

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

HAILEY NEWHART, CELESTE BATTLE, ALISA  
OLDACRE, and RICHARD BRENNAN, on behalf of  
themselves and all others similarly situated,

Index No.: 815961/2024

Plaintiffs,

- vs -

GENERAL PHYSICIAN, P.C.,

Defendant.

**[Proposed] ORDER GRANTING MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

**BEFORE THE COURT** is the Unopposed Motion for Preliminary Approval<sup>1</sup> submitted by Plaintiffs, individually, and on behalf of all Settlement Class Members. Prior to ruling, the Court considered the following documents and evidence:

- Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement;
- Declaration of Interim Co-Lead Counsel Gary M. Klinger and Israel David in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, and attached exhibits; and
- The records in this case and arguments of counsel.

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

**1. Preliminary Approval of the Proposed Settlement.** The Settlement is preliminarily approved pending Final Approval. Based on the representations of the Parties and

<sup>1</sup> All capitalized terms herein shall have the same meanings as those defined in the Settlement Agreement, attached to the Motion for Preliminary Approval as Exhibit A.

the current record, the Court preliminarily finds that the proposed Settlement described in the Agreement (including the monetary provisions, the plan of allocation, the release of claims, the proposed award of attorneys' fees and costs, and Service Awards) appears reasonable and therefore grants Preliminary Approval of the Settlement. The Court preliminarily finds that the Settlement is fair, reasonable, and adequate and that the Settlement is in the best interests of the Settlement Class. In making this preliminary finding, the Court considered the nature of the claims, the relative strength of Plaintiffs' claims, the amounts and kinds of benefits paid in Settlement, the allocation of Settlement proceeds among the Settlement Class Members, and the fact that a settlement represents a compromise of the Parties' respective positions rather than the result of a finding of liability at trial. The Court further finds that the Settlement resulted from arm's length negotiations.

**2. Class Certification for Settlement Purposes Only.** Pursuant to C.P.L.R. Ch. 8, Art. 9, §§ 901(a)(1)-(5) and 902, the Court conditionally certifies, for settlement purposes only, the following Settlement Class, which consists of all Settlement Class Members who have not excluded themselves from the Settlement Class by submitting a timely request to opt-out in accordance with the requirements set forth in the Notice and the Preliminary Approval Order:

All individuals residing in the United States whose Private Information was potentially accessed and/or acquired by an unauthorized party as a result of the Data Incident reported by Defendant in October 2024.

Excluded from the Settlement Class are all persons who are: (a) the Judge assigned to the Action, that Judge's immediate family, and Court staff; and (b) any Settlement Class Member who timely and validly opt-out of the Settlement.

3. **Prerequisites for Class Action.** Solely for the purposes of settlement, the Court conditionally finds that the prerequisites for a class action appear satisfied pursuant to the C.P.L.R. Ch. 8, Art. 9, § 902 factors and the *Colt* factors, for the following reasons:

(a) The Settlement Class consists of approximately 490,210 members and thus is very numerous, and it may be impracticable to bring them all before the Court, one or more may sue or defend for the benefit of all;

(b) There are questions of law or fact common to the Settlement Class for the purpose of determining whether the Settlement should be approved;

(c) The Class Representatives' claims are typical of the claims of the Settlement Class because the Class Representatives' claims arise from the same alleged course of conduct that gives rise to the claims of other Settlement Class Members and are based on the same legal theory;

(d) The Class Representative and Class Counsel are capable of fairly and adequately protecting the interests of the Settlement Class Members in connection with the proposed Settlement;

(e) For purposes of settlement, the predominance requirement is satisfied because there is a "common nucleus of operative facts" to each Settlement Class Members' claims, and all Settlement Class Members were subject to the same alleged conduct by Defendant;

(f) For purposes of settlement, the superiority requirement is satisfied because the resolution of approximately 490,210 claims in one action is far superior to individual lawsuits and promotes consistency and efficiency of adjudication, particularly in a case like this one with modest individual damages; and

(g) The Settlement conforms to the requirements of due process and fairly ensures the protection of absent parties who are to be bound by the Settlement.

**4. Appointment of the Class Representatives and Class Counsel.** The Court conditionally appoints Plaintiffs Hailey Newhart, Celeste Battle, Alisa Oldacre, and Richard Brennan as Class Representatives for the Settlement Class.

The Court appoints Gary M. Klinger of Milberg PLLC and Israel David of Israel David LLC as Class Counsel for the Settlement Class.

**5. Settlement Administrator.** Kroll Settlement Administration LLC is appointed to serve as the Settlement Administrator for the Settlement Class for the purpose of administering the Settlement and implementing the Notice Plan and Claims Process.

**7. Notice of Proposed Class Action Settlement.** The Court approves the Notice Plan and the form and content of the Notice, and authorizes dissemination of the Notice to the Settlement Class as required by the Settlement. The Court finds that the proposed method for notifying the Settlement Class meets the requirements of C.P.L.R. Ch. 8, Art. 9, §§ 904 and 908, and all due process requirements, is the best notice practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled to notice. The Settlement Administrator shall follow the procedures set forth in the Agreement to effectuate the Notice Plan. The deadline for Settlement Class Members to submit a claim for Settlement Class Member Benefits shall be 15 days before the initial scheduled Final Approval Hearing.

Within 10 days of the date of this order, Defendant shall provide the Settlement Class List to the Settlement Administrator. Within 30 days of this order, the Settlement Administrator shall begin to distribute Notice to all Class Members as provided in the Settlement Agreement.

8. **Opting-Out of the Settlement.** Unless a Settlement Class Member timely opts-out of the Settlement, pursuant to the requirement set forth in the Agreement and in the Notice, he/she shall be bound by the terms and conditions of the Agreement and shall also be bound by the Court's Final Approval Order enjoining all Settlement Class Members from pursuing, or seeking to reopen, any of the Released Claims against the Defendant or the Released Parties. The Court approves the proposed procedure to opt-out from the Settlement, which is to submit a written statement requesting to opt-out to the Settlement Administrator no later than the Opt-Out Deadline, which is 30 days before the initial scheduled Final Approval Hearing.

9. **Objecting to the Settlement.** Each member of the Settlement Class shall be given a full opportunity to object to the proposed Settlement and Application for Attorneys' Fees, Costs, and Service Awards and to participate in the Final Approval Hearing. Any Member of the Class seeking to object to the proposed Settlement may file such objection in writing with the Court no later than 30 days before the initial scheduled Final Approval Hearing. Settlement Class Members who fail to send timely written objections substantially complying with the manner specified above or fail to object at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. The written objection requirement may be excused by the Court upon a showing of good cause. Only objecting Settlement Class Members who make objections in the exact manner described in the Agreement and in the Long Form Notice, will be considered objectors and will therefore be permitted to be heard at the Final Approval Hearing unless excused upon a showing of good cause. Class Counsel and Defendant's counsel may conduct discovery on any objector, including taking deposition and requiring the production of documents.

**10. Final Approval Hearing.** Class Counsel shall file their Motion for Final Approval inclusive of the Application for Attorneys' Fees, Costs, and Service Awards, no later than 45 days before the initial date set for the Final Approval Hearing. The Final Approval Hearing is set for June 4, 2026 at 9:30 a.m., and may be in-person at the Erie County Court Building, 25 Delaware Avenue, Buffalo, New York 14202, Courtroom PE 15, by Zoom, or both, depending upon the Court's preference. The Settlement Website will include notice of the date, time, and whether the hearing is in-person, by Zoom, or both. EAB

At the hearing, the Court will consider whether the prerequisites for class certification and treatment under C.P.L.R. Ch. 8, Art. 9, §§ 901(a)(1)-(5) are satisfied for settlement purposes and whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court. The Court will also consider Class Counsel's Application for Attorneys' Fees, Costs, and Service Awards, and rule on any other matters that the Court deems appropriate.

The Court reserves the right to continue the date of the Final Approval Hearing without further notice to the Settlement Class, which will not otherwise alter the deadlines for submitting a Claim, objecting to or opting-out of the Settlement, or for Plaintiffs to file their Motion for Final Approval set forth herein unless specifically ordered by the Court. In the event that the Effective Date does not occur, the Parties will be returned to their respective positions *nunc pro tunc* as those positions existed prior to the execution of the Settlement Agreement.

**11. Non-substantive amendments.** Non-substantive amendments may be made to the Settlement Agreement and/or Notice upon agreement of Class Counsel and Defendant's counsel.

**12.** All proceedings in this Action, except those contemplated herein, are stayed and all deadlines vacated.

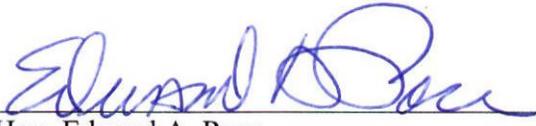
13. The Court retains jurisdiction to consider all further applications arising out of, or in connection with, the Settlement.

14. **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 this Preliminary Approval Order include, but are not limited to:

<u>EVENT</u>	<u>DATE</u>
Notice Date	30 days after Preliminary Approval
Deadline for Settlement Class Members to Object to Settlement	60 days after the Notice Date
Deadline for Settlement Class Members to Opt-Out of Settlement	60 days after the Notice Date
Deadline for Plaintiffs to File Motion for Final Approval and Application for Attorney Fees, Costs, and Service Awards	45 days prior to initial scheduled Final Approval Hearing (i.e., no earlier than 75 days after the Notice Date)
Deadline for Settlement Class Members to Submit Claim Forms (Electronically or Postmarked by Mail)	90 days after the Notice Date
<b><u>Final Approval Hearing</u></b>	<u>June 4</u> , 2026 (No earlier than 120 days after the Notice Date)

**IT IS SO ORDERED.**

DATED: January 23, 2026

  
Hon. Edward A. Pace