



## AlaFile E-Notice

63-CV-2023-900249.00

Judge: ALLEN W. MAY, JR

To: SUMMERFORD EDGAR CLARK  
cs@zeanahhust.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

JOSHUA KEMP V. NORTHSTAR EMERGENCY MEDICAL SERVICES, INC.  
63-CV-2023-900249.00

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**IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA**

**JOSHUA KEMP, WOODWARD  
SANDERSON, MATTHEW RIVERS, MARY  
WILLIAMS and JAMESETTA WILKERSON,  
on behalf of themselves and all others similarly  
situated,**

**Plaintiffs,**

**vs.**

**NORTHSTAR EMERGENCY MEDICAL  
SERVICES, INC.**

**Defendant.**

**Case No. 63-CV-2023-900249**

**JURY TRIAL DEMANDED**

**ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

The Court having held a Preliminary Approval Hearing on February 16, 2024, at 2:00pm in the Courtroom of the Honorable Allen W. May, Jr., Circuit Court of Tuscaloosa County, Alabama, 714 Greensboro Avenue Tuscaloosa, Alabama 35401, and having considered Plaintiffs' Unopposed Motion for Preliminary Approval of the Class Action Settlement ("Motion for Preliminary Approval"), the supporting Memorandum, the Parties' Settlement Agreement, the proposed Summary Notice, Long-Form Notice, and Claim Form, and all other 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, which is attached to Plaintiffs' Motion for Preliminary Approval as **Exhibit A**, 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 (a) the claims at issue in the lawsuits, (b) Plaintiffs Joshua Kemp, Matthew Rivers, Woodward Sanderson, Mary Williams, and Jamesetta Wilkerson, individually and on behalf of all others similarly situated ("Plaintiffs" or "Settlement Class"), and (c) Defendant NorthStar Emergency Medical Services, Inc. ("NorthStar" or "Defendant" and together with Plaintiff, the "Parties").

3. This Order is based on Alabama Rule of Civil Procedure 23 ("Rule 23").

4. The Court finds that the Parties' Settlement as set forth in **Exhibit A** 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, pursuant to Rule 23.

**PROCEDURAL HISTORY**

5. This case involves a putative class action against NorthStar relating to a cyber incident against NorthStar's computer systems which contained certain personal information of NorthStar's current and former patients, approximately 82,450 individuals in all (hereinafter, the

“Data Incident”). NorthStar provided notice of the Data Incident and mailed notification letters to all potentially impacted individuals for which it had addresses on or about March 14, 2023.

6. To date, four consumer class action cases have been filed in Alabama state courts relating to the Data Incident: (1) *Sanderson v. NorthStar EMS, Inc.*, No. 49-cv-2023-900032.00, filed March 22, 2023 in Marion County; (2) *Kemp v. NorthStar Emergency Medical Services, Inc.*, No. 63-cv-2023-90024900, filed March 22, 2023 in Tuscaloosa County; (3) *Rivers v. NorthStar EMS, Inc.*, No. 35-cv-2023-900015.00, filed March 22, 2023 in Greene County, and (4) *Williams v. NorthStar EMS et al.*, No. 68-cv-2023-900215.00, filed March 30, 2023 in Jefferson County. All four cases involve common questions of law or fact, arising from the same Data Breach. In June 2023, Plaintiffs’ counsel on the above listed cases organized to work together. Shortly thereafter, the Parties agreed to try to reach an early negotiated resolution of all matters.

7. After exchanging informal discovery to confirm the foundational facts of the case, the parties worked at arms’ length to negotiate a settlement over the course of numerous phone calls, emails, and mediation with Lee Copeland on July 24, 2023. The negotiations were hard fought on each side, but the parties were eventually able to come to an agreement in principle.

8. After the parties ultimately reached an agreement in principle on all material terms of substantive relief for the settlement class, they began negotiating the amount of attorneys’ fees and costs that Defendant would pay to Class Counsel (subject to Court approval) and the amount of service awards Defendant would pay to the Class Representatives (also subject to Court approval). At all times, the issue of attorneys’ fees, costs, and class representative service awards was negotiated separately from the settlement relief to class members. Like the other negotiations, these negotiations were conducted at arm’s length.

9. Following negotiations, the parties ultimately reached an agreement in principle on all issues related to the settlement and began drafting, exchanging, and editing the detailed Settlement Agreement, including its accompanying exhibits, notices, and claim forms. The parties sought bids from numerous claims administrators, and ultimately selected a qualified and cost-effective company after an extensive bidding process. The Settlement Agreement resulted from hard fought and adversarial negotiations over a six-month period. The time and effort spent by all parties to this litigation demonstrate the rigor, intensity, and thoroughness of the mediation efforts, as well as the parties' commitment to working constructively toward a resolution. The proposed settlement addresses the reasonable objectives of the litigation. The exchange of information throughout the settlement process allowed the parties to sufficiently understand the relative strengths and weaknesses of their positions when fashioning the proposed settlement.

#### **SETTLEMENT BENEFITS**

10. The Settlement negotiated on behalf of the Class provides for monetary relief to be paid by NorthStar to eligible claimants of a Settlement Class that includes approximately 82,450 persons whose personal information was potentially compromised as a result of NorthStar's Data Incident and who were sent written notice thereof. Defendant will fund a \$550,000 non-reversionary common fund to provide each claimant with either (1) a pro rata cash payment (estimated to total \$50); or (2) reimbursement for actual out-of-pocket losses and compensation for lost time. The common fund will also be used to pay for the costs of notice and settlement administration and Plaintiffs' service awards and attorneys' fees and costs awarded by the Court. Specifically, Settlement Class Members may be eligible to receive the following Settlement Benefits:

**Payment for Lost Time:** Settlement Class Members can make a claim for compensation for up to five (5) hours of lost time, compensable at a rate of \$20.00

per hour (\$500.00 total) for time spent to mitigate the potential effects of or to deal with the effects of the Data Breach. While no documentation is required to prove the lost time, all such lost time must be reasonably described and supported by an attestation under penalty of perjury that the time spent was reasonably incurred dealing with the Data Incident.

Payment for Out-of-Pocket Losses: Settlement Class Members not electing the pro rata cash payment may submit a claim for reimbursement of his or her out-of-pocket monetary losses and lost time for up to \$1,000 by submitting a valid and timely claim form and reasonable supporting documentation. Compensable out-of-pocket losses include any expenses incurred as a direct result of the Data Incident such as documented bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, gasoline for local travel, and bank fees. Additionally, as part of the \$1,000, Settlement Class Members can claim a reimbursement for fees paid for credit reports, credit reports, or other identity theft insurance products purchased between March 14, 2023, and the close of the claims period. To be compensable, such expenses must be documented, more likely than not attributable to the Data Incident, must not have been previously reimbursed or subject to reimbursement by insurance or a third party. Such losses must also be reasonably described and attested to on the claim form.

### CLASS CERTIFICATION

11. For purposes of settlement only, and pursuant to Rule 23, the Court provisionally certifies the class, defined as follows:

All persons who provided their personal data to NorthStar and were notified that their personal data may have been impacted as a result of the Data Incident.

12. The Settlement Class specifically excludes: ((i) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (ii) the judges assigned to the Litigation and to evaluate the fairness, reasonableness, and adequacy of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of perpetrating, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge.

13. The Court provisionally finds, 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 Plaintiffs' claims are typical of the claims of the Settlement Class; (d) the Plaintiffs will fairly and adequately protect the interests of the Settlement Class; (e) the questions of law or fact common to the Settlement Class Members predominate over any questions affecting only individual members; and (f) that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Alabama Rules of Civil Procedure 23(a)(1)- (4), (b)(3).

#### **SETTLEMENT CLASS REPRESENTATIVES AND CLASS COUNSEL**

14. Joshua Kemp, Matthew Rivers, Woodward Sanderson, Mary Williams, and Jamesetta Wilkerson 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, will be adequate Class Representatives.

15. The Court finds that Cory Watson, P.C., Pittman, Dutton, Hellums, Bradley & Mann, P.C., Migliaccio & Rathod LLP, Mason LLP, and Kopelwitz Ostrow Ferguson Weiselberg Gilbert are experienced and adequate counsel and are provisionally designated as Settlement Class Counsel.

#### **NOTICE TO SETTLEMENT CLASS**

16. No later than thirty-seven (37) business days after entry of the Preliminary Approval Order (the "Notice Date"), Notice shall be provided to Settlement Class Members via postcard mail to the postal address used for providing notice to the Settlement Class Members by NorthStar. The notice plan shall be subject to approval by the Court as meeting constitutional due process requirements. The Claims Administrator shall establish a dedicated settlement website and shall maintain and update the website throughout the claim

period, with the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement. A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement. The Claims Administrator will also provide copies of the forms of Short Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement, upon request of Settlement Class Members.

17. Prior to any dissemination of the Short 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 Notice, the Claim Form, this Agreement, the Preliminary Approval Order entered by the Court, and the operative Complaints in the Actions, 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 Claims Administrator directly. The Settlement Website shall further allow for submission of Requests of Exclusion electronically through the Settlement Website.

18. The Claim Form, Short Notice, and Long Notice, attached as Exhibits A-C, respectively, to the Settlement Agreement, are constitutionally adequate and are hereby approved. The Notice contains all essential elements required to satisfy state statutory requirements and due process under Alabama Rule 23(c)(2), the United States Constitution, and other applicable laws. 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.

19. The Notice plan set forth in the Settlement Agreement and described herein satisfies the requirements Rule 23(c)(2), provides the best notice practicable under the circumstances, and is hereby approved.

20. The Claims Administrator is directed to carry out Notice as set forth in the Settlement Agreement.

21. Settlement Class Members who seek to be excluded from the Settlement Class shall individually sign and timely submit written notice of such intent electronically through the Settlement Website or to the designated Post Office box established by the Claims Administrator. The written notice must clearly manifest the intent to be excluded from the Settlement Class. To be effective, written notice must be electronically submitted or mailed with the postmark dated no later than sixty (60) days after the Notice Date. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, as set forth in the Settlement Agreement, shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not timely request to be excluded from the Settlement Class in the

manner set forth in the Settlement Agreement shall be bound by the terms of the Settlement Agreement and Final Approval Order and Judgment entered thereon.

22. In the event that more than 250 of the Settlement Class opts out of the settlement (exclusions), NorthStar may, by notifying Class Counsel in writing within 10 days after the Opt-Out Date, void the Settlement Agreement. If NorthStar voids the Settlement Agreement pursuant to this Paragraph: (a) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel; and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

23. Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the case name and number; (ii) the objector's full name, address, telephone number, and e-mail address (if any); (iii) information identifying the objector as a Settlement Class Member (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of all counsel representing the objector; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); (viii) specify whether the objection applies only to the objector, a subset of the Settlement Class, or the entire

Settlement Class; (ix) include all documents and writings that the objector desires the Court to consider; (x) list all persons who will be called to testify at the Final Approval Hearing in support of the objection; and (xi) be filed or postmarked on or before the Objection Deadline. In addition to the foregoing, objections must also provide the following information: (a) a list, by 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 within the last three (3) years; and (b) a list, by case number, court, and docket number, of all other cases in which the objector has been named a plaintiff or class representative. The Notice will further inform Settlement Class Members that, to be considered timely and valid, they must mail a copy of their objection to the Clerk of the Court, Class Counsel, and Defendant's Counsel as stated herein.

24. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court no later than sixty (60) days after the Notice Date and served concurrently therewith upon by mail (postmarked no later than sixty (60) days after the Notice Date) to Class Counsel (Attn: Ryan Lutz, Cory Watson, P.C., 2131 Magnolia Ave South, Birmingham, Alabama 35205 and Attn: Jon Mann, Pittman, Dutton, Hellums, Bradley & Mann, P.C., 2001 Park Place North, Suite 1100, Birmingham, AL 35203); and counsel for NorthStar (Attn: Christopher A. Wiech, Baker & Hostetler LLP, 1170 Peachtree Street, Suite 2400, Atlanta, Georgia 30309-7676).

25. Any Settlement Class Member who does not make their objections to the Settlement in the manner and by the date set forth herein shall be deemed to have waived and forfeited any and all rights he or she may have to appear separately and/or object to the Settlement Agreement and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to

the Settlement Agreement shall be through the provisions stated herein and set forth in the Settlement Agreement.

26. Without limiting the foregoing, any challenge to the Settlement Agreement, this Preliminary Approval Order, the Final Approval Order, and Final Judgment shall be pursuant to appeal under applicable Court rules and not through a collateral attack.

#### **ADMINISTRATION OF SETTLEMENT**

27. The Claims Administrator shall calculate and administer the claims submitted by Settlement Class Members in accordance with the terms of the Settlement Agreement. Class Counsel and Counsel for Defendant shall be given reports as to both claims and distribution and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Claims Administrator shall determine the validity or invalidity of any such claims and such determination shall be binding, subject to the dispute resolution process set forth in the Settlement Agreement.

28. The Court appoints Kroll as Settlement Administrator.

29. 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.

30. 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.

31. If the Final Approval Order and Final 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 and will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, including the Releases contained therein and the Final Approval Order and Judgment.

32. Prior to the Final Approval Hearing, Class Counsel and NorthStar shall cause to be filed with the Court an appropriate affidavit or declaration regarding compliance with the provisions of the Settlement Agreement relating to the Notice provided to the Settlement Class Members.

### **FINAL APPROVAL HEARING**

33. A Final Approval Hearing shall be held not less than 120 days following the entry of this Order, *to wit*, on June 17, 2024 at 2:00 p.m., at the Circuit Court of Tuscaloosa County, Alabama, or as otherwise directed by the Court, to be noticed on the Settlement Website.

34. 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.

35. 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 Rule 23(a)(1)-(4), (b)(3) & (c)(1); (2) 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; (6) the Class Representatives' requests for Service Awards should be approved; and (7) the Parties, their respective attorneys, and

the Settlement Administrator should consummate the Settlement in accordance with the terms of the Settlement Agreement.

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

37. Class Counsel shall file a motion for Final Approval and Final Judgment of the Settlement no later than fourteen (14) days prior to the date of the Final Approval Hearing.

### **RELEASE**

38. Upon the Effective Date, and without any further action, each Settlement Class Member, including Representative Plaintiffs, and including themselves, their heirs, successors, representatives, assigns, attorneys, agents, executors, trustees and administrators, shall be deemed to have, and by operation of the Final Approval Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged any and all Released Claims against each and any of the Released Persons and shall forever be barred and enjoined, without the necessity of any of the Released Persons posting a bond, from commencing, instituting, prosecuting or maintaining any of the Released Claims. Further, upon the Effective Date, and without any further action, Representative Plaintiffs further agree not to knowingly and voluntarily assist in any way any third-party in commencing or prosecuting any suit against the Released Persons relating to any Released Claim.

**TERMINATION**

39. In the event that the Effective Date does not occur, class certification shall be automatically vacated and this Preliminary Approval Order, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

40. 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.

**SUMMARY OF DEADLINES**

41. 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:

<b>EVENT</b>	<b>DATE</b>
Notice Date	No later than 37 business days after entry of this Preliminary Approval Order - April 10, 2024
Deadline for Plaintiffs to File Motion for Attorneys' Fees, Expenses and Service Awards for Class Representatives	No later than 14 days prior to the Objection Deadline - May 27, 2024
Deadline for Class Members to Opt-Out of Settlement	60 days after Notice Date - June 10, 2024
Deadline for Class Members to Object to Settlement	60 days after Notice Date - June 10, 2024

Deadline for Class Members to Submit Timely, Valid Claims for Monetary Relief	60 days after Notice Date - June 10, 2024
Deadline for Plaintiffs to File Motion for Final Approval and Judgment	No later than 14 days prior to the date of the Final Approval Hearing - June 3, 2024
Final Approval Hearing	[To be determined by the Court. Must be at least 120 days from the date of preliminary approval.] - June 17, 2024

42. Upon application of the Parties and for good cause shown, the deadlines set forth in this Preliminary Approval Order may be extended by order of the Court, without further notice to the Settlement Class. Settlement Class Members must check the Settlement Website regularly for updates and further detail regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Approval Hearing and/or to extend the deadlines set forth in this Order, without further notice of any kind to the Settlement Class.

**IT IS SO ORDERED, ADJUDGED, AND DECREED:**

Dated: February 16, 2024.

  
 ALLEN W. MAY, JR.  
 CIRCUIT JUDGE