

CAUSE NO. 111219-D-CV

DENELI SHARBER, SHANNA BYERS,
LYLE SCHAFER and JENNIFER HART,
*individually and on behalf of all others
similarly situated,*

Plaintiffs,

v.

FMC SERVICES, LLC, D/B/A FAMILY
MEDICINE CENTERS,

Defendant.

IN THE DISTRICT COURT OF
POTTER COUNTY, TEXAS

320TH JUDICIAL COURT

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

This matter came before the Court on Plaintiffs’ Unopposed Motion for Preliminary Approval of a Settlement Agreement between Plaintiffs Deneli Sharber, Shanna Byers, Lyle Schafer, and Jennifer Hart (“Plaintiffs” or “Representative Plaintiffs”), individually and on behalf of the proposed Settlement Class, and Defendant FMC Services, LLC (“FMC” or “Defendant”), that, upon final approval by this Court, settles the above-captioned litigation.

The Court hereby GRANTS preliminary approval of the Parties’ Settlement Agreement dated _____, 2026 (“Settlement Agreement”), the proposed Postcard Notice, Long Form Notice, and Claim Form, and finds as follows:

The Court has jurisdiction over all claims in this Action and all Parties hereto. This Order is based on Texas law, including but not limited to Rule 42 of the Texas Rule of Civil Procedure. The Court adopts by reference the Settlement Agreement, attached to Plaintiffs’ Unopposed Motion for Preliminary Approval. This Order adopts the definitions in the Settlement Agreement,

and terms used in this Order shall have the same meaning ascribed to them in the Settlement Agreement.

The Court preliminarily FINDS that the Parties' Settlement, as reflected in the Settlement Agreement, is fair, reasonable, and adequate, and that it is in the best interests of the Settlement Class Members. The Court preliminarily approves the Settlement Agreement, provisionally appoints the Settlement Class Representatives, Class Counsel, and Claims Administrator, and ORDERS that the Parties should commence providing notice of the Settlement to Settlement Class Members in accordance with the procedures proposed in the Settlement Agreement.

This class action arises out a data incident wherein, on or around July 26, 2022, cybercriminals unlawfully accessed information stored on FMC's computer systems (the "Data Incident"). As a result of the Data Incident, approximately 266,540 individuals' personally identifiable information ("PII") and personal health information ("PHI") was affected.

On October 5, 2022, Plaintiff Sharber named Defendant in the first class action lawsuit related to the Data Incident. Thereafter, three other cases alleging similar causes of action and overlapping putative classes were filed against Defendant by the remaining Plaintiffs. Following agreement, Plaintiffs moved to consolidate the actions on October 20, 2022. On November 16, 2022, the Court granted the motion to consolidate and appointed Ben Barnow of Barnow and Associates, P.C. and Gary E. Mason of Mason LLP as Interim Co-Lead Counsel. On December 15, 2022, Plaintiffs filed their Consolidated Class Action Petition, alleging claims for negligence, negligence per se, breach of fiduciary duty, breach of implied contract, and unjust enrichment.

The Parties entered into the Settlement after months of diligently negotiating, drafting, and finalizing a term sheet, the settlement agreement, notice forms, and coming to an agreement on a

claims process and administrator. Plaintiffs summarize the relevant terms of the proposed Settlement as follows:

The Settlement. The Settlement secures significant benefits for the Settlement Class. FMC will pay \$2,150,000.00 to a Settlement Fund. The fund is “non-reversionary,” meaning none of the funds will be returned to FMC if the Settlement becomes Final. To administer those funds and implement the Settlement’s terms, the Parties have agreed to use EAG Gulf Coast LLP (“EAG”) as Settlement Administrator.

Once funded, the Settlement Fund will be used by the Settlement Administrator to pay for: (1) all Settlement Class Member Benefits to Settlement Class Members who submit Valid Claims; (2) all Settlement Administration Costs; and (3) any attorneys’ fees, costs, expenses, and Service Awards approved by the Court. The Settlement Fund allows all Settlement Class Members the opportunity to submit claims for the following:

- a. **Cash Payment A – Documented Losses.** In lieu of the compensation outlined below in paragraph (b), Settlement Class Members may submit a claim for Cash Payment A for up to \$5,000.00 per Settlement Class Member upon presentment of reasonable documented losses related to the Data Incident. To receive a documented loss payment, a Settlement Class Member must elect Cash Payment A on the Claim Form attesting under penalty of perjury to incurring documented losses. Settlement Class Members will be required to submit reasonable documentation supporting the losses, which means documentation contemporaneously generated or prepared by a third party or the Settlement Class Member supporting a claim for expenses paid.
- b. **Cash Payment B – Alternate Cash.** As an alternative to Cash Payment A above, a Settlement Class Member may elect to receive Cash Payment B, which is a cash payment in the estimated amount of \$75.00. The amount of Cash Payment B will be calculated on a pro rata basis.
- c. **Medical Data Monitoring.** In addition to Cash Payment A or Cash Payment B, adult Settlement Class Members may also make a Claim for Medical Data Monitoring that will include two years of CyEx’s medical data monitoring product that will include: (i) real time monitoring of the credit file with one credit bureau; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) security freezing assistance; (iv) victim assistance; (v) \$1,000,000.00 in identity theft insurance with no deductible; and (vi) access to fraud resolution agents to help investigate and resolve instances of identity theft. Minor Settlement Class Members may also make a Claim for Medical Data Monitoring that will include two years of CyEx’s minor monitoring product that will include: (i) real time

monitoring for evidence of the minor's SSN in combination with a credit file to protect against creation of synthetic identities; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) public record traces; and (iv) access to fraud resolution agents to help investigate and resolve instances of identity theft.

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 and pursuant to Rule 42 of the Texas Rule of Civil Procedure, the Court provisionally certifies a Settlement Class in this matter, defined as follows:

Settlement Class

All persons whose personally identifiable information or personal health information was compromised in the Data Incident by unauthorized persons, including all persons who were sent notice of the Data Incident.

The Settlement Class specifically excludes: (1) all persons who are directors, officers, and agents of Defendant, or their respective subsidiaries and affiliated companies; (2) governmental entities; and (3) the Judge assigned to the Action, that Judge's immediate family, and Court staff.

The Court provisionally finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable, (b) there are questions of law and fact common to the Settlement Class, (c) the claims and defenses of the Settlement Class Representatives are typical of the claims and defenses of the Settlement Class Members, (d) the Settlement Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Settlement Class Representatives

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement Agreement.

have no interest antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class, (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members, and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

2. Settlement Class Representatives and Settlement Class Counsel.

Plaintiffs Deneli Sharber, Shanna Byers, Lyle Schafer, and Jennifer Hart are hereby provisionally designated and appointed the Settlement Class Representatives. The Court provisionally finds that the Settlement Class Representatives are similarly situated to absent Class Members and therefore typical of the Class and that they will be adequate Settlement Class Representatives.

The Court finds that the following counsel are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel: Ben Barnow of Barnow and Associates, P.C. and Gary E. Mason of Mason & Perry LLP.

3. Preliminary Settlement Approval. Upon preliminary review, the Court concludes and finds that the proposed Settlement is fair, reasonable, and adequate to warrant providing Notice of the Settlement to the Settlement Class 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.

5. Final Approval Hearing. A Final Approval Hearing shall be held on _____, 2026, at ___:00 .m., in the District Court of Potter County, Texas, 350 SE 6th Ave., Suite 4A, Amarillo, Texas 79101 to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to Rule 42 of Texas

Rules of Civil Procedure; (b) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to Rule 42(e) of Texas Rules of Civil Procedure; (c) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the motion of Settlement Class Counsel for an award of attorneys' fees, costs, and expenses (the "Fee Request") should be approved; and (f) the motion of the Settlement Class Representatives for Service Awards (the "Service Award Request") should be approved. Plaintiffs shall file their Motion for Final Approval of the Settlement, inclusive of the Application for Attorneys' Fees, Costs, Expenses, and Service Awards, no later than 45 days before the original date set for the Final Approval Hearing. The Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or the Service Award Request and Fee Request in conformance with the local rules.

6. **Appointment of Settlement Administrator.** The Court appoints EAG Gulf Coast, LLC as the Settlement Administrator, with responsibility for class notice and claims administration and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. In accordance with the Settlement Agreement, Defendant shall pay all agreed upon costs and expenses associated with providing notice to Settlement Class Members including, but not limited to, the Claims Administrator's fees, as well as the costs associated with administration of the Settlement.

7. **Notice to the Class.** The proposed Notice Program set forth in the Settlement Agreement, and the Post Card Notice, Long Form Notice, and Claim Form attached to the Settlement Agreement as **Exhibits 1-3** satisfy the requirements of Texas Rule of Civil Procedure 42(e), provide the best notice practicable under the circumstances, and are hereby approved. The

Parties may make non-material modifications to these Exhibits without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement.

Within **30 days from the date of this Order** (the “Notice Deadline”), the Settlement Administrator shall commence the Notice Program provided in the Settlement Agreement, using the Postcard Notice and Long Form Notice approved by the Court.

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 Order and Section VIII of the Settlement Agreement (including the exhibits thereto): (a) will 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 proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement, (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice, and (d) the Court concludes that the Notice Program meets all applicable requirements of law, including Texas Rule of Civil Procedure Rule 42, and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

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 provided in the Notice, postmarked no later than **30 days before the initial scheduled Final Approval Hearing** (the

“Opt-Out Deadline”). The written notification must be personally signed by the Settlement Class member and contain the requestor’s name, address, telephone number, and email address (if any), and include a statement indicating a request to opt-out of the Settlement Class.

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 may submit to the Court no later than **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 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 Release 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 Persons 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 and Appearances. A Settlement Class Member who complies with the requirements of this paragraph may object to the Settlement, the Service Award Request, or the Fee Request.

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 filed with the Court by the Objection Deadline and postmarked by

no later than **30 days before the initial scheduled Final Approval Hearing** (the “Objection Deadline”), as specified in the Notice. For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 85 of the Settlement Agreement, which is as follows:

- (a) the objector’s full name, mailing address, telephone number, and email address (if any);
- (b) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector’s counsel;
- (c) the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector’s prior objections that were issued by the trial and appellate courts in each listed case;
- (d) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys’ Fees, Costs, Expenses, and Service Awards;
- (e) the number of times in which the objector’s counsel and/or counsel’s law firm have objected to a class action settlement within the five years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel’s or the counsel’s law firm’s prior objections that were issued by the trial and appellate courts in each listed case in which the

objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;

- (f) the identity of all counsel (if any) representing the objector, and whether they will appear at the Final Approval Hearing;
- (g) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);
- (h) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- (i) the objector's signature (an attorney's signature is not sufficient).

Any Settlement Class Member who fails to comply with the provisions in this Paragraph shall be deemed to have waived and forfeited any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if 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, the Service Award Request, or the Fee Request.

If 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, the Service Award Request, or the Fee Request.

11. Claims Process and Distribution and Allocation Plan. Settlement Class Representatives and Defendant 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 Settlement Benefits described in the Settlement Agreement and directs that the Settlement Administrator prepare to 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 Notice and the Claim Form. If 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 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. Indemnification. The funds in the Escrow Account shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. The Settlement Fund shall earn a reasonable rate of interest and all interest earned on the Settlement funds shall be for the benefit of the Settlement Class. All taxes (including any estimated taxes, and any interest, any expenses, or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed on Defendant, Defendant’s Counsel, Plaintiffs, and/or Class

Counsel with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise, shall be paid out of the Escrow Account. Defendant, Defendant’s Counsel, Plaintiffs, and Class Counsel shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Defendant, Defendant’s Counsel, Plaintiffs, and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification). Except as otherwise provided by law, the Settlement Administrator shall indemnify and hold harmless the Parties, Settlement Class, Class Counsel, Defendant’s Counsel, and Defendant’s insurers and reinsurers for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator’s designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement; (iii) the formulation, design or terms of the disbursement of the Settlement; (iv) the determination, administration, calculation or payment of any claims asserted for the Settlement; or (v) the payment or withholding of any Taxes and Tax-Related Expenses.

13. Termination of Settlement. 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 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 Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

14. Use of Order. This Order shall be null and void and of no force or effect if Final Order and Judgment is not entered or there is no Effective Date. In such event, this Order shall not

be construed or used as an admission, concession, or declaration by or against Defendant of any negligence, fault, wrongdoing, omission, assertion, fact, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Settlement 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 Litigation or in any other lawsuit.

15. Stay of Proceedings. Except as necessary to effectuate this 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 further order of this Court.

16. 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 website maintained by the Settlement Administrator.

17. 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 Order include but are not limited to:

<u>Grant of Preliminary Approval</u>	
FMC provides list of Settlement Class Members to the Settlement Administrator	+10 days after Preliminary Approval
Long Form and Short Form Notices Posted on the Settlement Website	+30 days after Preliminary Approval
Notice Commencement	+30 days after Preliminary Approval
Objection Deadline	-30 days before the initial scheduled Final Approval Hearing
Opt-Out Deadline	-30 days before the initial scheduled Final Approval Hearing

Claims Deadline	-15 days before the initial scheduled Final Approval Hearing
Settlement Administrator Provide List of Objections/Exclusions to Counsel	+7 days after deadline for Opt-Out
<u>Final Approval Hearing</u>	+120 days after Preliminary Approval Order, or any date thereafter convenient for the Court
Motion for Final Approval, inclusive of the Application for Attorneys' Fees, Costs, Expenses, and Service Awards	-45 Days before the original date set for the Final Approval Hearing
<u>Final Approval</u>	
Effective Date	+1 day after all conditions met pursuant to ¶ 34 of SA.
Payment of Attorneys' Fees and Expenses Class Representative Service Award	+5 days after the Effective Date or +5 days after the date Defendant funds the Settlement Fund, whichever is later
Distribution of Settlement Relief	+75 days after Final Approval or +30 days after the Effective Date, whichever is later

4/10/2026 11:02:51 AM

IT IS SO ORDERED this ____ day of _____, 2026

BY THE COURT:



APPROVED AS TO FORM:

/s/ J. Daren Brown

J. Daren Brown

**STOCKARD, JOHNSTON, BROWN,
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**Pro Hac Vice Admission*

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Courtney Neely on behalf of John Brown

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Envelope ID: 113411307

Filing Code Description: Motion (No Fee)

Filing Description: FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT - PLTFS' UNOPPOSED

Status as of 4/9/2026 10:07 AM CST

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Courtney Neely on behalf of John Brown
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Filing Code Description: Motion (No Fee)
Filing Description: FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT - PLTFS' UNOPPOSED
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