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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18
19 **COUNTY OF ORANGE**

20 KARI DELKENER, individually, and on
21 behalf of all others similarly situated,

22 Plaintiffs,

23 vs.

24 COTTAGE HEALTH SYSTEM, a California
25 corporation; SANTA BARBARA COTTAGE
26 HOSPITAL, a California corporation,
27 GOLETA VALLEY COTTAGE HOSPITAL,
28 a California Corporation, SANTA YNEZ
VALLEY HOSPITAL, INSYNC
COMPUTER SOLUTIONS, INC., a
California corporation, CIO SOLUTIONS,
INC., CIO SOLUTIONS, LP, and DOES 1-
100, Inclusive,
Defendants.

CASE NO. 30-2016-00847934-CU-NP-CXC
*[Assigned for all Purposes to the Honorable
Glenda Sanders]*

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

DATE: November 17, 2017
TIME: 1:30 p.m.
DEPT: CX101

Complaint Filed: April 21, 2016
Trial Date: Not Yet Set

1 **WHEREAS**, plaintiff and proposed settlement class representative, Kari Delkener,
2 (“plaintiff” or “Class Representative”), individually and on behalf of the proposed settlement class
3 in this action (“Settlement Class”, as defined herein), and defendants, Cottage Health (formerly
4 known as and erroneously sued as Cottage Health System), Santa Barbara Cottage Hospital, Goleta
5 Valley Cottage Hospital, and Santa Ynez Valley Cottage Hospital (erroneously sued as Santa Ynez
6 Valley Hospital), (collectively, “Cottage Defendants”), InSync Computer Solutions, Inc.
7 (“InSync”), CIO Solutions, Inc., and CIO Solutions, LP (collectively “CIO”), (Cottage Defendants,
8 InSync, and CIO collectively are “Defendants”), have reached a proposed settlement of the action;
9

10 **WHEREAS**, the terms and conditions of said settlement is set forth in the *Amended*
11 *Settlement and Release Agreement*, fully executed in November 2017, and Exhibits A through C
12 thereto, (collectively, “Settlement” or “Agreement”), a true and correct copy of which has been
13 filed as **Plaintiff’s Exhibit B to the Declaration of Richard L. Kellner in Further Support of**
14 **the Motion for Preliminary Settlement Approval**, and;
15

16 **HAVING CONSIDERED** the proposed Settlement; the motion for preliminary settlement
17 approval filed by plaintiff; defendants’ separate request for preliminary settlement approval; the
18 additional submissions by counsel in response to this Court’s October 16, 2017 tentative ruling,
19 and good cause appearing:
20

21 **THE COURT HEREBY FINDS** that the proposed Settlement, as set forth in the
22 Agreement, should be preliminarily approved as fair, reasonable and adequate, free of collusion or
23 indicia of unfairness, and within the range of possible final judicial approval. The Agreement, a
24 true and correct copy of which is submitted as **Plaintiff’s Exhibit B to the Declaration of**
25 **Richard L. Kellner in Further Support of the Motion for Preliminary Settlement Approval** is
26 incorporated by reference and hereby made a part of this Preliminary Approval Order.
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1 **THEREFORE, THE COURT HEREBY FINDS, CONCLUDES, AND ORDERS, AS**
2 **FOLLOWS:**

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4 **1. Conditional Certification of the Settlement Class:** For purposes of the proposed
5 Settlement only, and conditioned upon the Agreement receiving final approval following the
6 fairness hearing and that order becoming final, the Court preliminarily and conditionally certifies
7 the proposed Settlement Class, defined as follows:

8
9 “All patients of a Cottage Health hospital (Santa Barbara Cottage Hospital, Santa Ynez
10 Valley Cottage Hospital, or Goleta Valley Cottage Hospital) whose confidential
11 information and/or records were placed on the SQL Server maintained by Cottage Health
12 and were accessible between October 26, 2015 and November 8, 2015 without login
13 credentials, passwords or encryption.”

14
15 The Court finds preliminarily that the proposed Settlement Class satisfies all requirements
16 for class certification under *Code of Civil Procedure* §382 and applicable law, particularly in the
17 more limited context of a proposed Settlement. The proposed Settlement Class is numerous and
18 ascertainable and there is a sufficiently well-defined community of interest among the Settlement
19 Class members in questions of law and fact, such that conditional certification of the Settlement
20 Class, for settlement purposes only, is proper.

21 **2. Conditional Appointment of Class Representative and Class Counsel:** For
22 purposes of the proposed Settlement only, and conditioned upon the Agreement receiving final
23 approval following the fairness hearing and that order becoming final, the Court finds that plaintiff
24 and her counsel are adequate to represent the Settlement class for the purposes of settlement, and
25 preliminarily and conditionally designates and appoints plaintiff, Kari Delkener, as Class
26 Representative, and designates and appoints Richard L. Kellner and Brian S. Kabateck of Kabateck
27 Brown Kellner LLP, and Don A. Ernst and Taylor Ernst of Ernst Law Group, as Class Counsel.

1 **3. Appointment of Settlement Administrator:** Conditioned upon execution of a
2 Business Associate Agreement satisfactory to the Defendants, the Court confirms, designates, and
3 appoints JND Legal Administration as the Settlement Administrator, for the purpose of
4 administering the proposed Settlement, preparing the Settlement Notice mailing database and
5 mailing the Settlement Notice, and performing all other duties and obligations of the Settlement
6 Administrator as defined in the Settlement, this Preliminary Approval Order, and/or as may
7 otherwise be ordered by the Court.

8 **4. Preliminary Approval of Cy Pres Recipient:** The Court preliminarily approves
9 the proposed *cy pres* recipient, Electronic Frontier Foundation, as the recipient of twenty-five
10 percent (25%) of all non-negotiated Settlement payments as provided in the Settlement, with the
11 remainder to be distributed as set forth in Code of Civil Procedure § 384(b)(3).

12 **5. Settlement Notice:** The Court hereby approves the proposed form of the Settlement
13 Notice attached as Exhibit A to the Agreement, to be mailed by first-class U.S. Mail, in the manner
14 set forth in the Agreement, on December 11, 2017, which is approximately twenty-one (21) days
15 after the Court’s execution of this Preliminary Approval Order. Settlement Administrator, JND
16 Legal Administration, is directed and ordered to prepare the Settlement Notice mailing database
17 and mail the Settlement Notice, to the Settlement Class members, in the form of Exhibit A to the
18 Settlement, and in the manner provided by the Settlement.

19 As further described below, and in the Agreement, the Settlement Notice adequately and
20 properly provides notice to the Settlement Class members of the nature of the lawsuit, the terms of
21 the Settlement, Settlement Class members’ right to request exclusion, Settlement Class members’
22 right to object to the Settlement and to request to appear at the fairness hearing in support of said
23 objection (either on their own behalf or through counsel of their own selection at their own
24 expense). The deadline for the exercise of such rights shall be February 12, 2018, which is
25 approximately sixty (60) days after the initial date of mailing of the Settlement Notice.

26 In order to facilitate printing and dissemination of the Settlement Notice, the Settlement
27 Administrator and Parties may change the format, but not the content, of the Settlement Notice,
28 without further Court order, so long as the legibility is not adversely impacted. The Settlement

1 Administrator and Parties may also, without further Court order, insert the information specified in
2 the blank places provided in the Settlement Notice.

3 The Court finds that the manner of providing notice of the pendency of this Action and of
4 the proposed Settlement to the Settlement Class members, as set forth in this Preliminary Approval
5 Order, the Settlement, and the Settlement Notice, is the best notice practicable, and is reasonably
6 calculated, under the circumstances, to apprise the Settlement Class members of their rights
7 regarding the proposed Settlement should it become final, including their rights to request
8 exclusion, object, and to request to appear at the fairness hearing, all as set forth in the Agreement.
9 *Inter alia*, the Court finds that the provisions of Section IV of the Agreement for preparing and
10 updating the Settlement Notice mailing database, and researching alternate mailing data and re-
11 mailing any returned notices, constitute the best practicable methodology for maximizing the
12 efficacy of the Settlement Notice.

13 The Court further finds that the Settlement Notice, and the mailing thereof, as provided in
14 this Preliminary Approval Order and the Agreement, shall be the only notice to the Settlement
15 Class members of the proposed Settlement required, and constitutes due and sufficient notice of
16 the proposed Settlement, the fairness hearing, Settlement Class members' rights with respect to the
17 proposed Settlement (including their rights to request exclusion, object, and appear), Class
18 Counsel's application for attorneys' fees, litigation expenses, and a Class Representative incentive
19 award, and the other matters set forth in the Agreement. The Court further finds that the
20 Settlement Notice and the manner of mailing the Settlement Notice as provided for in the
21 Agreement and this Preliminary Approval Order fully satisfy the requirements of due process and
22 all other applicable provisions of law, including *California Code of Civil Procedure* §382,
23 *California Civil Code* §1781, *California Rules of Court*, Rules 3.766 and 3.769, the California and
24 United States Constitutions, and all other applicable law.

25 **6. Proof of Mailing of Settlement Notice:** By the time of filing of the final settlement
26 approval motion, the Settlement Administrator shall provide, and Plaintiff shall file proof by
27 affidavit or declaration, of the mailing of the Settlement Notice in the form and manner provided in
28 the Agreement and in this Preliminary Approval Order.

1 7. **Fairness Hearing:** A fairness hearing will be held on March 16, 2018, at 1:30
2 p.m., (or on such continued date(s) or time(s) as the Court may direct), in Department CX101 of
3 the California Superior Court for the County of Orange, before the Honorable Glenda Sanders.

4 The address for the Court, where the fairness hearing will be conducted, is:

5 California Superior Court, County of Orange
6 Civil Complex Center, Department CX101
7 751 West Santa Ana Boulevard
8 Santa Ana, California 92701

9 If for any reason the fairness hearing is continued to a different date or time, Plaintiff shall
10 promptly serve written notice on any Settlement Class member who has submitted an objection to
11 the Settlement (and/or a request to appear at the fairness hearing), and shall post notice on the
12 Settlement Administrator’s website. Otherwise, the Court may continue the fairness hearing
13 without notice to the Settlement Class.

14 At the fairness hearing, the Court will consider all matters set forth by Section VII of the
15 Settlement, and such other matters as the Court may deem appropriate in connection with the
16 Settlement, including:

17 (a) approve the Settlement Agreement as fair, reasonable, adequate, and binding on all
18 members of the Settlement Class; (b) enter the Final Approval Order and Judgment in accordance
19 with the terms of this Settlement Agreement; (c) determine the amount and approve the payment of
20 attorneys’ fees and litigation expenses; (d) determine the amount of any incentive payment to award
21 to the Class Representative; (e) provide for the release of all Plaintiffs’ Released Claims against the
22 Plaintiffs’ Released Parties, by the Class Representative and all Class Members who have not
23 submitted valid and timely requests for exclusion from the Settlement Class; and (f) provide for the
24 entry of judgment in the Action. Defendants will not join in requesting any award of attorneys’ fees
25 and litigation expenses for Class Counsel or incentive payment for the Class Representative, nor
26 join in requesting any findings in support thereof, but will not oppose any application for such
27 awards consistent with the terms of this Settlement.

1 Class Counsel shall file and serve their motion for final approval of the proposed Class
2 Settlement on or before the date fourteen (14) days prior to the fairness hearing. Class counsel
3 shall also, by the same deadline, file and serve any motion for an award of attorneys' fees and
4 litigation expenses, for approval of the agreement among Class Counsel with respect to the
5 division of fees awarded, and for an award of any incentive for the Class Representative.

6 **8. Settlement Class Members' Right to Request Exclusion:** Each Settlement Class
7 member who wishes to exclude himself or herself from the Settlement and Settlement Class may
8 do so by mailing a written request for exclusion to the Settlement Administrator, at the address
9 specified in the Settlement Notice.

10 In order to be valid, a request for exclusion must unequivocally state that the Settlement
11 Class member is requesting exclusion from the *Delkener v. Cottage Health, et al.*, Case No. 30-
12 2016-00847934-CU-NP-CXC, Superior Court of the State of California, County of Orange. The
13 request for exclusion must be signed by the Settlement Class member, and must include the
14 Settlement Class member's full name, address and telephone number, and the following statement:
15 "I request to be excluded from the settlement in the *Delkener v. Cottage Health* action" or the
16 functional equivalent thereof.

17 In order to be timely, any request for exclusion must be mailed to the Settlement
18 Administrator, post marked no later than February 12, 2018. A request for exclusion can only be
19 submitted in writing by mail, and not by electronic mail, telephone, or any other method. Any
20 request for exclusion which is not timely submitted, in the manner required, will be deemed null,
21 void, and ineffective. If any request for exclusion is timely submitted, but is equivocal in its
22 language or omits any of the required information, the Settlement Administrator is directed and
23 ordered to contact the submitting party and use good faith, diligent efforts to correct any
24 equivocation or omission.

25 **9. Settlement Class Members' Right to Object:** Any Settlement Class member who
26 does not request exclusion, and who wishes to object to any of the terms of the proposed
27 Settlement may do so by mailing a written objection to the Settlement Administrator, at the
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1 address specified in the Settlement Notice. The Settlement Administrator shall promptly transmit
2 one copy of any objection (including any enclosures) to counsel for each of the Parties.

3 In order to be valid, an objection must unequivocally state that the Settlement Class
4 member is objecting to the proposed Settlement in the *Delkener v. Cottage Health, et al.*, Case No.
5 30-2016-00847934-CU-NP-CXC, Superior Court of the State of California, County of Orange.
6 The objection must state the reasons why the objector thinks the Court should not approve the
7 Settlement, and must submit a writing containing a clear and specific statement of the objection, as
8 well as the specific reason(s), if any, for each objection, including any legal support the Class
9 Member wishes to bring to the Court's attention and any evidence the Class Member wishes to
10 introduce in support of the objection.

11 If the objector wishes the Court to consider any records in support of the objection, the
12 objector must enclose copies of such records with the written objection mailed to the Settlement
13 Administrator, or if the subject records are not in the objector's possession, custody, or control, the
14 objector must identify those records, and the person(s) whom he or she believes has possession of
15 them.

16 An objector is not required to retain an attorney in order to object to the Settlement, but
17 may do so if desired, at the objector's own expense.

18 In order to be timely, any objection to the Settlement must be mailed to the Settlement
19 Administrator, post marked no later than February 12, 2018. An objection can only be submitted
20 in writing by mail, and not by electronic mail, telephone, or any other method. All timely and
21 properly submitted objections will be considered by the Court at the fairness hearing. Any
22 objection which is not timely and properly submitted will be deemed waived, and will not be
23 considered at the fairness hearing or otherwise. If the objector does not submit or identify any
24 supporting records with the submission of the objection in the manner required, such supporting
25 records will not be considered at the fairness hearing or otherwise.

26 The foregoing procedures and requirements for the submission and assertion of any
27 objections to the Settlement are intended to ensure the efficient administration of justice and the
28

1 orderly presentation of any Settlement Class member's objection to the Settlement, in accordance
2 with the due process rights of all Settlement Class members.

3 **10. Settlement Class Members' Right to Request Leave to Appear:** No Settlement
4 Class member, including any objector to the Settlement, is required to attend, appear, or speak at
5 the fairness hearing. Any member of the Settlement Class who submits a timely objection may
6 appear at the final fairness hearing, and the Court will consider the merits of all timely-submitted
7 objections, whether or not the objector appears. No objector will be permitted to appear at the
8 fairness hearing in support of his or her objection unless the objector has timely and properly
9 submitted a written objection, in the manner required by this Preliminary Approval Order.

10 A Settlement Class member is not required to retain an attorney in order to request leave to
11 appear, or to appear, at the fairness hearing, but may do so if desired, at the Settlement Class
12 member's own expense.

13 **11. Counsel's General Settlement Administration Authority:** Counsel for the
14 Parties are hereby authorized to utilize any and all reasonable procedures in connection with the
15 administration of the Settlement Notice and Settlement which are not materially inconsistent with
16 either this Preliminary Approval Order or the terms of the Settlement.

17 **12. Preliminary Stay and Injunction:** All discovery and proceedings in the Action
18 shall be stayed pending hearing on final approval of the Settlement, except as is necessary to seek
19 and obtain the Court's final approval of the Settlement. Pending final approval, the Settlement
20 Class members are preliminarily barred and enjoined from instituting, commencing, continuing to
21 prosecute, participating in, or receiving benefits from, directly or indirectly, as an individual or
22 collectively, representatively, derivatively, or in any other capacity, any action, lawsuit or
23 proceeding in the California State Courts, any other state court, any federal court, or any other
24 tribunal or forum of any kind, against Defendants or any party prospectively released by the
25 Settlement asserting any claims that would be released and discharged upon final approval of the
26 Settlement. This preliminary injunction shall not require any Settlement Class member to take any
27 affirmative action with regard to other pending class action litigation in which they may be absent
28 class members, and not a named plaintiff and/or appointed class representative.

1 **13. Termination:** If the Settlement does not receive final approval, does not become
2 effective, or is terminated pursuant to the Agreement, this Preliminary Approval Order shall become
3 null and void. In such event, the Action shall revert to its status as of the date of execution of the
4 Agreement, and shall proceed as if the Settlement and all related orders and papers had not been
5 executed or otherwise agreed to. Plaintiffs and Defendants shall be restored to their respective
6 positions without prejudice to any of their rights or positions on any issues in the Action. Further,
7 this Preliminary Approval Order, the Settlement, and all papers or information of any kind
8 submitted or provided by or on behalf of any Party in connection with the Settlement, and any
9 discussions related to the Agreement, unless independently obtained through past or future
10 discovery, shall not (a) be offered or submitted in evidence or used, referred to, cited, presented or
11 otherwise involved for any purpose in any proceeding, or (b) constitute a waiver of work product,
12 settlement, or any other privilege.

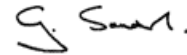
13 **14. Settlement Administration Schedule:** The following settlement administration
14 schedule, reflecting certain deadlines and dates ordered in this Preliminary Approval Order and/or
15 required by the Settlement, and subject to the Court’s consideration and determination of final
16 settlement approval following the fairness hearing, and that order becoming final, is preliminarily
17 approved by the Court:

Event	Timing
Hearing on preliminary settlement approval motion	November 17, 2017
Entry of Preliminary Approval Order	November 17, 2017
Last day for Defendants to provide Settlement Notice mailing data (Class List)	December 4, 2017
Date for Settlement Administrator to mail Settlement Notice	December 11, 2017
Last day for Settlement Class members to postmark a request exclusion or objection to the Settlement	February 12, 2018

Event	Timing
Last day for Settlement Class members to postmark a request for leave to appear at the fairness hearing	February 12, 2018
Deadline for Cottage Health to exercise option to rescind if opt-outs exceed 750	February 26, 2018
Deadline for Plaintiff to file motion for final settlement approval and motion for award of attorneys' fees, litigation expenses, and Class Representative incentive	March 2, 2018
Fairness hearing and hearing on motion for award of attorneys' fees, litigation expenses, and Class Representative incentive	March 16, 2018, at 1:30 p.m.
Entry of Final Approval Order and Judgment	<i>tbd</i>

IT IS SO ORDERED.

Date Judge Signed: November 30, 2017



Honorable Glenda Sanders
JUDGE OF THE SUPERIOR COURT