

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGSERYN KAPLAN, *et al.*,

Plaintiffs

Case No. 520763/2025

v.

Motion Sequence 2

NORTHWELL HEALTH,

Defendant

**PROPOSED PRELIMINARY APPROVAL ORDER**

**WHEREAS**, Plaintiffs Eryn Kaplan, Michael Zurl, and KathyAnn McLendon, on behalf of themselves and others similarly situated, (collectively, “Plaintiffs”) and Defendant Northwell Health, Inc. (“Northwell” or “Defendant”) have entered into a Settlement Agreement (the “Settlement Agreement” or “S.A.”) that fully and finally settles the above-captioned litigation and provides for a complete dismissal with prejudice for all claims arising out of Defendant’s use of the Tracking Technologies<sup>1</sup> that have been or could have been asserted against Defendant in the Action on the terms and conditions set forth in the Settlement Agreement, subject to and contingent on the approval of the Court;

**WHEREAS**, Plaintiffs have made an application, pursuant to Article 9 of the Civil Practice Law and Rules, for an order preliminarily approving the Settlement in accordance with the Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only, appointing Plaintiffs as Class Representatives, appointing Class Counsel as counsel for the Settlement Class, appointing Simpluris, Inc. (“Simpluris”) as Settlement Administrator, and

<sup>1</sup> All capitalized terms shall have the meanings defined in the Settlement Agreement, which is attached as Exhibit A to the Joint Declaration of Class Counsel in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement.

allowing notice to Settlement Class Members as more fully described herein;

**WHEREAS**, the Court has read and considered: (a) Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement; (b) Plaintiffs' Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement; (c) Joint Declaration of Class Counsel in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement and exhibits attached thereto; and (d) all prior pleadings and proceedings heretofore; and

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only and pursuant to CPLR 901(a), 903, and 907, the Court certifies, solely for purposes of effectuating the proposed Settlement, a Settlement Class in this matter as defined as follows:

**Settlement Subclass 1:** All patients of Northwell who logged into Northwell's FollowMyHealth patient portal between January 1, 2020 and December 31, 2023, and all patients who booked an appointment on Northwell's website, northwell.edu, between January 1, 2020 and December 31, 2023.

**Settlement Subclass 2:** All other patients of Northwell between January 1, 2020, and July 25, 2024, not including those in Settlement Subclass 1.

S.A. ¶ 1.36. Excluded from the Settlement Class are: (a) Defendant's officers and directors; and (b) Defendant's Counsel and in-house counsel who advised Defendant on the Action or Predecessor Actions. *Id.* Also excluded from the Settlement Class are members of the judiciary to whom this case is assigned, their families and members of their staff. *Id.*

2. **Class Findings.** The Court provisionally finds, for settlement purposes only, that the requirements of CPLR 901(a) have been met, including: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims of the Class Representatives are

typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Class Representatives and Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Class Representatives has no interest antagonistic to or in conflict with the Settlement Class and has retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to the Settlement Class Members predominate over any questions affecting only individual class members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of the controversy.

3. **Settlement Class Representatives and Class Counsel.** Eryn Kaplan, Michael Zurl, and KathyAnn McLendon are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Class Members and therefore typical of the Class and that they will be adequate Class Representatives.

The Court finds that Terence R. Coates of Markovits, Stock & DeMarco, LLC; Elena A. Belov and David S. Almeida of Almeida Law Group LLC; Gary Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC; Bryan L. Bleichner, Christopher P. Renz, and Philip J. Krzeski of Chestnut Cambronne PA; Joseph M. Lyon of The Lyon Firm, LLC; and Nicholas A. Coulson of Coulson P.C. are experienced and adequate counsel and are hereby provisionally designated as Class Counsel.

4. **Preliminary Settlement Approval.** The Court hereby preliminarily approves the Settlement, as embodied in the Settlement Agreement, as being fair, reasonable, and adequate to the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described below.

April 21,

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on \_\_\_, 2026 at <sup>Pent 9</sup> ~~9:30~~ am/pm in Courtroom \_\_\_ of the Supreme Court of the State of New York, County of Kings Courthouse, 360 Adams Street, Brooklyn, New York for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class; (b) to determine whether a proposed Judgment should be entered dismissing the Action with prejudice against Defendant; (c) to determine whether the motion of Class Counsel for a Fee Award should be approved; (d) to determine whether the motion of the Class Representatives for Service Awards should be approved; and (e) to consider any other matters that may be properly brought the Court in connection with the Settlement. Notice of the Settlement and the Final Approval Hearing shall be given to the Settlement Class Members as set forth in Paragraph 8 of this Order.

6. The Court may adjourn the Final Approval Hearing without further notice to the Settlement Class Members, and may approve the proposed Settlement with such modifications as the Parties may agree, if appropriate, without further notice to the Settlement Class Members.

7. **Retention of Claims Administrator.** Class Counsel is hereby authorized to retain Simpluris to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claims as set forth more fully in the Settlement Agreement.

8. **Approval of Form and Content of Notice.** The Court (a) approves, as to form and content, the Claim Form, Email Notice Form, and Publication Notice Form, attached to the Settlement Agreement as Exhibits A, B, and C and (b) finds that the mailing and distribution of the Notice as set forth in the Settlement Agreement (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class members of the pendency of the Civil Actions, of the effect of the



proposed Settlement (including the releases to be provided thereunder), of Class Counsel's request for the Fee Award, and/or Class Representatives' request(s) for Service Awards, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Final Approval Hearing; (iii) constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of CPLR 904 and 908, the New York and United States Constitutions (including Due Process Clause and other provisions guaranteeing due process of law), and all other applicable law and rules. The date and time of the Final Approval Hearing shall be included in the Notice before they are mailed and distributed.

9. **Participation in the Settlement.** Settlement Class Members must submit a claim in order to qualify for benefits under the Settlement. All Settlement Class Members who do not exclude themselves from the Settlement may submit a Claim Form to receive, after Final Judgment is entered, reimbursement for a cash payment in the amount of \$15.00 and twelve months of Privacy Shield to Settlement Subclass 1 Members. *Id.*, ¶ 2.1(a). All Settlement Subclass 2 Members who do not exclude themselves from the Settlement may submit a Claim Form to receive, after Final Judgment is entered, twelve months of Privacy Monitoring. *Id.*, ¶ 2.1(b).

10. Settlement Class Members who do not submit a valid request for exclusion, pursuant to Paragraph 12 of this Order, will be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Judgment, even if they do not submit a claim.

11. **Distribution and Allocation Plan.** Settlement Class Representatives and Defendant have created a process through which Settlement Class Members can submit claims to the Settlement Administrator. The Court preliminarily approves the process described in the Settlement Agreement and directs that the Claims Administrator effectuate the evaluation of

submitted claims and distribution of Settlement benefits according to the terms of the Settlement Agreement, should the Settlement be finally approved.

12. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Claims Administrator at the address provided in the Notice, postmarked no later than sixty (60) Days from the date of Notice and no sooner than fourteen (14) Days after papers supporting the Fee Award are filed with the Court and posted to the Settlement Website (the “Opt-Out Period”).

Any Settlement Class Member who does not timely and validly excuse herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If Final Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Judgment, including Settlement Class Members who have previously litigated or who subsequently initiate any litigation against any or all the Released Persons relating to the claims and transactions released in the Settlement. All Settlement Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

13. **Objections and Appearances.** No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless (a) the objection, including copies of such papers he or she proposes to be submitted at the Final Approval Hearing, is filed with the Clerk of Court, The Kings County Clerk Supreme Court Building, 360 Adams Street, Room 189, Brooklyn, NY 11201 and (b) copies of such papers are sent by mail, hand, or overnight delivery service to Class

Counsel and Defendant's Counsel, no later than 60 Days from the date on which notice program commences and no sooner than fourteen (14) Days after papers supporting the Fee Award are filed with the Court and posted to the Settlement Website, as specified in the Notice. For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 4.4 of the Settlement Agreement, which provides: Any Settlement Class Member who intends to object to this Agreement must present the objection in writing, which must be personally signed by the objector and must include: (1) the case name and number of the Action; (2) the objector's full name, current address, telephone number, and email address; (3) proof that the Settlement Class Member is a member of the settlement (e.g., copy of settlement notice, proof of being a Northwell patient during the relevant time period, proof of use of FollowMyHealth patient portal during the relevant period, and/or proof of having booked an appointment on Northwell's website during the relevant period); (4) an explanation of the basis upon which the objector claims to be a Settlement Class Member all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (5) the Settlement Class Member's signature (digital or handwritten); (6) the name, contact information (address, telephone number, and email address) and state bar(s) to which counsel is admitted, as well as associated state bar numbers, of any all attorneys representing, advising, or in any assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"), if applicable; (7) copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; (8) the signature (digital or handwritten) of the Settlement Class Member's duly authorized attorney or any other duly authorized representative, along with documentation setting forth such representation; (9) whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class,

or to the entire Settlement Class; (10) a list, including case name, court, and docket number of all other cases in which the objector and/or objector's counsel has filed an objection to any proposed class action settlement in the past three (3) years; and (11) a statement indicating whether the objector intends to appear at the Final Approval Hearing, and if so, whether personally or through Objecting Attorneys who file an appearance with the Court in accordance with the Court's rules.

14. Any Settlement Class Member who fails to comply with the provisions in Paragraph 13 shall waive and forfeit any and all rights he or she may have to object, and shall be bound by all terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if Final Judgment is entered. If Final Judgment is entered, any Settlement Class Member who fails to object in the matter prescribed herein shall be deemed to have waived his or her objections and shall forever be barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the service award request, or the fee award request.

15. **Termination of Settlement.** In accordance with the Settlement Agreement, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement, then this Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further notice and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to any purpose of whatsoever.

16. **Use of Order.** This Order shall be of no force or effect if Final Judgment is not entered or there is no Effective Date, and, as outlined in Paragraph 10.6 of the Settlement Agreement, it shall not be construed or used as an admission, concession, evidence of, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, the certifiability of the class, or any of the points items outlined in Paragraph 10.6 of the Settlement Agreement. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Class Representatives or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

17. **Stay of Proceedings and Temporary Injunction.** Unless otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs, and any and all other members of the Settlement Class, from commencing or prosecuting any and all of the Released Claims against the Release Entities.

18. **Settlement Administration Fees and Expenses.** All reasonable costs incurred with notifying Settlement Class Members of the Settlement and administering the Settlement shall be paid by the Defendant as set forth in the Settlement Agreement.

19. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

20. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and/or this Order include, but are not limited to, the following:

**Commencement of Notice Program**

**Notice Date:** 60 Days after Preliminary Approval is Granted

**Motion for Final Approval Deadline:** 14 Days prior to the Final Approval Hearing

**Motion for Service Awards, Attorneys' Fees, and Costs Deadline:** 14 Days prior to the Objection or Opt-Out Deadline


**Exclusion Deadline:** 60 Days after issuance of Notice and no sooner than fourteen (14) Days after papers supporting the Fee Award are filed with the Court and posted to the Settlement Website

**Objection Deadline:** 60 Days after issuance of Notice and no sooner than fourteen (14) Days after papers supporting the Fee Award are filed with the Court and posted to the Settlement Website

**Claims Deadline:** 90 Days after issuance of Notice

**Final Approval Hearing:** at least 90 Days after issuance of Notice

IT IS SO ORDERED this 10<sup>th</sup> day of December, 2025

  
\_\_\_\_\_  
Hon. Steven Z. Mostofsky  
Judge, Kings County, New York