

IN THE PENNSYLVANIA COURT OF COMMON PLEAS
FRANKLIN COUNTY

2023 APR 11 PM 2: 32

TIMOTHY S. SPONSELLER
PROTHONOTARY

DEPUTY JM

KYLIE BRENEMAN, BRANDY ARROYO-)
RYAN, M. CRISTINA GONZALEZ RUIZ,)
PATRICIA SAVAGE, AND JACOB)
WHITEHEAD ON BEHALF OF A MINOR)
CHILD M.W.,)

Case No. 2023-618

Plaintiffs,

) CLASS ACTION

v.

) JURY TRIAL DEMANDED

KEYSTONE RURAL HEALTH CENTER)
D/B/A KEYSTONE HEALTH,)

Defendant.)

~~PROPOSED~~ ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT

The Court having held a Preliminary Approval Hearing on April 11th
SHAWN D. MEYERS
2:00 p.m., 2023, at 2:00 p.m., in the Courtroom of The Honorable [], Pennsylvania Court
of Common Pleas, Franklin County, 2 N. Main Street, Chambersburg, PA 17201, and having
considered all matters submitted to it at the Preliminary Approval Hearing and otherwise, and
finding no just reason for delay in entry of this Order Granting Preliminary Approval of Class
Action Settlement (this "Order") and good cause appearing therefore, and having considered the
papers filed and proceedings held in connection with the Settlement, having considered all of the
other files, records, and proceedings in the Action, and being otherwise fully advised,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

1. The Settlement Agreement, attached to Plaintiffs' Uncontested Motion for
Preliminary Approval ("Motion for Preliminary Approval") as Exhibit 1 is incorporated fully

herein by reference. The definitions used in the Settlement Agreement are adopted in this Order and shall have the same meaning ascribed in the Settlement Agreement.

2. The Court has jurisdiction over the claims at issue in this lawsuit, Plaintiffs Kylie Breneman, Brandy Arroyo-Ryan, M. Cristina Gonzalez Ruiz, Patricia Savage, and Jacob Whitehead on behalf of a minor child M.W. (“Plaintiffs”), individually and on behalf of all others similarly situated, and Defendant Keystone Rural Health d/b/a Keystone Health (“Keystone” or “Defendant”) (together with Plaintiffs, the “Parties”).

3. This Order is based on Pennsylvania Rules of Civil Procedure 1702.

4. The Court finds that the Parties’ Settlement as set forth in Exhibit 1 to Plaintiffs’ Motion for Preliminary Approval is fair, reasonable, and adequate, and falls within the range of possible approval, and was entered into after extensive, arm’s-length negotiations, such that it is hereby preliminarily approved and notice of the Settlement should be provided to the Settlement Class Members.

PROCEDURAL HISTORY

5. This case arises out of a data security incident at Keystone between July 28, 2022 and August 19, 2022. Keystone is a Pennsylvania-based healthcare provider which has its principal place of business at 111 Chambers Hill Drive, Chambersburg, Pennsylvania. As a condition of receiving health services at Keystone, current and former patients like Plaintiffs are required to provide some of their most sensitive and confidential information, including names, addresses, dates of birth, Social Security numbers, clinical information, and other personal identifiable information.

6. Plaintiffs allege that the Data Breach resulted in the unauthorized access to files within Keystone's systems. As a result of Data Breach, Keystone notified approximately 235,237 individuals that their Personal Information was potentially impacted by the Data Breach.

7. On October 19, 2022, Plaintiff Kylie Breneman filed *Breneman, et al., v. Keystone Health*, No. 1:22-cv-01643 in the Middle District of Pennsylvania, the first-filed class action asserting various state law claims as a result of the Data Breach. Subsequently, additional actions were filed in both federal court and in this Court.

8. On November 14, 2022, Judge Christopher C. Conner issued an order consolidating the federal actions and appointing Mr. Johns and Mr. Ferich as interim co-lead counsel for the putative class pursuant to Fed. R. Civ. P. 23(g) ("Consolidated Federal Action"). On November 15, 2022, Plaintiffs in the federal case filed a Consolidated Amended Complaint, bringing causes of action for: (i) negligence; (ii) negligence per se; (iii) breach of fiduciary duty; and (iv) unjust enrichment; (v) breach of implied contract; (vi) declaratory and injunctive relief; (vii) violations of the Maryland Consumer Protection Act, Md. Code Ann., Com. Law, Sec. 13-301, *et. seq.*; (viii) violations of the Maryland Personal Information Protection Act, Md. Code Ann., Com. Law, Sec. 14-3501, *et seq.*; (ix) violations of the Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. Secs. 205-A, 213, *et seq.*; (x) violations of the Maine Uniform Deceptive Trade Practices Act, 10 Me. Rev. Stat. Sec. 1212, *et seq.*

9. Plaintiffs alleged they and Class Members have suffered or will suffer: (i) a risk of fraud and identity theft; (ii) lost or diminished value of Personal Information; (iii) out-of-pocket expenses associated with mitigation efforts; (iv) lost opportunity costs associated with mitigation efforts, including lost time; (v) invasion of privacy; and (vi) emotional distress, fear, anxiety, nuisance and annoyance.

10. Plaintiffs sought various relief, including monetary relief and equitable relief enjoining Defendant from engaging in the wrongful conduct complained of and compelling Defendant to utilize appropriate methods and policies with respect to data collection, storage, and safety.

11. On March 1, 2023, Class Counsel filed the above-captioned action in the Franklin County Court of Common Pleas on behalf of Plaintiffs, all of whom were Plaintiffs in the Consolidated Federal Action. To avoid potential jurisdictional objections and to conserve both Parties' and the Court's resources, the Parties decided to present this Settlement to this Court for approval, and have agreed to stay the Consolidated Federal Action, pending final approval in this Action.

SETTLEMENT BENEFITS

12. The Settlement negotiated on behalf of the Class provides for The Settlement provides for a \$900,000 non-reversionary Settlement Fund that will be used to pay for Administrative Expenses, taxes, any Service Awards, and any Fee Award and Costs. The remaining amount, i.e., the Net Settlement Fund, will be used to pay for Approved Claims submitted by Class Members for Settlement Benefits. Class Members may submit a claim for only one of the following Settlement Benefits:

- a. Credit Monitoring and Insurance Services: Class Members have the option of claiming 12 months of CMIS. The CMIS benefit will provide at a minimum three credit bureau monitoring services and \$1 million in identity theft insurance. *Id.* CMIS benefits will be available to Class Members irrespective of whether they took advantage of any previous offering of credit monitoring from Keystone. *Id.* Individuals who elected to utilize previous offerings of CMIS from Keystone, or

who obtained CMIS services from another provider as a result of the Data Breach, will be permitted to postpone activation of their CMIS settlement benefit for up to 12 months. *Id.*

- b. Documented Loss Payment: Class Members may submit a Documented Loss Payment claim seeking up to \$5,000 per person for the reimbursement of Documented Losses with Reasonable Documentation. Documented Losses must be supported sufficient to show that the claimed loss is more likely than not a result of the Data Breach. Any Class Member who previously paid out-of-pocket for credit monitoring as a result of the Data Breach will be eligible to be reimbursed under this category. The Settlement Administrator will review these claims for compliance with the requirements of the Settlement Agreement. Any claim for a Documented Loss Payment that is rejected, if not timely cured, will instead be considered for a Cash Fund Payment.
- c. Cash Fund Payment: ***In the alternative to all the foregoing settlement benefits,*** Settlement Class Members may instead elect to receive a Cash Fund Payment. Settlement Class Members who submit a Claim for a Cash Fund Payment will not be entitled to select the CMIS or Documented Loss Payment.
- d. In addition to monetary benefits, Keystone will implement data security measures and enhancements for a period of three years following settlement approval.

13. The Settlement Fund shall be used to make payments for the following: (i) Administrative Expenses, (ii) Fee Award and Costs, (iii) the costs of providing the CMIS; (iv) Approved Claims for Documented Loss Payments (up to \$5,000 per claim); and (v) Approved Claims for Cash Fund Payments. The remaining amount is the Net Settlement Fund. The

Settlement Administrator will first apply the Net Settlement Fund to pay for CMIS claimed by Class Members. If Net Settlement Funds remain after paying for the CMIS, the Settlement Administrator will next use it to pay valid claims for Documented Loss Payments. The amount of the Net Settlement Fund remaining after all Documented Loss Payments are applied and the payments for the CMIS are made shall be referred to as the "Post CM/DL Net Settlement Fund." The Settlement Administrator shall then utilize the Post CM/DL Net Settlement Fund to make all Cash Fund Payments pursuant to Section 3.2(c) herein. The amount of each Cash Fund Payment shall be calculated by dividing the Post CM/DL Net Settlement Fund by the number of valid claims submitted for Cash Fund Payments.

14. Importantly, the Settlement Fund is non-reversionary. To the extent any monies remain in the Net Settlement Fund more than 120 days after the distribution of Settlement Payments, a subsequent Settlement Payment will be evenly made to all Class Members with Approved Claims for Cash Fund Payments who cashed or deposited the initial payment they received, assuming such payment is over \$3.00. Should any remaining amount of the Net Settlement Fund be economically not distributable, the Parties shall petition the Court for permission to distribute the remaining funds to an approved non-profit recipient, providing the Court with details of the proposed non-profit recipient, with not less than 50% of any residual going to the Pennsylvania Interest on Lawyers Trust Account Board as required by Pa. R. Civ. P. 1716.

CLASS CERTIFICATION

15. For purposes of settlement only, the Court provisionally certifies the class, defined as follows:

All natural persons who are residents of the United States whose Personal Information was compromised in the Data Breach

disclosed by Keystone on or about October 14, 2022, including all who were sent notice of the Data Breach.

16. Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their immediate families and their staff; (2) Keystone, its subsidiaries, parent companies, successors, predecessors, and any entity in which Keystone or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

17. The Court provisionally finds, pursuant Pa. R. Civ. P. 1708, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the Class Representatives' claims are typical of the claims of the Settlement Class; (d) the Class Representatives will fairly and adequately protect the interests of the Settlement Class; and (e) the Court finds that the questions of law or fact common to the Settlement Class Members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

SETTLEMENT CLASS COUNSEL AND THE CLASS REPRESENTATIVES

18. Plaintiffs Kylie Breneman, Brandy Arroyo-Ryan, M. Cristina Gonzalez Ruiz, Patricia Savage, and Jacob Whitehead on behalf of a minor child M.W., as described more fully in the Consolidated Complaint filed in this action, are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Settlement Class Members and are typical of the Settlement Class, and, therefore, they will be adequate Class Representatives.

19. The Court finds that Andrew W. Ferich of Ahdoot & Wolfson, PC and Benjamin F. Johns of Shub Law Firm, LLC are experienced and adequate counsel and are provisionally designated as Settlement Class Counsel.

NOTICE TO SETTLEMENT CLASS

20. No later than thirty-five (35) days after entry of the Preliminary Approval Order (the "Notice Date"), or such other time as may be ordered by the Court, the Settlement Administrator shall disseminate the Summary Notice to the Settlement Class Members as follows:

- a. For any Settlement Class Member for whom a physical address is reasonably available, the Settlement Administrator will send the Summary Notice (in Postcard form) by U.S. mail, postage prepaid;
- b. For any Summary Notice that has been mailed via U.S. mail and returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail;
- c. Neither the Parties nor the Settlement Administrator shall have any other obligation to re-mail individual notices that have been mailed; and
- d. In the event the Settlement Administrator transmits a Summary Notice via U.S. Mail, then the Settlement Administrator shall perform any further investigations deemed appropriate by the Settlement Administrator, including using the National Change of Address ("NCOA") database maintained by the United States Postal Service, in an attempt to identify current mailing addresses for individuals or entities whose names are provided by Keystone.

21. Prior to any dissemination of the Summary Notice and prior to the Notice Date, the Settlement Administrator shall cause the Settlement Website to be launched on the Internet. The Settlement Administrator shall create the Settlement Website. The Settlement Website shall contain information regarding how to submit Claim Forms (including submitting Claims Forms electronically through the Settlement Website) and relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, this Agreement, the Preliminary Approval Order entered by the Court, and the operative Consolidated Class Action Complaint in the Action, as well as the date, time, and place of the Final Approval Hearing. The Settlement Website shall also include a toll-free telephone number and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall further allow for submission of Requests of Exclusion electronically through the Settlement Website.

22. The Summary Notice, Long Form Notice, and Claim Form, attached as Exhibits F, D, and A, respectively, to the Settlement Agreement, are constitutionally adequate and are hereby approved. The Notice contains all essential elements required to satisfy federal statutory requirements and due process. The Court further finds that the form, content, and method of providing the Settlement Class Notice, as described in the Settlement Agreement, including the exhibits thereto: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the Settlement, their rights under the Settlement, including, but not limited to, their rights to object to or exclude themselves from the Settlement; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members.

23. The Notice Plan set forth in the Settlement Agreement, and described below, provides the best notice practicable under the circumstances, and is hereby approved.

24. The Settlement Administrator is directed to carry out Notice and the Notice Plan, as set forth in the Settlement Agreement.

EXCLUSIONS AND OBJECTIONS

25. Class Members will have sixty (60) days from the Notice Date to object to or to submit a request for exclusion from the Settlement. Any Settlement Class Member may submit a Request for Exclusion from the Settlement at any time during the Opt-Out Period. To be valid, the Request for Exclusion must be postmarked or received by the Settlement Administrator on or before the end of the Opt-Out Period. In the event a Class Member submits a Request for Exclusion to the Settlement Administrator via US Mail, such Request for Exclusion must be in writing and must identify the case name "*Breneman et al. v. Keystone Health*"; state the name, address, telephone number and unique identifier of the Class Member seeking exclusion; identify any lawyer representing the Class Member seeking to opt out; be physically signed by the person(s) seeking exclusion; and must also contain a statement to the effect that "I hereby request to be excluded from the proposed Settlement Class in '*Breneman et al. v. Keystone Health*.'" Any person who elects to request exclusion from the Settlement Class shall not (i) be bound by any orders or Judgment entered in the Action, (ii) be entitled to relief under this Agreement, (iii) gain any rights by virtue of this Agreement, or (iv) be entitled to object to any aspect of this Agreement.

26. Requests for Exclusion may only be on an individual basis, and no person may request to be excluded from the Settlement Class through "mass" or "class" opt-outs. Any Class Member who timely requests exclusion shall not (i) be bound by any Final Approval Order or the Judgment; (ii) be entitled to the Settlement Benefits under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement.

27. Any Class Member who wishes to object shall submit a timely written notice of his or her objection by the Objection Deadline, which like the Opt-Out Period, is sixty (60) days following the Notice Date. All written objections and supporting papers must clearly (a) identify the case name and number; (b) state the Class Member's full name, current mailing address, and telephone number; (c) contain a statement by the Class Member that he or she believes himself to be a member of the Settlement Class; (d) include proof that the Class Member is a member of the Settlement Class (e.g., copy of the settlement notice, copy of the original notice of the Data Breach); (e) identify the specific factual and legal grounds for the objection; (f) identify whether the Objection is an objection to the Settlement in part or in whole; (g) state whether the objection applies only to the objector, a subset of the Settlement Class, or the entire Settlement Class; (h) identify all counsel representing the Class Member, if any; (i) include a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past five (5) years; (j) include all documents or writings that the Class Member desires the Court to consider; (k) contain a statement regarding whether the Class Member (or counsel of his or her choosing) intends to appear at the Final Approval Hearing; and (l) contain the signature of the Class Member or the Class Member's duly authorized attorney or representative. All objections must be submitted to the Settlement Administrator and to the Court either by mailing them to: ^{Prothonotary} ~~Clerk~~, Franklin County ¹⁴ Court of Common Pleas, ¹⁴ N. Main Street, Chambersburg, PA 17201, or by filing them in person at the Courthouse. A copy of all objections must be served upon Class Counsel identified below. All objections must be filed or postmarked on or before the Objection Deadline, as set forth above.

28. Any Settlement Class Member who does not make their objections in the manner and by the date set forth in the last paragraph 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.

29. Without limiting the foregoing, any challenge to the Settlement Agreement, this Order Granting Preliminary Approval of the Class Action Settlement Agreement, and the Final Approval Order and Judgment shall be pursuant to appeal under the Pennsylvania Rules of Appellate Procedure and not through a collateral attack.

ADMINISTRATION OF SETTLEMENT

30. The Class Representatives, Settlement Class Counsel, and Keystone have created a process for assessing the validity of claims and a payment methodology to Settlement Class Members who submit timely, valid Claim Forms. The Court hereby preliminarily approves the Settlement Benefits to the Settlement Class and the plan for distributing the Settlement Benefits as described in Sections 3 and 7 of the Settlement Agreement.

31. The Court appoints Epiq Class Action and Claims Solutions, Inc. as Settlement Administrator.

32. The Court directs that the Settlement Administrator effectuate the distribution of Settlement Benefits according to the terms of the Settlement Agreement, should the Settlement be finally approved.

33. Settlement Class Members who qualify for Settlement Benefits and who wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice.

34. If the Final Approval Order and Judgment are entered, all Settlement Class Members who fail to submit a claim in accordance with the requirements and procedures specified in the Notice, and who do not timely exclude themselves from the Settlement Class, shall be

forever barred from receiving any payments or benefits pursuant to the Settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Final Approval Order and Judgment.

35. The Settlement Fund shall be used by the Settlement Administrator to pay for: (i) all Administrative Expenses;¹ (ii) any Service Awards; (iii) any Fee Award and Costs; and (iv) any Approved Claims, pursuant to the terms and conditions of the Settlement Agreement.

FINAL APPROVAL HEARING

36. A Final Approval Hearing shall be held on August 15th, 2023 at ~~the~~ 1:00 o'clock p.m., Franklin County Courthouse, 14 N. Main St to be Chambersburg, PA 17201 noticed on the Settlement Website.

37. The Court may require or allow the Parties and any objectors to appear at the Final Approval Hearing either in person or by telephone or videoconference.

38. At the Final Approval Hearing, the Court will determine whether: (1) this action should be finally certified as a class action for settlement purposes pursuant Pa. R. Civ. P. 1702, 1708, and 1709, the Settlement should be finally approved as fair, reasonable, and adequate; (3) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (4) Settlement Class Members should be bound by the Releases set forth in the Settlement Agreement; (5) Class Counsel's application for Attorneys' Fee Award and Costs should be approved; and (6) the Class Representatives' requests for Service Awards should be approved.

¹ "Administrative Expenses" is defined in the Settlement Agreement as: "all charges and expenses incurred by the Settlement Administrator in the administration of this Settlement, including, without limitation, all expenses and costs associated with claims administration, the Notice Plan and providing Notice to the Settlement Class. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement."

39. Class Counsel shall file a motion an Attorneys' Fee Award and Costs and Class Representatives' requests for Service Awards on or before fourteen (14) days prior to the Objection Deadline.

40. Class Counsel's shall file a motion for Final Approval and Judgment of the Settlement no later than fourteen (14) days after the Objection Deadline.

TERMINATION

41. This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions, if the Settlement is not finally approved by the Court or is terminated in accordance with paragraph 10 of the Settlement Agreement.

42. In the event the Settlement is terminated, the Parties to the Settlement Agreement, including Settlement Class Members, shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of the Settlement Agreement, and, except as otherwise expressly provided in the Settlement Agreement, the Parties shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered. In addition, the Parties agree that in the event the Settlement is terminated, any orders entered pursuant to the Settlement Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses.

43. In the event the Settlement Agreement is terminated, then the Settlement shall become null and void (with the exception of Sections 3.11, 3.12, 3.13, 10.5, and 10.6) and shall have no legal effect and may never be mentioned at trial or in dispositive or class motions or motion papers (except as necessary to explain the timing of the procedural history of the Action),

and the Parties will return to their respective positions existing immediately before the execution of the Settlement Agreement.

44. In the event the Settlement Agreement is not approved by any court, or is terminated for any reason, or if the Settlement set forth in the Settlement Agreement is declared null and void, or in the event that the Effective Date does not occur, Settlement Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any of the Administrative Expenses, or any expenses, including costs of notice and administration associated with the Settlement or the Settlement Agreement, except that each Party shall bear its own attorneys' fees and costs.

45. In the event the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, the Court's orders, including this Order, shall not be used or referred to for any purpose whatsoever (except as necessary to explain the timing of the procedural history of the Action).

46. This order shall have no continuing force or effect if Final Judgment is not entered and shall not be construed or used as an admission, concession, or declaration by or against Keystone of any fault, wrongdoing, breach, liability, or the certifiability of any class.

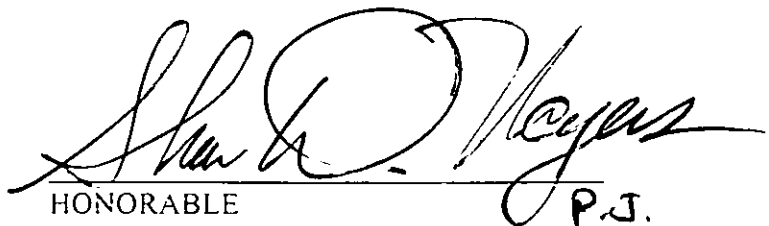
SUMMARY OF DEADLINES

47. The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement and this Order include, but are not limited to:

EVENT	DATE
Deadline to mail Notices (the "Notice Date")	No later than 35 days after the Court enters the Preliminary Approval Order
Deadline to File Claim Form	90 days after the Notice Date
Deadline to File Request for Exclusion or Objection	60 days after the Notice Date
Deadline to File Response to Objections	14 days after the Objection Deadline
Deadline to file Motion for Final Approval of Settlement	14 days after the Objection Deadline
Deadline to File Motion for Fee Award and Costs, and Service Awards	14 days prior to the Objection Deadline
Deadline to submit Request for Exclusion or objection to Settlement	60 days after the Notice Date
Settlement Administrator to provide Counsel copies of all Requests for Exclusion	5 days after deadline to file Request for Exclusion
Final Approval Hearing date	TBD (no earlier than 120 days after the Entry of the Preliminary Approval Order)

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Date: April 11, 2023


HONORABLE P.J.

Jst.

- Andrew W. Ferich, Esq.
- Tina Wolfson, Esq.
- Jonathan Shub, Esq.
- Benjamin F. Johns, Esq.
- Samantha E. Holbrook, Esq.
- Gary Klinger, Esq.
- Philip J. Krzeski, Esq.
- Bryan L. Bleichner, Esq.
- Benjamin D. Wenger, Esq.
- Carrie Dettmer Slye, Esq.
- Casie D. Colignon, Esq.