, which was ultimately acceptable to the Parties. Thereafter, the Parties drafted and entered
2 into Amendment to the Class Action Settlement Agreement, a true and correct copy of which is
3 attached hereto as **Exhibit A**. The Amendment to the Class Action Settlement Agreement changes
4 the release defined in Section XII(a) of the Class Action Settlement Agreement to the following:

5 Plaintiffs and Class Members who fail to timely make a Request for
6 Exclusion from the Settlement release Defendant and Released
7 Parties from any and all claims or causes of action alleged in the
8 Action and/or that could have been alleged in the Action, under the
9 laws of any jurisdiction, including federal law, state law, and
10 common law, whether at law or equity, that reasonably arise out of
11 the same set of operative facts alleged in the Class Action Complaints
12 filed in the *R.O.* Action and/or the *Orozco* Action. For avoidance of
13 doubt, the scope of the Released Claims is limited to the operative
14 facts set forth in the *R.O.* Class Action Complaint, the *Orozco*
15 Class Action Complaint and/or the letter sent by Rady Children’s
16 Hospital – San Diego entitled “Notice of Data Security Incident,”
17 dated on or about February 21, 2020.

18 4. Additionally, on Monday, November 15, 2021, I proposed changes to the proposed
19 Class Notice and Claim Form to Jon Kardassakis and Whitney Betts, counsel of record for
20 Defendant. Lastly, on Monday, November 22, 2021, I proposed an additional change to the the first
21 sentence in the response to Question 1 *Why Did I Receive This Notice?* to the Class Notice to Mr.
22 Kardassakis. My proposed changes to proposed Class Notice and Claim Form were ultimately
23 acceptable to counsel of record for Defendant. Attached hereto as **Exhibit B** is a true and correct
24 copy of the the Proposed Notice of Class Action Settlement. Attached hereto as **Exhibit C** is a true
25 and correct copy of the the Proposed Claim Form For Rady Data Security Incident Benefits.

26 **Summary of Plaintiffs’ Allegations**

27 5. This Consolidated Action is brought on behalf of 2,360 patients of Defendant for
28 alleged violations of, *inter alia*, the Confidentiality of Medical Information Act (“CMIA”), Civil
Code §§ 56, et seq. relating to the alleged disclosure of confidential medical information. On
February 21, 2020, Rady mailed a letter to the named Plaintiffs and all other similarly situated
patients, entitled “Notice of Data Security Incident,” signed by Christina Galbo, MBA, CHC, Chief
Compliance and Privacy of Rady, stating, in part, “we need to let you know about a data security
incident involving patient health information,” and also stating, “[o]n January 3, 2020, we learned
of a data security incident that involved radiology-related patient information,” and that “We
learned that, between the dates of June 20, 2019 and January 3, 2020, some information for a
limited number of patients was accessed without authorization via an Internet port. On February 5,
2020, our investigation determined that your information may have been involved.”

1 be certified for settlement purposes: All patients of Defendant Rady who were admitted as
2 radiology patients or received radiology-related treatment or services at one of Defendant’s hospital,
3 satellite or urgent care locations on or before January 3, 2020 and were mailed a letter sent by Rady
4 entitled Notice of Data Breach, dated on or about February 21, 2020 (the “Class”) [Settlement
5 Agreement, §II.H]. The Class of 2,360 patients will be divided into two Sub-Classes:

- 6 • Sub-Class 1 consists of those 590 Class members whose information was on Rady’s server
7 HCIPAPV1.
- 8 • Sub-Class 2 consists of those 1,770 Class members who do not timely opt-out of
9 participation of this settlement whose information was on server Rady’s server HCIPAPV2
10 and not on server HCIPAPV1.

11 [Settlement Agreement, §IV.1]. The executed Settlement Agreement is attached to the Declaration
12 of Robert Prine submitted concurrently herewith. Specifically, if the Court grants final approval,
13 the Settlement will provide the following benefits to the Class:

- 14 • **Identity Theft Protection:** One (1) year of Experian IdentityWorks, including up to
15 \$1 Million Identity Theft Insurance for all 2,360 Class members who submit a valid
16 and timely claim form, which is valued by Class Counsel at \$239.88 for each Class
17 member and at \$566,116.80² for the entire Class [Settlement Agreement, §IV.4-5,
18 16, 18];
- 19 • **Cash Payment:** For those 590 Class members whose information was on Rady’s
20 server HCIPAPV1 (Sub-Class 1) who submit a valid and timely claim form, a
21 guaranteed cash payment of \$125.00; and for those 1,770 Class members whose
22 information was on Rady’s server HCIPAPV2 (Sub-Class 2) who submit a valid and
23 timely claim form, a guaranteed cash payment of \$35.00, which is collectively
24 valued at \$135,700.00³ for the entire Class [Settlement Agreement, §IV.4-5];
- 25 • **Out-of-Pocket Expenses:** For all 2,360 Class members who submit a valid and
26 timely claim form, up to a maximum of \$400.00 for actual documented Out-of-
27 Pocket Expenses⁴ incurred by that Class members after June 20, 2019 as a result of
28 the Data Security Incident [Settlement Agreement, §IV.4-15, 24]; and

21 ² This value was estimated by multiplying the number of Class Members (2,360) by the estimated retail value to
22 consumers of approximately \$19.99 per month for 12 months for the comparable Experian IdentityWorks SM Premium
23 product with nearly identical features which is available to the public directly through Experian. See
24 <https://www.experian.com/consumer-products/identity-theft-and-credit-rotection.html>.

25 ³ This value was reached by multiplying the number of Class Members in Sub-Class 1 (590) by the guaranteed
26 monetary relief if a claim is made (\$125) and then adding the same calculation for the total number of Class Members in
27 Sub-Class 2 (1,770) and their guaranteed monetary relief if a claim is made (\$35).

28 ⁴ “Out-of-Pocket Expenses” as defined herein and in the Settlement Agreement means out-of-pocket expenses that were
reasonably incurred as a result of the Data Security Incident for: (i) long distance telephone charges; (ii) cell minutes (if
charged by minute), Internet usage charges (if charged by the minute or by the amount of data usage and incurred solely
as a result of the Data Security Incident), and text messages (if charged by the message and incurred solely as a result of
the Data Security Incident); (iii) unreimbursed charges from banks or credit card companies; (iv) postage; (v)
unreimbursed costs for credit reports; and (vi) unreimbursed costs for of credit monitoring and identity theft protection
first purchased by Settlement Class Members between February 21, 2020 and the Claims Deadline (with affirmative
statement by Settlement Class Member that it was purchased primarily because of the Data Security Incident and not for
other purposes, and with proof of purchase). “Data Security Incident” as defined herein and in the Settlement

- **Remedial Measures:** Additional data security measures to be taken by Rady, including Enhance Firewall Change Management and Logging Policy and Procedures, Change Management Process, Firewall Audit Discrete Findings, Certificate and Vulnerability Management, Penetration Testing, and Web Application Firewall, valued by Rady at approximately \$307,400.00, implemented by Rady as a result of this action [Settlement Agreement, §IV.19].⁵

9. In summary, the Settlement Benefits of Experian IdentityWorks Identity Theft Protection valued at \$566,116.80, plus Cash Payments valued at \$135,700.00, plus Remedial Measures valued at \$307,400, equals **\$1,009,216.80**.

10. The Settlement also provides for Defendant to pay (i) incentive or service awards of \$2,500.00 for each of the appointed Class Representatives [Settlement Agreement, §IV.20], subject to approval by this Court, (ii) an award of attorneys' fees and costs of \$175,000.00 to Class Counsel [Settlement Agreement, §IV.21], subject to approval by this Court, and (iii) all notice and settlement administration costs [Settlement Agreement, §IV.22]. My firm undertook this representation *solely* on a contingency basis and to date, Class Counsel has not received any payment for their services in conducting this litigation on behalf of Plaintiffs and members of the Class, nor have Class Counsel been reimbursed for their out-of-pocket expenses.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and this declaration is executed this 29th day of November, 2021, in Carlsbad, California.

/s/ Patrick N. Keegan
Patrick N. Keegan

Agreement means the data security incident that involved possible unauthorized access to radiology-related patient information as referred to in the Data Security Incident notification letters sent to affected patients, or their parents or guardians, on or about February 21, 2020.

⁵ More specifically, the remedial measures by Rady, include: \$126,400 in expenses for developing and implementing a more expansive and balanced penetration test program; \$50,000 in estimated expenses for vulnerability management; \$50,000 in estimated expenses for changing management processes; \$31,000 in estimated expenses for implementing Cloud Based web application Firewall to protect Rady web applications; \$25,000 in estimated expenses for remediating twenty-two specific vulnerabilities and nineteen discrete Firewall changes; \$20,000 in estimated expenses for enhancing Firewall change management and logging policy and procedures; and \$5,000 in estimated expenses for certificate management. See Settlement Agreement §IV.G; and Supplemental Declaration of Sahan Fernando, Chief Information Security Officer for Rady Children's Hospital-San Diego.