

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

BARBARA HORVATH, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

GRAMERCY SURGERY CENTER, INC.,

Defendant.

Index No.: 159212/2024

PART 58

HON. DAVID B. COHEN

PRELIMINARY APPROVAL ORDER

WHEREAS, this Action¹ is a putative class action before this Court;

WHEREAS, Plaintiff, individually, and on behalf of the proposed Settlement Class, and Defendant, have entered into the Settlement Agreement, which is subject to review and approval by the Court under C.P.L.R. § 901, *et seq.*, and which, together with its exhibits, provides for a complete dismissal on the merits and with prejudice of the claims asserted in the Action against HA should the Court grant Final Approval of the Settlement;

WHEREAS, Plaintiff filed an unopposed motion pursuant to C.P.L.R. § 908 requesting entry of an order to: (1) conditionally certify the Settlement Class; (2) appoint Plaintiff as Class Representative; (3) appoint counsel listed in paragraph 1.7 of the Settlement Agreement as Class Counsel; (4) preliminarily approve the Settlement; (5) approve the Notice Program and Notices and direct that Notice be sent to the Settlement Class members; (6) approve the Claim Form and Claims process; (7) order the Settlement's opt-out and objection procedures; (8) appoint the Claims

¹ The capitalized terms used herein are defined and have the same meaning as used in the Settlement Agreement unless otherwise stated.

Administrator; (9) stay all deadlines in the Action pending Final Approval of the Settlement; (10) enjoin and bar all members of the Settlement Class from initiating or continuing in any litigation or asserting any claims against GSC and the Released Parties arising out of, relating to, or in connection with the Released Claims prior to the Court's decision to grant Final Approval of the Settlement; and (11) set a date for the Final Approval Hearing; and

WHEREAS, the Court having reviewed the Motion along with the Settlement and its exhibits and finding that substantial and efficient grounds exist for entering this Preliminary Approval Order granting the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Settlement Class Certification:** Pursuant to C.P.L.R. § 903, and for purposes of the Settlement only, the Action is hereby preliminarily certified as a class action on behalf of the following Settlement Class:

all individuals to whom GSC sent notice of the Data Incident.

The Settlement Class specifically excludes: (i) GSC, and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the presiding judge, and his or her staff and family; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

2. **Settlement Class Findings:** The Court finds, for purposes of settlement only, and without any adjudication on the merits, that the prerequisites for certifying the Action as a class action under C.P.L.R. §§ 901-902 and have been satisfied, and that the Court will likely certify at the Final Approval stage a Settlement Class.

3. As to C.P.L.R. § 901(a)(1)-(5), the Court finds that: (a) the number of Settlement Class members is so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any questions affecting only individual members; (c) the claims of the proposed Class Representatives are typical of the claims of the Settlement Class; (d) the proposed Class Representatives and Class Counsel have and will fairly and adequately represent the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. As to C.P.L.R. § 902(1)-(5), the Court finds there is no evidence that there is any interest in any of the members of the Settlement Class in individually controlling the prosecution or defense of separate actions; it would be impracticable and inefficient to prosecute separate action for each of the Settlement Class members; Plaintiffs are not aware of any litigation concerning the controversy already commenced by or against members of the Settlement Class; it is desirable to concentrate litigation of claims arising from the Data Incident in this Court; and since this case has now been settled pending Court approval, the Court need not be concerned about manageability issues that can exist in a class action trial.

5. **Appointment of Class Representatives and Class Counsel:** The Court hereby finds and concludes pursuant to § 901(a)(4), and for purposes of settlement only, that Plaintiff Barbara Horvath is an adequate class representative and appoints her as Class Representative for the Settlement Class.

7. The Court has considered (1) the work Class Counsel have done in identifying or investigating potential claims in the action, (2) Class Counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action, (3) Class Counsel's knowledge of applicable law, and (4) the resources Class Counsel will commit to representing the

Settlement Class. The Court finds that proposed Class Counsel and their law firms have expended a reasonable amount of time, effort, and expense investigating the Data Incident. It is clear from their track records of success, as outlined in their resumes, that Class Counsel are highly skilled and knowledgeable concerning class action practice. For purposes of the Settlement only, pursuant to § 901(a)(4), the Court appoints the following as Class Counsel to act on behalf of the Settlement Class and the Class Representatives with respect to the Settlement: David Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC.

6. **Preliminary Approval of the Settlement:** The Court hereby preliminarily approves the Settlement, as embodied in the Agreement, as being fair, reasonable, adequate, and in the best interest of the named Plaintiff and the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described below. *Klein v. Robert's Am. Gourmet Food, Inc.*, 28 A.D. 3d 63, 73 (2d Dep't 2006); *Rosenfeld v. Bear Stearns & Co., Inc.*, 237 A.D. 2d 199, 199-200 (1st Dep't 1996); *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000). To reach that conclusion at his Preliminary Approval stage, the Court considered the following five factors: (1) the likelihood of success; (2) the extent of support from the parties; (3) the judgment of counsel; (4) the nature of the issues of law and fact; and (5) the presence of bargaining in good faith, which Plaintiffs sufficiently address in the Motion, and which make the proposed Settlement well within the range of possible approval. *See Klurfeld v. Equity Enters., Inc.*, 79 A.D. 2d 124, 133 (2d Dep't 1981) (adopting the factors set forth in *State of W. Va. v. Chas. Pfizer & Co., Inc.*, 314 F. Supp. 710, 740 (S.D.N.Y. 1970), *cert. denied*, *Colter Drugs, Inc. v. Chas. Pfizer & Co., Inc.*, 404 U.S. 871, 92 S. Ct. 81 (1971)); *In re Colt Inds. Shareholder Litig.*, 155 A.D.2d 154, 160 (1st Dep't 1990) (same); *Hibbs v. Marvel Enters., Inc.*, 19 A.D.3d 232, 233 (1st Dep't 2005) (same).

7. **Claims Administrator:** Class Counsel are authorized to retain Angeion Group as

the Claims Administrator to supervise and administer the Notice Program and Claim process, as well as to administer the Settlement should the Court grant Final Approval.

8. **Approval of Notice Program and Notices:** The Court approves, as to form and content, the Notice Program, including the Email Notice, Postcard Notice, and Long Form Notice, substantially in the forms attached as Exhibits to the Agreement. The Court finds that the Notice Program: (a) is the best notice practicable under the circumstances; (b) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class members of the pendency of the Action, the terms of the Settlement, the effect of the proposed Settlement (including the Releases contained therein), and their right to opt-out of or to object to the proposed Settlement and appear at the Final Approval Hearing; and (c) will give the Settlement Class the required reasonable notice of the commencement of this Action, thereby satisfying the requirements C.P.L.R. § 904, due process, the rules of this Court, and all other applicable law and rules. The date and time of the Final Approval Hearing shall be posted on the Settlement Website and included in the Email Notice, Postcard Notice, and Long Form Notice, respectively, before they are emailed, mailed, or published. Consistent with the terms of the Settlement, and as permitted by C.P.L.R. § 908(d)(I), the Court approves use of a portion of the Settlement Fund paid by HA to be used to pay for the Notice Program.

9. **Claim Form and Claims Process:** The Court approves the Claim Form as set forth in the Settlement, and the Claims process to be implemented by the Claims Administrator. The Claim Form is straightforward and easy to complete, allowing each Settlement Class Member to elect the alternative Settlement Class Member Benefits. Should the Court grant Final Approval of the Settlement, Settlement Class Members who do not opt-out of the Settlement shall be bound by its terms even if they do not submit Claims.

10. **Dissemination of Notice and Claim Forms:** The Court directs the Claims Administrator to disseminate the Notices and Claim Form as approved herein. Class Counsel and HA's counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this order or the Settlement, including making, without the Court's further approval, minor form or content changes to the Notices and Claim Form they jointly agree are reasonable or necessary.

11. **Opt-Outs from the Settlement Class:** The Notice shall provide that any member of the Settlement Class who wishes to opt out from the Settlement Class must request exclusion in writing within the time and manner set forth in the Notice. The Notices shall provide that opt-out requests must be sent to the Claims Administrator and be postmarked no later than 60 days after the Notice Deadline (the last day of the Opt-Out Period). The opt-out request must be personally signed by the Settlement Class member and contain the name of this proceeding (*Horvath v. Gramercy Surgical Center, Inc.*, Index No.: 159212/2024 (N.Y. Cnty Sup. Ct.)), the Class Member's full name, current address, and signature, and must clearly manifest your intent to be excluded from this settlement.. If submitted by mail, an opt-out request shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an opt-out request shall be deemed to have been submitted on the shipping date reflected on the shipping label.

12. Any Settlement Class member who timely and validly opts-out from the Settlement Class shall, provided the Court grants Final Approval: (a) be excluded from the Settlement Class by Order of the Court; (b) not be a Settlement Class Member; (c) not be bound by the terms of the Settlement; and (d) have no right to the Settlement Class Member Benefits. Any Settlement Class

member who does not timely and validly request to opt-out shall be bound by the terms of this Settlement.

13. **Objections to the Settlement:** The Notice shall also provide that any Settlement Class Member who does not opt-out from the Settlement Class may object to the Settlement and/or the Application for Attorneys' Fees, Costs, and Service Awards. Objections must be mailed to the address designated by the Claims Administrator. For an objection to be considered by the Court, the objection must be submitted on behalf of a Settlement Class Member no later than 60 days after the Notice Deadline (the last day of the Objection Period). When submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

14. For an objection to be considered by the Court, the objection must set forth:
- i. the objector's full name, address, telephone number, and email address (if any);
 - ii. the case name and case number (i.e. *Horvath v. Gramercy Surgical Center, Inc.*, Index No.: 159212/2024 (N.Y. Cnty Sup. Ct.));
 - iii. information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of original notice of the Data Incident or a statement explaining why the objector believes he or she is a Settlement Class Member);
 - iv. a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
 - v. the identity of all counsel representing the objector in connection with the

objection;

- vi. a statement whether the objector and/or his or her counsel will personally appear at the Final Fairness Hearing;
- vii. a list of all settlements to which the objector and/or their counsel have objected in the preceding three (3) years and
- viii. the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative.

15. Class Counsel and/or GSC's counsel may conduct limited discovery on any objector consistent with the Civil Practice Law and Rules, and respond in writing to the objections prior to the Final Approval Hearing.

16. Any Settlement Class Member who does not make an objection in the manner provided herein shall be deemed to have waived the right to object to any aspect of the Settlement and/or to the Application for Attorneys' Fees, Costs, and Service Awards and, if Final Judgment is entered, shall forever be barred and foreclosed from raising such objections in this or any other proceeding and from challenging or opposing, or seeking to reverse, vacate, or modify, the Final Judgment or any aspect thereof.

17. **Motion for Final Approval and Application for Attorneys' Fees, Costs, and Service Awards:** Class Counsel intends to seek an award of up to \$200,000 in combined attorneys' fees, costs, and out-of-pocket case expenses and a Service Award for the Class Representative of \$2,500.00, to be paid separately from Class Relief by GSC. These amounts appear reasonable, but the Court will defer ruling on those awards until the Final Approval Hearing when considering Class Counsel's Application for Attorneys' Fees, Costs, and Service Awards.

18. Class Counsel shall file their Motion for Final Approval and Application for

Attorneys' Fees, Costs, and Service Awards no later than 14 days before the Opt-Out and Objection Deadlines. At the Final Approval Hearing, the Court will hear argument on Class Counsel's request for attorneys' fees and costs and Service Award for the Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the Application for Attorneys' Fees, Costs, and Service Awards, provided the objector(s) submitted timely objections that meet all of the requirements listed in the Settlement and in this order.

19. **Termination:** If the Settlement is terminated, not approved, canceled, fails to become effective for any reason, or the Effective Date does not occur, this order shall become null and void and shall be without prejudice to the rights of Plaintiff, the Settlement Class members, and GSC, all of whom shall be restored to their respective positions in the Action as provided in the Agreement.

20. **Stay:** All pretrial proceedings in this Action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Settlement and this Preliminary Approval Order.

21. Upon the entry of this order, with the exception of Class Counsel's, GSC's Counsel's, and the Class Representative's implementation of the Settlement and the approval process in this Action, all members of the Settlement Class shall be provisionally enjoined and barred from asserting any claims or continuing any litigation against GSC and the Released Parties arising out of, relating to, or in connection with the Released Claims prior to the Court's decision as to whether to grant Final Approval of the Settlement.

22. **Jurisdiction:** For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure

the effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of this Court.

23. **Final Approval Hearing:** The Court will hold a Final Approval Hearing on **October 21, 2025 at 9:30 a.m.** The Final Approval Hearing will be conducted for the following purposes: (a) to determine whether the proposed Settlement, on the terms and conditions provided for in the Settlement, is fair, reasonable, and adequate, and should be approved by the Court; (b) to determine whether an order of Final Judgment should be entered dismissing the Action on the merits and with prejudice; (c) to determine whether the proposed plan of allocation and distribution of the Settlement Fund is fair and reasonable and should be approved; (d) to determine whether any requested award of attorneys' fees and costs to Class Counsel and Service Awards to the Class Representative should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. The Court may elect to hold the Final Approval Hearing virtually by Zoom or some other application, and if it does, the instructions on how to attend shall be posted by the Claims Administrator on the Settlement Website.

24. **Schedule:** The Court hereby sets the following schedule of events:

Event	Date
Notice Deadline	30 days after Preliminary Approval
Deadline to File Motion for Attorneys' Fees , Costs, and Service Award	14 days prior to the Opt-Out and Objection Deadlines
Opt-Out Deadline	60 days after the Notice Deadline
Objection Deadline	60 days after the Notice Deadline
Deadline to Submit Claim Forms	90 days after the Notice Deadline
Final Approval Hearing	_____, 2025 at ____ am/pm Not Less than 135 days after Preliminary Approval