

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

NONI WAHAB, GINA ADDORISIO,
DANIEL OUGRIN, LAVERNE CARR,
DIANE YOUNG, as parent and guardian of
Q.Y., a minor, and STEPHEN
SCHLAUGIES, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

BOSTON CHILDREN'S HEALTH
PHYSICIANS, LLP and ATSG, INC.,

Defendants.

Index No. 73692/2024

Motion Seq. No. 8

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 Defendants, 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 Defendants 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 23 of the 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 Claims

¹ The capitalized terms used herein have the same meanings as those defined in the Settlement Agreement attached as Exhibit A to the Memorandum in Support of Motion for Preliminary Approval.

Process; (7) order the Settlement's opt-out and objection procedures; (8) appoint Kroll, Inc. 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 Defendants and other 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; 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. § 903, and for purposes of the Settlement only, the Action is hereby preliminarily and conditionally approved and certified as a class action on behalf of the following Settlement Class:

All individuals who were directly or indirectly notified by BCHP that their Private Information may have been impacted in the Data Incident. Excluded from the Settlement Class are all persons who are: (a) directors, officers, and agents of Defendants; (b) the Judge assigned to the Action, that Judge's immediate family, and; (c) Court staff.

2. **Settlement Fund:** The Settlement provides for a non-reversionary \$5,150,000.00 common cash Settlement Fund for the benefit of the Settlement Class that Defendants shall cause to be paid under the Settlement. The Settlement Fund will be used to pay all Settlement Class Member Benefits; 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. The Settlement Fund will be created and funded subject to the terms of the Settlement.

3. **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.

4. 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.

5. 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.

6. **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 them as the Class Representatives for the Settlement Class.

7. The Court has considered (a) the work Class Counsel have done in identifying or investigating potential claims in the Action, (b) Class Counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the Action, (c) Class Counsel's knowledge of applicable law, and (d) the resources Class Counsel will commit to representing the Settlement Class. 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: Jeff Ostrow of Kopelowitz Ostrow P.A., Jean Martin of Morgan & Morgan, P.A., and Christian Levis of Lowey Dannenburg, P.C.

8. **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 Plaintiffs 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: (a) the likelihood of success; (b) the extent of support from the Parties; (c) the judgment of counsel; (d) the nature of the issues of law and fact; and (e) the presence of bargaining in good faith, which Plaintiffs sufficiently address in the Motion for Preliminary Approval, 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).

9. **Settlement Administrator:** Class Counsel are authorized to retain Kroll, Inc. 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. The Settlement Administrator is directed to perform all tasks the Settlement Agreement requires. The Settlement Fund will be used to pay all Settlement Administration Costs.

10. **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 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 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 Notices before they are 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 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.

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 Defendants' 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. **Claims Process:** Class Counsel and Defendants have created a process for Settlement Class Members to claim benefits under the Settlement. The Court preliminarily approves this process and directs the Settlement Administrator to make the Claim Form or its substantial equivalent available to Settlement Class Members in the manner specified in the Settlement Agreement. The Settlement Administrator will be responsible for effectuating the claims process. In order to be a timely and Valid Claim for Settlement Class Member Benefits, Settlement Class Members must submit or postmark a Claim Form no later than 15 days before the initial scheduled Final Approval Hearing. If the Final Approval Order is entered, all Settlement Class Members who did not submit a valid and timely claim 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 Final Approval Order, including the Releases.

14. **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 original date set for the Final Approval Hearing (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, postal address, email address (if any), telephone number, and a statement that indicates a request to be excluded from the Settlement Class.

15. 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.

16. **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 sent by U.S. Mail to Class Counsel, Defendants' Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted on behalf of a Settlement Class Member no later than 30 days before the initial date set for the Final Approval Hearing (the last day of the Objection Period). When 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.

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

- a. the objector's full name, address, email address (if any), and telephone number;
- b. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- c. the number of times the objector has objected to a class action settlement within the five 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 on the objector's prior objections that were issued by the trial and appellate courts in each listed case;
- d. the identity of all counsel (if any) 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 or Application for Approval of Attorneys' Fees, Costs and Service Awards;
- e. 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 on 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 five years;
- f. the identity of all counsel (if any) representing the objector, and whether they will appear at the Final Approval Hearing;
- g. a list of all persons who will be called to testify at the Final Approval

Hearing in support of the objection;

h. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

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

18. Class Counsel and/or Defendants' Counsel may conduct limited discovery on any objector or objector's counsel consistent with the Civil Practice Law and Rules, and respond in writing to the objections prior to the Final Approval Hearing.

19. 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.

20. **Motion for Final Approval and Application for Attorneys' Fees, Costs, and Service Awards:** 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 original 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 Representatives. 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.

21. **Termination of the Settlement:** 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, or Defendants, all of whom shall be restored to their respective positions in the Action as provided in the 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 Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

22. **Use of Order:** This Order shall be of no force or effect if the 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, or liability. 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 claims lack merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any party of any defense or claims they may have in this Action or in any other action.

23. **Stay of the Action:** 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.

24. Upon the entry of this order, with the exception of Class Counsel's, Defendants', Defendants' Counsel's, 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 Defendants and the other 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.

25. **Final Approval Hearing:** The Court will hold a Final Approval Hearing on Dec. 10, 2025, at 9:30 am~~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 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.

26. **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. The Court may approve the Settlement, with such modifications as may be agreed upon by the Parties, if appropriate, without further notice to the Settlement Class.

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

Event	Date
Notice Program Begins	30 days after Preliminary Approval
Notice Program Complete	60 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 date
Opt-Out Deadline	30 days before initial scheduled Final Approval Hearing
Objection Deadline	30 days before initial scheduled Final Approval Hearing
Deadline to Submit Claim Forms	15 days before initial scheduled Final Approval Hearing
Final Approval Hearing	<u>December 10</u> , 2025, at <u>9:30 am</u> pm (<u>or soon thereafter</u>)

SO ORDERED this 27th day of June, 2025.


HON. GRETCHEN WALSH
SUPREME COURT JUSTICE