

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SARATOGA

ROBERT MYERS, MADISON MARCEL, TROY ASHLINE, and TARAYL GOSS, individually and on behalf of all others similarly situated, Plaintiffs, v. SARATOGA HARNESS RACING, INC., Defendant.	INDEX NO.: EF202598
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[PROPOSED] PRELIMINARY APPROVAL ORDER

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

WHEREAS, Plaintiffs, 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 and 902 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 Defendant should the Court grant Final Approval of the Settlement;

WHEREAS, Plaintiffs filed an unopposed Motion for Preliminary Approval requesting entry of an order to: (1) conditionally certify the Settlement Class; (2) appoint Plaintiffs as Class Representatives; (3) appoint Steven Sukert of Kopelowitz Ostrow P.A. and Casondra Turner of Milberg Coleman Bryson Phillips Grossman PLLC as Class Counsel; (4) preliminarily approve the Settlement; (5) appoint Simpluris, Inc. as the Settlement Administrator; (6) approve the Notice Program and direct that Notice be sent to the Settlement Class; (7) approve the Claim Process; (8)

¹ The capitalized terms herein shall have the same meanings as those used in Section II of the Settlement Agreement, attached to the Motion for Preliminary Approval as *Exhibit A*.

approve the Settlement's opt-out and objection procedures; (8) stay all deadlines in the Action pending Final Approval of the Settlement; (9) enjoin and bar all members of the Settlement Class from initiating or continuing in any litigation or asserting any claims against Defendant 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 (10) 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. §§ 901 and 902, and for purposes of settlement only, the Action is hereby preliminarily certified as a class action on behalf of the following Settlement Class:

All living individuals residing in the United States who had information potentially impacted in the Data Incident and/or were notified of the Data Incident.

2. **Settlement Fund:** The Settlement provides Cash Payments and Medical Data Monitoring that Defendant is obligated to pay under the Settlement. The Settlement Fund will be used to pay for the Cash Payments and Credit Monitoring; Settlement Administration Costs; any Court-approved attorneys' fees and costs to Class Counsel; and any Court-approved Service Awards to Plaintiffs for serving as the Class Representatives.

3. The terms of the Settlement (and the Settlement provided for therein) are preliminarily approved and likely to be approved at the Final Approval Hearing pursuant to C.P.L.R. § 908 as fair, reasonable, and adequate.

4. **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 and 902 have been satisfied, and that the Court will likely certify at the Final Approval stage a Settlement Class.

5. In particular, pursuant to C.P.L.R. § 901, 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 that predominate over any questions affecting only individual members of the Settlement Class; (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 fairly and efficiently adjudicating the Action taking into consideration: (i) the lack of evidence of any intent among the Settlement Class members to individually control the prosecution of separate actions; (ii) other than the Related Actions, the Parties' not being aware of any litigation concerning the controversy already begun by Settlement Class members other than the proposed Class Representatives; (iii) the small value of the claims of many of the individual Settlement Class members making the pursuit of individual actions cost prohibitive for most Settlement Class members; and (iv) the similarity of the Settlement Class members' claims involving substantially identical proofs.

6. **Appointment of Class Representatives and Class Counsel:** The Court hereby finds and concludes and for purposes of settlement only, that Plaintiffs are adequate class representatives and appoint Plaintiffs as Class Representatives for the Settlement Class.

7. The Court finds that proposed Class Counsel have expended a reasonable amount of time, effort, and expense investigating the Data Incident. It is clear from their track record 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, the Court appoints Steven Sukert and Casondra Turner as Class Counsel to act on behalf of the Settlement Class and the Class Representatives with respect to the Settlement:

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

9. **Settlement Administrator:** Class Counsel are authorized to use Simpluris, Inc. as the Settlement Administrator to supervise and administer the Notice Program, as well as to administer the Settlement should the Court grant Final Approval.

10. **Approval of Notice Program and Notices:** The Court approves, as to form and content, the Notice Program, including the 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; (c) constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (d) satisfies the requirements of 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 Postcard Notice and Long Form Notice, respectively, before they are emailed, mailed, or published.

11. **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 Settlement 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 to the Settlement, Settlement Class Members who do not opt-out of the Settlement shall be bound by its terms even if they though do not submit Claims.

12. **Dissemination of Notice and Claim Forms:** The Court directs the Settlement Administrator to disseminate the Notices and Claim Form as approved herein. Class Counsel and Defendant'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.

13. **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 Settlement Administrator and be postmarked no later than 30 days before the initial date set for the Final Approval Hearing and otherwise fully comply with the requirements of the Settlement Agreement and Long Form Notice.

14. 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.

15. **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 filed with the Clerk of the Court and mailed to the Settlement Administrator, Plaintiffs' Counsel and Defendant's Counsel. Objections must be submitted on behalf of a Settlement Class Member no later than 30 days before the original date set for the Final Approval Hearing and otherwise fully comply with the requirements set forth in the Settlement Agreement and Long Form Notice. Class Counsel and/or Defendant's counsel may conduct limited discovery on any objector consistent with the rules of civil procedure, including taking depositions and propounding written discovery requests.

16. **Motion for Final Approval and Application for Attorneys' Fees, Costs, and Service Awards:** Class Counsel intends to seek an award of up to one-third of the Settlement Fund as attorneys' fees, as well as reimbursement of reasonable litigation costs, and Service Awards of \$2,500.00 for each Class Representative to be paid from the Settlement Fund. 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.

17. Class Counsel shall file their Motion for Final Approval and Application for Attorneys' Fees, Costs, and Service Awards no later than 45 days before the initial date set for the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Class Counsel's request for attorneys' fees and costs and Service Awards 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.

18. **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 Plaintiffs, the Settlement Class members, and Defendant all of whom shall be restored to their respective positions in the Action as provided in the Agreement.

19. **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.

20. Upon the entry of this order, with the exception of Class Counsel, Defendant's Counsel, Defendant, and the Class Representatives 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 Defendant 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.

21. **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.

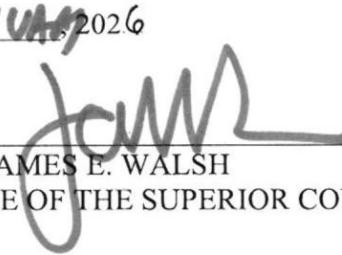
22. **Final Approval Hearing:** The Court will hold a Final Approval Hearing. The Final Approval Hearing will be conducted for the following purposes: (a) to determine whether the proposed Settlement, on the terms and conditions provided for in the Settlement, is fair, reasonable, and adequate, and should 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 Representatives 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 Settlement Administrator on the Settlement Website.

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

Event	Date
Notice Program Begins	Within 20 days of Preliminary Approval
Notice Program Complete	45 days before initial scheduled Final Approval Hearing
Deadline to File Motion for Final Approval, and Application for Attorneys' Fees , Costs, and Service Awards	45 days before initial scheduled Final Approval Hearing
Opt-Out Deadline	30 days before initial scheduled Final Approval Hearing
Objection Deadline	30 days before initial scheduled Final Approval Hearing
Claim Form Deadline	15 days before initial scheduled Final Approval Hearing
Final Approval Hearing	<u>May 26</u> , 2026, at <u>1:30 pm</u> /am

SO ORDERED this 7/1 day of JANUARY, 2026


HON. JAMES E. WALSH
JUSTICE OF THE SUPERIOR COURT