

Part 39

**SUPREME COURT OF THE STATE OF NEW YORK  
THE COUNTY OF NEW YORK**

ROBERT GUARNASCHELLI, NICOLAS CAROVILLANO, ESLAYE DEVINE, JOHN DUNNE, RACHAEL KUECHER, ALBA AVILA QUINTANA, ALAN RESNICK, JENNIFER LOWE and RAYMOND NARDO on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EAST RIVER MEDICAL IMAGING, P.C.,

Defendant.

Index No. 656099/2023

**DECISION/  
[PROPOSED] ORDER GRANTING  
PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Motion# 004

**THIS CAUSE** is before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, which seeks preliminary certification of the Settlement Class, appointment of Class Counsel and Class Representatives, and approval of the Parties' proposed Notice Plan. Having reviewed the motion, the Settlement Agreement and all exhibits attached thereto, and the record in this case, and for good cause shown:

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

**Preliminary Approval of Settlement**

1. The Court finds that for the purposes of preliminary approval the proposed settlement, as set forth in the Parties' Settlement Agreement, is fair, reasonable, adequate, and in the best interests of the Settlement Class defined below. The Court further finds that the settlement was entered into at arm's length by informed and highly experienced counsel. The Court therefore preliminarily approves the proposed settlement.

**Settlement Class Certification**

2. For purposes of this proposed settlement only and pending final approval, the Court certifies, pursuant to New York Civil Practice Law and Rules (“CPLR”) § 901, a Settlement Class (or the “Class”) defined as:

All natural persons who were provided notice by ERMI that their Personal Information was compromised, accessed or involved in the Data Security Incident.

ERMI is defined as Defendant East River Medical Imaging, P.C and its current and former affiliates, parents, subsidiaries, and successors. Excluded from the Settlement Class are: (1) the judges presiding over the Action and members of their immediate families and their staff; (2) ERMI, its subsidiaries, parent companies, successors, predecessors, and any entity in which ERMI or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

3. Pursuant to CPLR §§ 901(a) and 902, and for settlement purposes only and pending final approval, the Court finds as to the Settlement Class that:

- a) the Class is so numerous that joinder of all members is impracticable;
- b) the questions of law or fact common to the Class predominate over any questions affecting only individual Class Members;
- c) Plaintiffs’ claims are typical of the claims of the Class;
- d) Plaintiffs will fairly and adequately protect the interests of the Class;
- e) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy;
- f) the “feasibility considerations” of CPLR 902 have been met; and

g) because this action is being settled rather than litigated, the Court need not consider feasibility or manageability issues that might be presented by the trial of a class action involving the issues in this case.

4. The Court's certification of the Settlement Class as provided herein is without prejudice to, or waiver of the rights of Defendants to contest certification of any class proposed in this action if the Settlement is not finally approved. In the event the Settlement is terminated or otherwise is not finally approved, the Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any class in this action and no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class.

**Appointment of Class Counsel and Class Representatives**

5. For purposes of these settlement approval proceedings, the Court finds that Benjamin F. Johns of Shub & Johns LLC and Jean S. Martin of Morgan & Morgan will fairly and adequately represent the interests of the Settlement Class and appoints them as Class Counsel, and appoints Israel David as Liaison Counsel. For purposes of these settlement approval proceedings, the Court finds that Plaintiffs Robert Guarnaschelli, Nicolas Carovillano, Eslaye Devine, John Dunne, Rachael Kuecher, Albia Avila Quintana, Alan Resnick, Jennifer Lowe and Raymond Nardo will fairly and adequately represent the interests of the Settlement Class and appoints them as the Class Representatives for the Settlement Class.

**Notice to Class Members**

6. The Court approves the form and content of the proposed Settlement Notices and Claim Form (collectively the "Settlement Notice," attached as Exhibits A, B and D to the Settlement Agreement) and approves the Parties' proposal to distribute the Settlement Notice by

U.S. Mail and via email, as set forth in the Settlement Agreement. The Court finds that the Parties' proposal regarding notice to the Class constitutes the best notice practicable under the circumstances as well as valid, due, and sufficient notice to all those entitled thereto and that it complies fully with the requirements of due process and CPLR §§ 904 and 908.

7. The Court approves the schedule set forth in the Settlement Agreement for disseminating the Settlement Notice, requesting exclusion from the Settlement Class or objecting to the settlement, submitting papers in connection with Final Approval, and holding the Final Approval Hearing.

**Claims Administration**

8. The Court approves the parties' selection of Angeion Group as the Claims Administrator, with the responsibilities set forth in the Settlement Agreement.

9. All objections and requests for exclusion from the Settlement Class must be postmarked no later than 60 days after the date of this Order and must otherwise comply with the requirements set forth in the approved Settlement Notice. Persons or entities that request exclusion from the Class shall not be bound by any judgment and shall not be entitled to share the benefits of the Settlement Agreement. Any request for exclusion shall not be effective unless it complies with the requirements set forth in the Settlement Notice and is made within the time set forth in this Order or is otherwise accepted by the Court. So-called "mass" or "class" exclusions or opt outs shall not be permitted.

10. Any potential member of the Class who does not properly and timely opt out of the Settlement shall be included in the Class and shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such Class Member has objected to the Settlement.

11. Any objections that do not comply with the requirements set forth in the Settlement

Notice or are not made within the time set forth in this Order will not be considered. Any objections not raised properly and timely will be waived, and any Class Member who fails to timely file and serve a valid written objection shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal.

**Final Approval Hearing**

12. A Final Approval Hearing is hereby scheduled to be held before the undersigned on \_\_\_\_\_, 2024, at \_\_\_\_\_ am/pm at 111 Centre Street, courtroom 623 [~~LOCATION~~], to consider the fairness, reasonableness and adequacy of the Settlement, whether the Settlement Agreement should be finally approved, and the entry of a final order and judgment in the case. At the Final Approval Hearing, the Court will also consider any petition for attorneys' fees, costs and reimbursement of expenses made by Class Counsel, service awards to Plaintiffs, and any other related matters that are brought to the attention of the Court in a timely fashion consistent with this Order.

13. Plaintiffs' motion for final approval of the settlement and for an award of attorneys' fees, expenses and service awards shall be filed twenty-one (21) days before the Fairness Hearing.

14. Any member of the Class that has not filed a request for exclusion may appear at the Final Approval Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness, and adequacy of the settlement; provided, however, that no person shall be heard in opposition to the settlement, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless, in accordance with the deadlines above and set forth in the Settlement Agreement, such person: (a) timely filed with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition to



the settlement, and any documentation in support of such opposition; and (b) timely served copies of such notice, statement, and documentation upon all counsel.

15. The date and time of the Final Approval Hearing shall be set forth in the Settlement Notice but shall be subject to adjournment or rescheduling by the Court without further notice to Class Members other than what may be posted on the Court's Electronic Case Filing system or the website created pursuant to the Settlement Agreement.

16. If the Settlement Agreement is terminated in accordance with its provisions, the Settlement Agreement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of Plaintiffs, Defendants, and the members of the Settlement Class.

Dated: 4/24/24, 2024  
New York, New York

SO ORDERED:



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Judge Suzanne J. Adams