

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

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**GRACE OLIVERI, TRACY POLICICCHIO, and
E.B. by his guardian, CANDACE BASSI,
individually, and on behalf of all
others similarly situated,**

Index No.: 66660/2024

Plaintiffs,

-against-

**MOUNT KISCO SURGERY CENTER LLC, D/B/A
THE AMBULATORY SURGERY CENTER OF
WESTCHESTER,**

Defendant.

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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, *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, Plaintiffs 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 Plaintiffs as Class Representatives; (3) appoint counsel listed in paragraph 24 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

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

Claims process; (7) order the Settlement's opt-out and objection procedures; (8) appoint Simpluris as the Settlement 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 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 (11) set a date for the Final Approval Hearing;

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 persons in the United States whose Private Information was potentially impacted as a result of the Data Security Incident.

Excluded from the Settlement Class are (a) all persons who are governing board members of Defendant, (b) governmental entities, (c) the Court, the Court's immediate family, and Court staff and (d) any individual who timely and validly opts-out of the Settlement.

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 Plaintiffs are adequate class representatives and appoints Grace Oliveri, Tracy Policicchio, and E.B., by his guardian Candace Bassi as Class Representatives for the Settlement Class.

6. 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 K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC, Scott Edward Cole of Cole & Van Note and Jarrett L. Ellzey of Ellzey, Kherkher, Sanford & Montgomery LLP.

7. **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).

8. **Settlement Administrator:** Class Counsel are authorized to retain Simpluris as the

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

9. **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.

10. **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 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.

11. **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.

12. **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 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, address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the 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.

13. 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.

14. **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 Clerk of the Court, Class Counsel, Defendant's Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Objection Period, as specified in the Notice. If 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.

15. For an objection to be considered by the Court, the objection must set forth:

- a. the name of this Litigation (*Grace Oliveri, et al., v. Mount Kisco Surgery Center LLC d/b/a The Ambulatory Surgery Center of Westchester*, Case No. 66660/2024)
- b. the objector's full name, mailing address, telephone number, and email address (if any);
- c. the specific reasons for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- d. the number of times the objector has objected to a class action settlement within the 5 years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior

- objections that were issued by the trial and appellate courts in each listed case;
- e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Motion for Attorneys' Fees, Costs, and Service Award;
 - f. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;
 - g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;
 - h. the identity of all counsel (if any) representing the objector and whether they will appear and address the Court at the Final Approval Hearing;
 - i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);
 - j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

k. the objector's signature (an attorney's signature is not sufficient).

16. Class Counsel and/or Defendant'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.

17. 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.

18. **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 (\$175,833.33) in attorneys' fees, plus costs and out-of-pocket case expenses, and a Service Award for the Class Representatives of \$2,500.00 each. 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.

19. 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.

20. **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 Defendant, all of whom shall be restored to their respective positions in the Action as provided in the Agreement.

21. **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.

22. Upon the entry of this order, with the exception of Class Counsel's, Defendant'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 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.

23. **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.


24. **Final Approval Hearing:** The Court will hold a Final Approval Hearing on September 9, 2026 at 2 ~~pm~~ pm. 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 Settlement Administrator on the Settlement Website.

25. **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	60 days after the Notice Deadline
Final Approval Hearing	<p>September 9, 2026 at 2 pm</p> <p>Not Less than 120 days after Preliminary Approval</p>

SO ORDERED this 27th day of March, 2026.



 Hon. David J. Squirrell, J.S.C.