

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

SUSAN SZUCS, ANTHONY PARRIZZI,
TERRENCE ERNEST GIDNEY, CHRISTINA
CHURCH, JIMMIE HARDAWAY, JR., SHARON
SIEGLE, PAUL PASCUCCI, JAMES
MARCISZEWSKI, and SHANNON ALLGRIM,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

EXCELSIOR ORTHOPAEDICS, LLP, and
BUFFALO SURGERY CENTER, LLP,

Defendants.

Index No. 812753/2024

CLASS ACTION

cnp
~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL

This matter came before the Court on Plaintiffs Susan Szucs, Anthony Parrizzi, Terrence Ernest Gidney, Christina Church, Jimmie Hardaway, Jr., Sharon Siegle, Paul Pascucci, James Marciszewski, and Shannon Allgrim's ("Plaintiffs" or "Class Representatives") Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement. Plaintiffs, individually and on behalf of the proposed Settlement Class, and Defendants Excelsior Orthopaedics, LLP and Buffalo Surgery Center, LLP ("Defendants"), have entered into a Settlement Agreement (the "Settlement Agreement").

Having reviewed the motion, the Settlement Agreement,¹ and all exhibits attached thereto, and the record in this case, and for good cause shown:

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only and pursuant to NY CPLR Ch. 8, Art. 9, §§ 901(a)(1)-(5) and 902, the Court conditionally certifies the Settlement Class in this matter defined as follows:

all living natural persons who are residents of the United States whose Personal Information was potentially accessible as a result of the Incident, including all persons who received notice of the Incident.

Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their families; (2) Defendants and their officers and directors; (3) AMKAI, LLC d/b/a Surgical Information Systems and its officers and directors; (4) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (5) the successors or assigns of any such excluded natural person.

The Court conditionally finds, for settlement purposes only, that: (1) the Settlement Class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (2) there are questions of law or fact common to the Settlement Class which predominate over any questions affecting only individual class members; (3) the claims or defenses of the Class Representatives are typical of the claims or defenses of the Settlement Class; (4) the Class Representatives will fairly and adequately protect the interests of the Settlement Class; (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

¹ Unless otherwise indicated, capitalized terms used in this Preliminary Approval Order Granting Unopposed Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”) have the same meaning as in the Settlement Agreement.

2. **Settlement Class Representatives and Settlement Class Counsel.** Susan Szucs, Anthony Parrizzi, Terrence Ernest Gidney, Christina Church, Jimmie Hardaway, Jr., Sharon Siegle, Paul Pascucci, James Marciszewski, and Shannon Allgrim are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Settlement Class Members and, therefore, typical of the Settlement Class and that they will be adequate Class Representatives. The Court finds that the following counsel is experienced and adequate counsel and is hereby provisionally designated as Settlement Class Counsel: Andrew W. Ferich of Ahdoot & Wolfson, PC, Arturo Peña of Sterlington PLLC, and Tyler J. Bean of Siri & Glimstad LLP.

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court concludes and finds that the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class to warrant providing Notice of the Settlement to the Settlement Class and, accordingly, is preliminarily approved.

4. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this Court.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on July 8, 202⁶, at 10:00 o'clock [^Xa.m./p.m.] in the Supreme Court of the State of New York, Erie County, 25 Delaware Avenue, Buffalo, New York 14202, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to NY CPLR Ch. 8, Art. 9, §§ 901(a)(1)-(5); (b) the Settlement and Settlement Agreement should be finally approved as fair, reasonable, adequate, and in the best interests of the Settlement Class pursuant to NY CPLR Ch. 8, Art. 9, § 908; (c) the Action should

be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members (except those who have made timely and valid requests for exclusion from the Settlement) should be bound by the releases set forth in the Settlement Agreement; and (e) Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards should be approved.

6. **Settlement Administrator.** The Court appoints Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator, with responsibility for the Notice Plan and administration of claims and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. All costs associated with the Notice Plan shall be paid from the Settlement Fund. Defendants shall disclose the necessary names and mailing addresses to the Settlement Administrator for purposes of the Notice Plan and administration of claims and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. The Settlement Administrator shall maintain any names and mailing addresses obtained from Defendants in the course of the Settlement Class notification and claims administration process securely and confidentially and shall use such information solely for purposes of effecting Settlement Class Notice and claims administration under the Settlement Agreement.

7. **Notice.** The proposed Notice Plan set forth in the Settlement Agreement, including the Claim Form, Summary Notice, and Long Form Notice, which are attached to the Settlement Agreement as **Exhibits A, B, and D**, respectively, satisfy the requirements of NY CPLR Ch. 8, Art. 9, §§ 904 and 908 and constitute reasonable notice of the Action and Settlement and are hereby approved. Non-material modifications to these exhibits may be made without further order of the Court. The Settlement Administrator and Defendants are directed to carry out the Notice Plan in conformance with the Settlement Agreement.

Within 35 days from the date of this Order (the “Notice Date”), the Settlement Administrator and Defendants shall initiate the Notice Plan, which shall be completed in the manner set forth in the Settlement Agreement.

8. **Findings Concerning Notice.** The Court finds that the form, content, and method of giving Notice to the Settlement Class as described in Paragraph 7 of this Preliminary Approval Order and the Settlement Agreement (including the exhibits thereto) constitutes reasonable Notice of the commencement of the Action to the Settlement Class pursuant to NY CPLR Ch. 8, Art. 9, §§ 904 and 908. Specifically, the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members. Moreover, the Notice is clear and straightforward: it apprises Settlement Class Members of the pendency of the Action; describes the essential terms of the Settlement; defines the Settlement Class; clearly describes the options available to the Settlement Class and the deadlines for taking action; explains procedures for making claims, objections, or requesting exclusion; provides information that will enable Settlement Class Members to calculate their individual recovery; discloses the Plaintiffs’ requested attorneys’ fees, costs, and expenses, and Class Representatives’ requested Service Awards; describes the date, time, and place of the Final Approval Hearing; and prominently displays the address of proposed Settlement Class Counsel. Finally, direct mailing, combined with publishing on the Settlement Website, is designed to be the best reasonable notice of the commencement of the Action to reach the Settlement Class Members under the circumstances. The Court concludes that the Notice Plan meets all applicable requirements of law pursuant to NY CPLR Ch. 8, Art. 9, §§ 904 and 908.

9. **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 Settlement Administrator at the address provided in the Notice, postmarked no later than 60 days from the Notice Date (the “Opt-Out Period”). The written notification must include all the information set forth in Paragraph 7.8 of the Settlement Agreement, as follows:

- (i) state the name, address and telephone number of the Class Member seeking exclusion;
- (ii) be physically signed by the person(s) seeking exclusion; and
- (iii) contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Szucs, et al. v. Excelsior Orthopaedics, LLP, et al.*, Supreme Court of the State of New York, Erie County, Case No. 812753/2024.”

The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Settlement Class Counsel may move to file under seal with the Court, no later than **five Days after the last day of the Opt-Out Period**.

Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If a Final Approval Order is entered, any Settlement Class Member who has not submitted a timely, valid written Request for 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 Approval Order, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Persons relating to the claims and transactions released in the Settlement Agreement. All Settlement Class Members who submit valid and timely Requests for Exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

10. **Objections and Appearances.** A Settlement Class Member who complies with the requirements of this Paragraph may object to the Settlement and to Plaintiffs' Motion for Fee Award and Costs, and Service Awards for the Class Representatives.

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 the objection is: (1) filed with the Clerk of Court by the Objection Deadline as set forth in the Settlement Agreement, and (2) mailed or hand-delivered concurrently upon (a) Settlement Class Counsel, (b) Defendants' Counsel, and (c) the Settlement Administrator, at the addresses listed in the Notice, and postmarked by no later than the Objection Deadline set forth in the Settlement Agreement, and 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 7.9 of the Settlement Agreement, which is as follows:

- (a) identify the case name and number;
- (b) state the Settlement Class Member's full name, current mailing address, and telephone number;
- (c) contain a statement by the Settlement Class Member that he or she believes himself to be a member of the Settlement Class;
- (d) include proof that the Settlement Class Member is a member of the Settlement Class (e.g., copy of the settlement notice, copy of the original notice of the Incident);
- (e) identify the specific factual and legal grounds for the objection;
- (f) identify whether the objection is an objection to the Settlement in part or in whole;
- (g) state whether the objection applies only to the objector, a subset of the Settlement Class, or the entire Settlement Class;

- (h) identify all counsel representing the objector, if any;
- (i) include a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past 5 years;
- (j) include all documents or writings that the objector desires the Court to consider;
- (k) contain a statement regarding whether the objector (or counsel of his or her choosing) intends to appear at the Final Approval Hearing; and
- (l) contain the signature of the objector or the objector's duly authorized attorney or representative.

Any Settlement Class Member who fails to comply with the provisions in this Paragraph may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Preliminary Approval Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the Release in the Settlement Agreement, if the Final Approval Order is entered.

Any Settlement Class Member, including a Settlement Class Member who files and serves a written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, or Plaintiffs' Fee Award and Costs, and/or Service Award requests for Class Representatives.

If the Final Approval Order is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever 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, and Plaintiffs' Attorneys' Fee Award and Costs, and/or Service Award requests for Class Representatives.

11. **Claims Process and Allocation Plan.** Settlement Class Counsel and Defendants have created a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the plan for distribution of the Settlement consideration described in the Settlement Agreement and directs that the Settlement Administrator effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If the Final Approval Order is entered, all Settlement Class Members who qualify for any benefit under the Settlement, but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form, shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Approval Order.

12. **Termination of Settlement.** This Preliminary Approval 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, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the

Court's orders, including this Preliminary Approval Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

13. **Use of Order.** This Preliminary Approval Order shall be of no force or effect if a Final Approval Order is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Preliminary Approval 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 Action or in any other lawsuit.

14. **Stay of Proceedings and Enjoining Further Actions.** Except as necessary to effectuate this Preliminary Approval Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order, or until such further order of this Court. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Settlement Class Members from commencing or prosecuting any and all of the Released Claims against the Released Settling Parties.

15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website maintained by the Settlement Administrator.

16. **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> |
|---|---|
| Preliminary Approval Order | _____ |
| Notice Date | 35 days after Preliminary Approval: _____ |
| Deadline for Plaintiffs to File Motion for Attorneys’ Fee Award and Costs, and Service Awards | 14 days prior to Objection Deadline: _____ |
| Deadline for Settlement Class Members to Object to Settlement | 60 days after Notice Date: _____ |
| Deadline for Settlement Class Members to Opt-Out of Settlement | 60 days after Notice Date: _____ |
| Deadline for Plaintiffs to File Motion for Final Approval of Settlement | 14 days after Objection Deadline: _____ |
| Deadline for Class Members to Submit Claim Forms (Electronically or Postmarked by Mail) | 90 days after Notice Date: _____ |
| <u>Final Approval Hearing</u> | _____ [No earlier than 130 days after entry of the Preliminary Approval Order] |

SO ORDERED THIS 10th DAY OF February, 2026.

Catherine Nugent Panepinto

Hon. Catherine Nugent Panepinto