

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 001776

JEFFREY MCMANUS and LAURA
MCMANUS, individually and on
behalf of themselves and all other
similarly situated,

Plaintiffs,

v.

GERALD O. DRY, P.A.,

Defendant.

**ORDER GRANTING UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT AGREEMENT**

THIS MATTER came before the Court on Plaintiff Jeffrey McManus's and Plaintiff Laura McManus's (collectively, "Plaintiffs" or "Class Representatives") Unopposed Motion for Preliminary Approval of Class Settlement Agreement. Plaintiffs, individually, and on behalf of the proposed Settlement Class, and Defendant Gerald O. Dry, P.A. ("Defendant") have entered into a Settlement Agreement (the "Settlement Agreement") that settles the above-captioned litigation.

Plaintiffs brought this class action against Defendant on 9 June 2022. In the Class Action Complaint ("Complaint"), Plaintiffs asserted claims for: (1) Negligence; (2) Negligence per se; (3) Breach of Implied Contract, and (4) violations of North Carolina's Unfair and Deceptive Trade Practices Act, N.C.G.S. 75-1.1, et seq. According to the Complaint, Gerald O. Dry, P.A. experienced a targeted cyberattack and data breach, which resulted in the potential compromise of current and former client personally identifiable information ("PII") (the "Data Incident"). The PII

potentially compromised in the Data Incident consisted of information necessary to file tax returns for Defendants' clients, including names, addresses, Social Security numbers, dates of birth, familial information, employment information, and in some instances driver's license numbers and direct deposit bank account information (if that information was provided to Defendants).

The Parties, through their counsel, have entered into a Settlement Agreement following good faith, arm's-length negotiations. The Parties have agreed to settle the Lawsuit, pursuant to the terms of the Settlement Agreement, and subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the Settlement which, if approved, will result in dismissal of the Lawsuit with prejudice.

Having reviewed the Settlement Agreement, including the exhibits attached thereto, and all prior proceedings herein, and for good cause shown, **IT IS HEREBY ORDERED** that Plaintiffs' Unopposed Motion for Preliminary Approval is **GRANTED** as set forth herein.¹

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only, the Court conditionally certifies the Settlement Class in this matter defined as follows:

All persons to whom Gerald O. Dry, P.A. sent a notice of the Data Incident.

¹ Unless otherwise indicated, capitalized terms used in this Preliminary Approval Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order") have the same meaning as in the Settlement Agreement.

The Settlement Class includes approximately 15,281 persons. Excluded from the Settlement Class are:

- a) Defendant's officers and directors; (b) any entity in which Defendant has a controlling interest; (c) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Defendant; and (d) attorneys and other legal representatives affiliated with or employed by Class Counsel. Also excluded from the Settlement Class are members of the judiciary to whom this case is assigned, their families and members of their staff.

The Court conditionally finds, for settlement purposes only, that: (1) the Settlement Class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (2) there are questions of law or fact common to the Settlement Class which predominate over any questions affecting only individual class members; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the Settlement Class; (4) the representative parties will fairly and adequately protect the interests of the Settlement Class; and (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

2. **Class Representatives and Settlement Class Counsel.**

Jeffrey McManus and Laura McManus 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 therefore typical of the Class and that they will be adequate Class Representatives.

The Court finds that the following counsel is experienced and adequate, and is hereby provisionally designated as Settlement Class Counsel: Milberg Coleman Bryson Phillips Grossman, PLLC.

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court concludes and finds that the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Classes to warrant providing Notice of the Settlement to the Settlement Classes and accordingly is preliminarily approved.

4. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this Court.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on 29 March 2023 at 9:30 a.m. in Courtroom 6370 of the Mecklenburg County Courthouse located at 832 East Fourth Street, Charlotte, North Carolina, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes; (b) the Settlement Agreement between the Parties should be finally approved; (c) the Settlement and Settlement Agreement should be finally approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; (d) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (e) Settlement Class Members (except those who have timely and valid requests for exclusion from the Settlement) should be bound by the Release set forth in the Settlement Agreement; (f) Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards should be approved; (g) Milberg

Coleman Bryson Phillips Grossman, PLLC should be appointed as Settlement Class Counsel; and (h) Jeffrey McManus and Laura McManus should be appointed as Class Representatives.

Plaintiffs' Motion for Final Approval of the Class Action Settlement shall be filed with the Court at least **fourteen (14) Days prior to the date of the Final Approval Hearing**, and Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards shall be filed with the Court at least **fourteen (14) Days prior to the deadline for Settlement Class Members to opt-out of or object to the Settlement**.

6. **Administration.** The Court appoints Atticus Administration LLC ("Atticus") as the Claims Administrator, with responsibility for the notice program and claims administration activities that make up the Settlement Administration and to fulfill the duties of the Claims Administrator set forth in the Settlement Agreement. Gerald O. Dry, P.A. shall pay the Costs of Settlement Administration, including, but not limited to, the Claims Administrator's fees, as well as the costs associated with the provision of notice to the Settlement Class Members and administration of the Settlement pursuant to the terms of the Settlement Agreement.

7. **Notice to the Class.** The proposed notice program set forth in the Settlement Agreement, and in the Claim Form, the Short Form Notice, and the Long Form Notice (which are attached to the Settlement Agreement as **Exhibits A-C**) respectively constitute reasonable notice of the commencement of the action and of the terms of the proposed class action settlement and are hereby approved. Non-

material modifications to these exhibits may be made without further order of the Court. The Claims Administrator and Gerald O. Dry, P.A. are directed to carry out the notice program in conformance with the Settlement Agreement.

Within **twenty-one (21) days from the date of this Order** (the “Notice Deadline”), the Claims Administrator and Gerald O. Dry shall initiate the notice program, which shall be completed in the manner set forth in Section 14 of the Settlement Agreement.

8. **Findings and Conclusions Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Settlement Class as described in Paragraph 7 of this Preliminary Approval Order and the Settlement Agreement (including the exhibits thereto) constitutes reasonable notice of the commencement of the action to the Settlement Classes. Specifically, the Class Notice, in particular the Short Form Notice, is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members. Moreover, the Class Notice is clear and straightforward: the Long Form Notice apprises Settlement Class Members of the pendency of the Lawsuit; describes the essential terms of the Settlement; defines the Settlement Class; clearly describes the options available to the Settlement Class and the deadlines for taking action; explains procedures for making claims, objections, or requesting exclusion; discloses the Plaintiffs’ requested attorneys’ fees, costs, and expenses, and Class Representatives’ requested Service Awards; describes the date, time, and place of the Final Approval Hearing; and prominently displays the address and phone number of

proposed Settlement Class Counsel. Finally, email or direct mail of the Short Form Notice, combined with publishing of all Class Notice documents on the Settlement Website, is designed to be the best reasonable notice of the settlement of the action to reach the Settlement Class Members under the circumstances. The Court concludes that the notice program meets all applicable requirements of due process and law.

9. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Claims Administrator at the address that can be found after reviewing the Class Notice and/or Settlement Website, postmarked no later than 60 days after the date that Notice is sent to the Settlement Class (the “Opt-Out Date”). The written notification must include: (a) the case name, *Jeffrey McManus and Laura McManus, individually and on behalf of themselves an all others similarly situated v. Gerald O. Dry, P.A.*, Case No. 22CV001776; (b) the Settlement Class Member’s full name, address, and telephone number; (c) the Settlement Class Member’s personal and original signature (or the personal and original signature of a Person previously authorized by law to act on behalf of the Settlement Class Member with respect to the claims asserted in this Lawsuit); and (d) state unequivocally the Settlement Class Member’s intent to be excluded from the Settlement.

The Claims Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly

excluded themselves from the Settlement Class, which Settlement Class Counsel shall file with the Court no later than **ten (10) Days prior to the Final Approval Hearing**.

Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If a Final Order and Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including, but not limited to, the releases set forth in the Final Order and Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Parties relating to the claims and transactions released in the Settlement Agreement. All Settlement Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

10. **Objections.** A Settlement Class Member who complies with the requirements of this Paragraph may object to the Settlement and to Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards for the Class Representatives.

No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is: (a) filed with the Clerk of Court by the Objection Date as set forth in the Settlement Agreement; or (b) mailed first-class postage prepaid to the Clerk of Court, Settlement Class Counsel, and Defendant's

Counsel at the addresses that can be found after reviewing the Notice, and postmarked by no later than the Objection Date set forth in the Settlement Agreement, and as specified in the Notice. The Objection Date is set at **60 days after the date that Class Notice is presented to the Settlement Class**. For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 16 of the Settlement Agreement, which is as follows:

- a. The case title, *Jeffrey McManus and Laura McManus, individually and on behalf of themselves and all others similarly situated v. Gerald O. Dry, P.A.*, Case No. 22CV001776;
- b. The objector's full name, current address, telephone number, and email address (if any);
- c. The objector's original signature;
- d. all legal and factual bases for the objection, and
- e. copies of any documents and/or a list of witnesses the Settlement Class Member intends to use or call on his or her behalf.

Should a Settlement Class Member wish to appear at the Final Approval Hearing, the Settlement Class Member must also so state in her/his objection, and must identify any documents, or witnesses the Class Member intends to call on his or her behalf.

Any Settlement Class Member who fails to comply with the provisions in this Paragraph may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Preliminary Approval Order, and by all proceedings, orders, and judgments in this matter,

including, but not limited to, the Release in the Settlement Agreement, if the Final Order and Judgment is entered.

Any Settlement Class Member, including a Settlement Class Member who files and serves a written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, or Plaintiffs' Attorneys' Fees, Costs, Expenses, and/or Service Awards Requests for Class Representatives.

If the Final Order and Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, and Plaintiffs' Attorneys' Fees, Costs, Expenses, and/or Service Awards Requests for Class Representatives.

Unless otherwise ordered by the Court, Settlement Class Counsel shall file on the Business Court's electronic docket any written objections and other documents that any Settlement Class Member files with the Clerk of Court pursuant to this paragraph no later than three business days after the Settlement Class Member makes such filing with the Clerk of Court.

11. **Claims Process and Distribution and Allocation Plan.** Class Representatives and Gerald O. Dry, P.A. have created a process for assessing and

determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the plan for remuneration described in Sections 3, 6, and 9 of the Settlement Agreement and directs that the Claims Administrator effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Class Notice and the Claim Form. If the Final Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement, but fail to submit a claim in accordance with the requirements and procedures specified in the Class Notice and the Claim Form, shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Order and Judgment.

12. **Termination of Settlement.** This Preliminary Approval 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 existing as of the date of the execution of the Settlement Agreement, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's

orders, including this Preliminary Approval Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

13. **Use of Order.** This Preliminary Approval Order shall be of no force or effect if a Final Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Gerald O. Dry, P.A. of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Preliminary Approval Order be construed or used as an admission, concession, or declaration by or against the Class Representatives or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this Lawsuit or in any other lawsuit.

14. **Stay of Proceedings.** Except as necessary to effectuate this Preliminary Approval Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Order and Judgment, or until such further order of this Court.

15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website maintained by the Claims Administrator.

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

EVENT	DATE
Class Notice Deadline	21 days after Preliminary Approval
Deadline for Plaintiffs to File Motion for Attorneys' Fees, Costs, and Service Awards	14 days prior to Opt-Out and Objection Dates
Deadline for Settlement Class Members to Opt-Out of Settlement	60 days after Class Notice Deadline
Deadline for Settlement Class Members to Object to Settlement	60 days after Class Notice Deadline
Deadline for Class Members to Submit Claim Forms (Electronically or Postmarked by Mail)	90 days after Class Notice Deadline
Deadline for Plaintiffs to File Motion for Final Approval of Settlement	14 days before Final Approval Hearing
Final Approval Hearing	29 March 2023 at 9:30 AM

SO ORDERED this 16th day of November, 2022.

/s/ Louis A. Bledsoe, III
 Hon. Louis A Bledsoe, III
 Chief Business Court Judge