

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: HON. CAROLYN E. WADE, J.S.C.**

KIYA JOHNSON, SUSAN MUTNICK,
NOYIELLE SUTHERLAND, JASMINE
ROGERS, MARCUS ROBINSON, SHAKIRA
JONES, DEWANNA WASHINGTON, and
ANIKA FRANCIS individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

ONE BROOKLYN HEALTH SYSTEM, INC.,
Defendant.

**ORDER GRANTING
PRELIMINARILY APPROVAL OF
CLASS ACTION SETTLEMENT**

Index No. 512485/2023

MS# 10

This matter having come before the Court on Plaintiffs' Unopposed Motion in Support of Preliminary Approval of Class Action Settlement (the "Motion"), the Court having reviewed in detail and considered the Motion and memorandum in support of the Motion, the Settlement and Release Agreement ("Settlement Agreement") between Plaintiffs Kiya Johnson, Susan Mutnick, Noyielle Sutherland, Jasmine Rogers, Marcus Robinson, Shakira Jones, DeWanna Washington, and Anika Francis and Defendant One Brooklyn Health System, Inc. ("Defendant" or "OBH"), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and the Court 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. The Court hereby grants preliminary approval of the settlement memorialized in the Class Action Settlement Agreement and Release, attached as Exhibit 1 to the Affirmation of Benjamin F. Johns dated August 28, 2024.

Settlement Class Certification

3. The Court hereby conditionally certifies, pursuant to CPLR §§ 901 and 902, and for the purposes of settlement only, the following Settlement Class consisting of:

[A]ll natural persons who are U.S. residents whose Personal Information may have been compromised, accessed or involved in the Data Security Incident. Excluded from the Settlement Class are: (1) the judges presiding over the Action and members of their immediate families and their staff; (2) OBH, its affiliates, subsidiaries, parent companies, successors, predecessors, and any entity in which OBH or its parents, have a controlling interest, and its current or former officers, directors and trustees; (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.

4. For settlement purposes only, the Court finds that the prerequisites to class action treatment under CPLR § 901(a)—including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims—have been preliminarily satisfied.

- a. The members of the class are too numerous for their joinder to be practicable. There are approximately 235,231 Settlement Class Members.
- b. Questions of law and fact common to the settlement class predominate over individualized questions. Issues such as whether OBH failed to take reasonable and appropriate measures to safeguard the sensitive information entrusted to it, whether OBH had a duty to protect the sensitive information it was storing, and whether Plaintiffs and Class

Members are entitled to damages as a result of OBEH's conduct will turn on legal and factual questions that apply to each class member.

- c. Plaintiffs are adequate class representatives whose interests in this matter are aligned with those of all other Settlement Class Members. Proposed class counsel— Benjamin F. Johns of Shub & Johns LLC and Ben Barnow of Barnow and Associates, P.C.—have experience and expertise prosecuting class actions and have committed the necessary resources to represent the Settlement Class.
- d. A class action is a superior method for the fair and efficient resolution of this matter.

Preliminary Approval of Settlement

5. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate. There is good cause to find that the Settlement Agreement was negotiated at arm's-length between the Parties, who were represented by experienced counsel, and was reached with the assistance of a mediator, Mr. Bennett G. Picker of Stradley Ronon Stevens & Young, LLP.

6. For settlement purposes only, Plaintiffs Kiya Johnson, Susan Mutnick, Noyielle Sutherland, Jasmine Rogers, Marcus Robinson, Shakira Jones, DeWanna Washington, and Anika Francis are appointed as Class Representatives.

7. For settlement purposes only, the following counsel are hereby appointed as Class Counsel:

Benjamin F. Johns
SHUB & JOHNS LLC
Four Tower Bridge

200 Barr Harbor Drive, Ste 400
Conshohocken, PA 19428
bjohns@shublawyers.com

Ben Barnow
BARNOW AND ASSOCIATES, P.C.
205 West Randolph Street, Suite 1630
Chicago, IL 60606
b.barnow@barnowlaw.com

Manner and Form of Notice

8. The Court approves, in form and content, the Postcard and Long Form Notices, attached to the Settlement Agreement as Exhibits D and B, respectively, and finds that they meet the requirements of CPLR §§ 904 and 908 and satisfy due process.

9. The Court finds that the planned notice set forth in the Settlement Agreement meets the requirements of CPLR §§ 904 and 908 and constitutes the best notice practicable under the circumstances, where Class Members' identities are contained in Defendant's records and may be readily ascertained, satisfying fully the requirements of due process, and any other applicable law, such that the Settlement Agreement and Final Approval Order will be binding on all Settlement Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the Notices and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. Epiq Class Actions & Claims Solutions, Inc. is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement.

11. The Settlement Administrator may proceed with the distribution of the Notices as set forth in the Settlement Agreement.

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a valid Claim Form in accordance with the instructions provided in the Notices no later than 90 days after the Notice Date. The Court hereby approves as to form and content the Claim Form attached to the Settlement Agreement as Exhibit A.

13. All Claim Forms must be either mailed via U.S. Mail to the address specified in the Claim Form and/or be electronically submitted to the Settlement Administrator via the Settlement Website no later than no later than 90 days after the Notice Date. Settlement Class Members who do not timely submit a Claim Form deemed to be valid in accordance the Settlement Agreement shall not be entitled to receive any portion of the Settlement Fund.

14. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including with respect to Released Claims as set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated other litigation or other

proceedings against Defendant or the Released Persons relating to the claims released under the terms of the Settlement Agreement.

15. Class Counsel may file any motion seeking an award of attorneys' fees, costs and expenses, as well as Service Awards for the Class Representatives, in accordance with the terms of the Settlement Agreement, no later than 14 days prior to the Opt-Out and Objection Deadline.

Exclusions from the Settlement Class

16. Any person within the Settlement Class may request exclusion from the Settlement Class by expressly stating his/her request in a written exclusion request. Such exclusion requests must be received by the Settlement Administrator at the address specified in the Class Notice in written form, by first class mail, postage prepaid, and postmarked, no later than 45 days after the Notice Date.

17. In order to exercise the right to be excluded, a person within the Settlement Class must timely submit via first class mail a written request for exclusion to the Settlement Administrator, which must identify the case name; state the name, address, telephone number and Unique Identifier of the Class Member seeking exclusion; identify any lawyer representing the Class Member seeking to opt out; must be physically signed by the person(s) seeking exclusion; and must also contain a statement to the effect that "I hereby request to be excluded from the proposed Settlement Class in *'Johnson et al. v. One Brooklyn Health System, Inc.'*" No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with, that person within the Settlement Class, may request exclusion from the Settlement Class of any other person within the Settlement Class.

18. Any person who elects to request exclusion from the Settlement Class shall not (i) be bound by any orders or Judgment entered in the Action, (ii) be entitled to relief under the Settlement Agreement, (iii) gain any rights by virtue of the Settlement Agreement, or (iv) be entitled to object to any aspect of the Settlement Agreement.

Objections to the Settlement

19. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees, costs, and expenses that Class Counsel intends to seek and the payment of Service Awards to the Class Representatives, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth below in Paragraph 19 of this Order, with the Clerk of the Court, and served upon Class Counsel and Defendant's Counsel no later than 45 days after the Notice Date. Addresses for Class Counsel and Defendant's Counsel are as follows:

CLASS COUNSEL	DEFENDANT'S COUNSEL
<p>Benjamin F. Johns SHUB & JOHNS LLC Four Tower Bridge 200 Barr Harbor Drive, Ste 400 Conshohocken, PA 19428 bjohns@shublawyers.com</p> <p>Ben Barnow BARNOW AND ASSOCIATES, P.C. 205 West Randolph Street, Suite 1630 Chicago, IL 60606 b.barnow@barnowlaw.com</p>	<p>Claudia McCarron Daniel M. Braude MULLEN COUGHLIN LLC 426 W. Lancaster Avenue, Suite 200 Devon, PA 19333 cmccarron@mullen.law dbraude@mullen.law</p>

20. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also: (a) state the Class Member's full name, current mailing address, and telephone number; (b) include proof that the Class Member is a member of the Settlement Class (e.g., copy of the settlement notice, copy of the original notice of the Data Security Incident); (c) identify the specific factual and legal grounds for the objection; (d) identify all counsel representing the Class Member, if any; (e) include a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past five (5) years; and (f) provide a statement regarding whether the Class Member (or counsel of his or her choosing) intends to appear at the Final Approval Hearing. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of Service Awards, and to the Final Approval Order and the right to appeal same.

21. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement, may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however,

persons wishing to be heard orally in opposition to the approval of the Settlement and/or Class Counsel's request for attorneys' fees, costs, and expenses and/or the request for a Service Award to the Class Representatives are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates his/her intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in his/her written objection the identity of any witnesses he/she may call to testify, and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to Counsel for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

Final Approval Hearing

23. All papers in support of the Final Approval of the Settlement shall be filed at least 14 days prior to the Final Approval Hearing.

24. Pending the final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, no Settlement Class Member may prosecute,

institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Persons.

25. An in-person Final Approval Hearing shall be held before the Court on February 26, 2025 at 4:00 P.M., in Part 84, Room 969, at the Supreme Court of the State of New York, located at 360 Adams Street, Brooklyn, NY 11201 for the following purposes:

- a. to finally determine whether the applicable prerequisites for settlement class action treatment under CPLR § 901 have been met;
- b. to determine whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;
- c. to determine whether the judgment as provided under the Settlement Agreement should be entered;
- d. to consider the application for an award of attorneys' fees, costs, and expenses to Class Counsel;
- e. to consider the application for Service Awards to the Class Representatives;
- f. to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and
- g. to rule upon such other matters as the Court may deem appropriate.

26. The Final Approval Hearing may be postponed, adjourned, transferred, or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the

Settlement Agreement and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

27. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

Temporary Stay

28. All discovery, pending motions, and other proceedings in the Litigation as between Plaintiffs and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

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Termination of the Settlement


29. If the Settlement fails to become effective in accordance with its terms, or if the Final Order and Judgment is not entered or is reversed or vacated on appeal, the Order shall be null and void, the Settlement Agreement shall be deemed terminated, and the Parties shall return to their positions without any prejudice, as provided for in the Settlement Agreement.

Upcoming Deadlines

30. For clarity, the deadlines set forth above and in the Settlement Agreement are as follows:

EVENT	DATE
Defendant to provide the Class Member Information to Claims Administrator	21 Days after entry of Preliminary Approval Order
Notice Date	45 Days after entry of the Preliminary Approval Order
Deadline for Plaintiffs to File Motion for Attorneys' Fees, Costs, Expenses, and Service Awards for Class Representatives	14 Days prior to Opt-Out and Objection Deadline
Opt-Out and Objection Deadlines	45 Days after Notice Date
Deadline for Class Members to Submit Claim Forms	90 Days after Notice Date
Deadline for Plaintiffs to File Motion for Final Approval of Class Action Settlement	14 Days prior to Final Approval Hearing
Final Approval Hearing	At least 120 Days after the entry of this Order

IT IS SO ORDERED THIS 8th DAY OF NOVEMBER, 2024.


 Hon. Carolyn E. Wade, J.S.C.
HON. CAROLYN E. WADE
 JUSTICE OF THE SUPREME COURT

2024 NOV 13 A 10:00
 KINGS COUNTY CLERK
 FILED