

**STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT**

BRENT MCCULLOUGH,

Plaintiff,

v.

TRUE HEALTH NEW MEXICO, INC.,

Defendant.

Case No. D-202-CV-2021-06816

CLASS ACTION

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**FINAL ORDER APPROVING  
CLASS ACTION SETTLEMENT**

This matter coming to be heard on Plaintiffs' Motion for Final Approval of Class Action Settlement (the "Motion"), due and adequate notice having been given to the Settlement Class, and the Court having considered the papers filed and proceedings in this matter, and being fully advised in the premises,

IT IS HEREBY ORDERED:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them in the Settlement Agreement.
2. This Court has jurisdiction over the subject matter of the Litigation and personal jurisdiction over all parties to the Litigation, including all Settlement Class members.
3. This Court preliminarily approved the Settlement Agreement by Preliminary Approval Order dated December 19, 2022, and the Court finds that adequate notice was given to all members of the Settlement Class pursuant to the terms of the Preliminary Approval Order.
4. The Court has read and considered the papers filed in support of this Motion for

Final Approval, including the Settlement Agreement and exhibits thereto and supporting declarations.

5. Based on the papers filed with the Court, the Court now gives Final Approval of the Settlement and finds that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class. The complex legal and factual posture of the Litigation, and the fact that the Settlement Agreement is the result of arm's-length negotiations presided over by a neutral mediator, further support this finding.

6. Pursuant to Rule 1-023 of the New Mexico Rules of Civil Procedure for the District Courts, and for the purposes of settlement only, the following Settlement Class consisting of:

“All Persons to whom True Health sent notification that their personal information and/or protected health information may have been or was exposed to unauthorized third parties as a result of the Incident.”

7. For settlement purposes only, the Court confirms following counsel as Class Counsel, and finds they are experienced in class litigation and have adequately represented the Settlement Class:

Ben Barnow  
Anthony L. Parkhill  
BARNOW AND ASSOCIATES, P.C.  
205 W. Randolph St., Suite 1630  
Chicago, Illinois 60606

Andrew W. Ferich  
AHDOOT & WOLFSON, PC  
201 King of Prussia Road, Suite 650  
Radnor, PA 19087

8. With respect to the Settlement Class, this Court finds, for settlement purposes only, that: (a) the Settlement Class defined above is too numerous for their joinder to be practicable; (b) there are questions of law or fact common to the Settlement Class, and

those common questions predominate over any questions affecting only individual members; (c) the Class Representatives and Class Counsel have fairly and adequately protected, and will continue to fairly and adequately protect, the interests of the Settlement Class; and (d) certification of the Settlement Class is an appropriate method for the fair and efficient adjudication of this Litigation.

9. The Court has determined that the Notice given to the Settlement Class members in accordance with the Preliminary Approval Order fully and accurately informed Settlement Class members of all material terms of the Settlement and constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Rule 1-023, applicable law, and the due process clauses of both the U.S. and New Mexico Constitutions.

10. The Court orders the Parties to the Settlement Agreement to perform their obligations thereunder. The terms of the Settlement Agreement shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an order of this Court.

11. The Court dismisses the Litigation with prejudice and without costs (except as otherwise provided herein and in the Settlement Agreement) as to Plaintiffs' and all Settlement Class members' claims against the Released Persons. The Court adjudges that the Released Claims and all of the claims described in the Settlement Agreement are released against the Released Persons.

12. The Court adjudges that the Plaintiffs and all Settlement Class members who have not opted out of the Settlement Class shall be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons,

as set forth in the Settlement Agreement.

13. The Court further adjudges that, upon entry of this Order, the Settlement Agreement and the above-described release of the Released Claims will be binding on, and have *res judicata* preclusive effect in, all pending and future lawsuits or other proceedings related to the Released Claims maintained by or on behalf of Plaintiffs and all other Settlement Class members who did not validly and timely exclude themselves from the Settlement, and their respective predecessors, successors, heirs, beneficiaries, conservators, trustees, executors, administrators, representatives, and assigns of each of the foregoing, as set forth in the Settlement Agreement. The Released Persons may file the Settlement Agreement and/or this Final Order and Judgment in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14. The persons listed on **Exhibit 1**, attached hereto and incorporated by this reference, submitted timely and proper requests for exclusion, are excluded from the Settlement Class, and are not bound by the terms of the Settlement Agreement or this Final Order.

15. Plaintiffs and Settlement Class members who did not validly and timely request exclusion from the Settlement are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims or any of the claims described in the Settlement Agreement against the Released Parties.

16. The Court approves payment of attorneys' fees, costs, and expenses to Class Counsel in the amount of \$315,000. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement. The Court, having considered

the materials submitted by Class Counsel in support of final approval of the Settlement and their request for attorneys' fees, costs, and expenses, finds the award of attorneys' fees, costs, and expenses appropriate and reasonable for the following reasons: First, the Court finds that the Settlement provides substantial benefits to the Settlement Class. Second, the Court finds the payment fair and reasonable in light of the substantial work performed by Class Counsel. Third, the Court concludes that the Settlement was negotiated at arm's-length without collusion, and that the negotiation of attorneys' fees only followed agreement on the settlement benefits for the Settlement Class members. Finally, the Court notes that the Notice specifically and clearly advised the Settlement Class that Class Counsel would seek an award in the amount sought.

17. The Court approves the Service Award in the amount of \$1,500 for each of the Class Representatives Brent McCullough, Jason Clement, Stephanie Wade, Karen Siegman, and Miriam Shanks, and specifically finds such amount to be reasonable in light of the services performed by Plaintiffs for the Settlement Class, including taking on the risks of litigation and helping achieve the results to be made available to the Settlement Class. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

18. Neither this Final Order and Judgment, nor the Settlement Agreement, nor the payment of any consideration in connection with the Settlement shall be construed or used as an admission or concession by or against Defendant or any of the other Released Persons of any fault, omission, liability, or wrongdoing, or of the validity of any of the Released Claims as set forth in the Settlement Agreement. This Final Order and Judgment is not a finding of the validity or invalidity of any claims in this Litigation or a determination of

any wrongdoing by Defendant or any of the other Released Persons. The Final Approval of the Settlement does not constitute any position, opinion, or determination of this Court, one way or another, as to the merits of the claims or defenses of Plaintiffs, the Settlement Class members, or Defendant.

19. Two objections were filed in this matter. These objections to the Settlement Agreement are overruled and denied in all respects. The Court finds no reason to delay entering this Final Order and Judgment. Accordingly, the Clerk is hereby directed forthwith to enter this Final Order and Judgment.

20. The Parties, without further approval from the Court, are hereby permitted to agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with this Final Order and Judgment and do not limit the rights of the Settlement Class members.

21. Without affecting the finality of this Final Order and Judgment for purposes of appeal, the Court retains jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose.

**IT IS SO ORDERED.**

  
ERIN B. O'CONNELL  
DISTRICT COURT JUDGE

Submitted By: /s/ Mark Fine  
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*Counsel for Plaintiffs*  
\* admitted pro hac vice



# Exhibit 1

<b>No.</b>	<b>Class Member Name</b>
1	Michael Kovach
2	Jillian Kovach
3	Kimberly Kovach
4	Nicholas Kovach
5	Marc Nelson
6	Liam FitzPatrick
7	Evangelene Ecalinea