

STATE OF NORTH CAROLINA
PITT COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CVS000772-730

TAMMY FLYNN; HEISHA LYNCH;
J.L., a minor, through her mother,
HEISHA LYNCH; DEAN SWINSON;
BRANDON CANNON; BRITTANY
MOORE; ANNAIA MCLAMB;
CYNTHIA MEADOWS; SUZANNE
ABRAMS; LATASHA WILLIAMS;
BILLY ROBINSON; JOSEPH
SAWYER; SAMANTHA
RICHARDSON; LORI POWERS;
JASON POWERS; GENEVIEVE
JONES; ELAINE QUITTKAT; and
MARY SHELDON,

Plaintiffs,

v.

EASTERN RADIOLOGISTS, INC.,

Defendant.

**ORDER ON UNOPPOSED AMENDED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

This matter is before the Court on Plaintiffs' Unopposed Amended Motion for Preliminary Approval of Class Action Settlement. (ECF No. 42). Plaintiffs, on behalf of themselves and the proposed Settlement Class, have entered into a settlement agreement with defendant Eastern Radiologists, Inc. ("**Settlement Agreement**") that will settle this litigation, subject to the Court's approval (the "**Settlement**"). (ECF No. 42.1).

1. **Background.** In 2024, Plaintiffs separately filed a number of actions against Defendant seeking relief for a November 2023 cyberattack and data breach in which third parties allegedly maliciously obtained the personally identifiable information and protected health information of Defendant's patients, including

Plaintiffs. Those separate actions were consolidated into this Action on 10 June 2024, (ECF No. 11), and Plaintiffs filed their Consolidated Class Action Complaint on 21 August 2024, (ECF No. 19). Plaintiffs assert claims for negligence, negligence per se, breach of implied contract, breach of fiduciary duty, unjust enrichment, invasion of privacy, unfair and deceptive trade practices, and declaratory judgment and injunctive relief. Defendant filed a motion to dismiss the complaint on 3 October 2024. (ECF No. 21). In the midst of briefing on Defendant's motion to dismiss, the parties reached the proposed Settlement as part of the Settlement Agreement.

2. **Relief Requested.** Plaintiffs have moved pursuant to Rule 23 of the North Carolina Rules of Civil Procedure for an order preliminarily approving the terms of the Settlement in accordance with the Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only, appointing Plaintiffs as Class Representatives, appointing Class Counsel as counsel for the Settlement Class, appointing Epiq Class Action & Claims Solutions, Inc. as Claims Administrator, and allowing notice to Settlement Class Members as more fully described herein.

3. **Preliminary Approval.** Having reviewed Plaintiffs' motion for preliminary approval of the Settlement, the papers filed and arguments made in connection therewith, and the Settlement Agreement and exhibits attached thereto, the Court hereby **GRANTS** the motion as set forth below.¹

¹ Unless otherwise indicated, the capitalized terms in this Order have the same meaning as in the Settlement Agreement. (ECF No. 42.1).

4. **Conditional Class Certification for Settlement Purposes Only.**

Pursuant to Rule 23(c) of the North Carolina Rules of Civil Procedure, the Court certifies, conditionally and solely for purposes of effectuating the proposed Settlement, a Settlement Class in this matter defined as follows:

“All persons whose Private Information was impacted by the Data Incident and who were sent a notice of the Data Incident from or on behalf of Defendant.”²

The Settlement Class includes approximately 884,935 people. The Settlement Class specifically excludes: (1) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; and (2) the Judge presiding over the Litigation, the Judge’s staff, and their direct family members.

5. **Conditional Class Findings:** The Court conditionally finds, for settlement purposes only, that: (i) a class exists such that shared issues of law or fact predominate over individual issues of other Settlement Class Members; (ii) the claims or defenses of the named Class Representatives are typical of the claims or defenses of the Settlement Class Members; (iii) the named Class Representatives are adequate representatives (i.e., they will fairly and adequately represent the class, there is no conflict of interest between the named representatives and the class, and the named parties have a genuine personal interest in the outcome of the case); (iv) the Settlement Class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (v) adequate notice can be given to the class;

² While the word “who” was omitted from the parties’ proposed Settlement Class definition, this appears to the Court to be a typographical scrivener’s error, and the Court includes it for clarity accordingly.

and (vi) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

6. **Class Representatives and Settlement Class Counsel:** Plaintiffs Tammy Flynn; Heisha Lynch; J.L., a minor, through her mother, Heisha Lynch; Dean Swinson; Brandon Cannon; Brittany Moore; Annaia McLamb; Cynthia Meadows; Suzanne Abrams; Latasha Williams; Billy Robinson; Joseph Sawyer; Samantha Richardson; Lori Powers; Jason Powers; Genevieve Jones; Elaine Quittkat; and Mary Sheldon are hereby conditionally designated and appointed as Class Representatives. The Court conditionally finds that Class Representatives are similarly situated to other Settlement Class Members and are typical of the Settlement Class and that the named individuals will be adequate Class Representatives. The Court further finds that Jean Martin of Morgan & Morgan Complex Litigation Group, Scott C. Harris and Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC, and Joel Rhine of Rhine Law Firm PC are experienced and adequate counsel, and they are hereby conditionally designated as Settlement Class Counsel.

7. **Preliminary Settlement Approval.** Upon preliminary review, and subject to further consideration, review, and objections prior to final approval, the Court determines that the Settlement, as embodied in the Settlement Agreement, is fair, reasonable, and adequate overall; within the range of reasonableness for such a class action; and in the best interests of the Settlement Class, such that it warrants providing notice of the Settlement to the Settlement Class and is *preliminarily* approved. At this stage, however, the Court cautions that it makes no findings specific

to the reasonableness of the proposed fee and service awards that Class Counsel and Class Representatives intend to request, and the Court notes that neither the Settlement nor the Settlement Agreement is contingent on such amounts. The parties and counsel are reminded that the Court may award smaller fee and service awards than Class Counsel and Class Representatives request and that the Court may ultimately reject the proposed Settlement at any time prior to Final Approval.

8. **Jurisdiction and Venue.** The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the parties before it for the purposes of the Settlement and this matter and that venue is proper in this Court.

9. **Final Approval Hearing.** Unless otherwise ordered by the Court, a Final Approval Hearing will take place at **10:00 am ET on 15 December 2025 in Courtroom 3B of the Wake County Courthouse, 316 Fayetteville Street, Raleigh, North Carolina 27601** for the following purposes, among other things:

- a. To determine whether this Action should be finally certified as a class action for settlement purposes;
- b. To determine whether the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members and should be finally approved, along with the Settlement Agreement, by the Court;
- c. To determine whether Settlement Class Members (except those who have timely and valid requests for exclusion from the Settlement) should be bound by the release provisions set forth in the Settlement Agreement;

d. To determine whether to enter a Final Approval Order, as defined in the Settlement Agreement;

e. To determine whether the Notice Plan conducted was appropriate;

f. To determine whether the claims process under the Settlement is fair, reasonable, and adequate and should be approved by the Court;

g. To determine whether Class Counsel and Class Representatives should be finally approved and appointed as Class Counsel and Class Representatives, respectively;

h. To determine whether the requested Class Representative Service Awards in the amount of \$2,500 to each Class Representative and Class Counsel's Fee and Expense Award, as may be modified, should be approved by the Court;

i. To determine whether the settlement benefits are fair, reasonable, and adequate;

j. To determine whether this Action should be dismissed with prejudice; and

k. To address, hear, or otherwise rule upon such other matters as the Court may deem appropriate in its discretion.

Unless ordered otherwise by the Court, Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards must be filed with the Court by **26**

September 2025, and Plaintiffs' Motion for Final Approval of the Class Action Settlement shall be filed with the Court by 1 December 2025.

10. **Retention of the Claims Administrator and Manner of Giving Notice**. Class Counsel are hereby authorized to retain Epiq Class Action & Claims Solutions, Inc. (the "**Claims Administrator**") to supervise and administer the Notice Plan in connection with the proposed Settlement, as well as the processing of Claim Forms and such other responsibilities, obligations, and duties as are set forth in the Settlement Agreement for the Claims Administrator. All Claims Administration and Notice Costs are to be paid as provided in the Settlement Agreement.

11. **Approval of Form and Content of Notice**. The Court approves, as to form and content, the Claim Form, Long Form Notice, and Short Form Notice attached to the Settlement Agreement as Exhibits A, B and C, and finds that the Notice to be provided to Settlement Class Members as set forth in the Settlement Agreement (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases to be provided thereunder), of Class Counsel's request for Fee Award and Expenses, of Class Representatives' request for Service Awards, of their right to object to the Settlement, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Final Approval Hearing; (iii) when properly made, will constitute due, adequate, and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the

requirements of Rule 23 of the North Carolina Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules. The date and time of the Final Approval Hearing must be included in the Notice before it is distributed. Nonmaterial modifications, such as those involving minor typographical errors, may be made to the Long Form Notice, Short Form Notice, and Claim Form without further order of the Court. The Claims Administrator and Class Counsel are directed to carry out the Notice and the Notice Plan in conformance with the Settlement Agreement and this Order unless otherwise ordered by the Court.

12. **Participation in the Settlement.** Settlement Class Members who qualify for and wish to submit a Claim Form must do so in accordance with the requirements and procedures specified in the Notice and the Claim Form and must do so by **1 December 2025**. If a 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 will 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 releases included in that Settlement Agreement, and the Final Approval Order.

13. **Claims Process and Distribution and Allocation Plan.** The Settlement Agreement contemplates a process for the Claims Administrator to assess and determine the validity and value of claims and a payment methodology to compensate Settlement Class Members who submit a timely, valid Claim Form with

a valid Settlement Claim. The Court preliminarily approves the claims process described in the Settlement Agreement. If the Settlement is finally approved, the Claims Administrator will be directed to effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement and the Court's order.

14. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class (i.e., “opt out”) must mail a written notification of the intent and request to be excluded from the Settlement Class to the Claims Administrator at the address provided in the Notice, and that written notification must be postmarked **not later than 28 October 2025** (the “**Opt-Out Deadline**”). The written notification must include the name of this Action; the Settlement Class Member's full name, current address, and personal signature; and the words “Request for Exclusion,” “Request to Opt Out,” or a comparable statement to clearly convey that the Settlement Class Member does not wish to participate in, and wishes to be excluded from, the Settlement at the top of the communication.

Any Settlement Class Member who does not timely and validly opt out of the Settlement will be bound by the terms of the Settlement and Settlement Agreement if they are finally approved by the Court. If a Final Approval Order and a Judgment are entered by the Court, any Settlement Class Member who has not submitted a timely, valid written notice to be excluded from, or to opt out of, the Settlement Class will be bound by all proceedings, orders, and judgments in this matter, including but not limited to the releases 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 Parties and Released Persons relating to the claims and transactions released in the Settlement Agreement. All Settlement Class Members who submit valid and timely notices to be excluded from, or to opt out of, the Settlement Class will not be entitled to receive any benefits of the Settlement.

15. **Objections and Appearances.** Subject to the Court's discretion to order otherwise, no Settlement Class Member will be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member will be considered by the Court, unless the Settlement Class Member's objection is (i) filed with the Court (i.e., the Business Court via its filing system **and** the Pitt County Clerk of Superior Court by its filing system) by the Objection Deadline, and (ii) mailed first-class, postage prepaid to the Claims Administrator at the address listed in the Notice, and postmarked by no later than the Objection Deadline. For an objection to be considered by the Court, the objection must include all of the information set forth in Paragraph 4.1 of the Settlement Agreement, including: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector reasonably believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement as to whether the objector and/or the objector's counsel will

appear at the Final Approval Hearing (also referred to as the “Final Fairness Hearing”); and (vi) the objector’s signature and, if applicable, the signature of the objector’s duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation). All information required under the Business Court Rules, N.C. Gen. Stat. § 132-1.10(d), or other applicable law to be redacted must be redacted prior to publicly filing the information. If any interested party seeks to file information under seal, the party must comply with Rule 5 of the Business Court Rules.

16. **Waiver of Objections.** Any Settlement Class Member who fails to comply with the provisions in Paragraph 15 may waive and forfeit any and all rights the Settlement Class Member might have to object, and will be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement, if a Final Approval Order and a Judgment are entered. If a Final Approval Order is entered, any Settlement Class Member who fails to object in the manner prescribed herein will be deemed to have waived the Settlement Class Member’s objections and will 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, a motion for Service Award, or any motion for Fee Award and Expenses.

17. **Termination of Settlement and Use of Order.** The provisions of this Order are made solely for use in proceeding towards the Final Approval Hearing. If

the Court ultimately enters an order rejecting or otherwise declining to approve the material terms of the Settlement, this Order will then be vacated immediately, and the findings, conclusions, and other terms of this Order will be without prejudice to the rights of the Parties, all of whom will be restored to their respective positions existing as of the date of the execution of the Settlement Agreement. In such event, this Order may not be construed or used as an admission, concession, or declaration by or against Plaintiffs, Defendant, or any other interested party of any fault, wrongdoing, breach, liability, or the certifiability of any class; as an admission, concession, or declaration by or against the Settlement Class Representatives or any other Settlement Class Member that the Settlement Class Representative's or Member's claim lacks merit or that the relief requested is inappropriate, improper, or unavailable; or as a waiver by any Party of any defense or claim the Party may have in this litigation or in any other lawsuit. This does not in any way, however, impair the Court's authority to sanction any person or entity, including holding any person or entity in contempt, or taking any such actions as the Court deems just and equitable, for violations of or other failures to comply with the terms of this Order.

18. **Stay of Proceedings and Temporary Injunction.** Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this Order. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiff, and all other

Settlement Class Members, from commencing or prosecuting any and all of the Released Claims against the Released Persons and Released Parties.

19. **Common Fund.** The contents of the Common Fund (at times referred to as the “Qualified Settlement Fund”) are deemed and considered to be *in custodia legis* of the Court, and will remain subject to the jurisdiction of the Court, until such time as funds may be distributed pursuant to the Settlement Agreement or further order of the Court.

20. **Taxes.** The Claims Administrator is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Common Fund, to pay from the Common Fund any taxes owed with respect to the Common Fund, and to otherwise perform all obligations with respect to taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Settlement Agreement.

21. **Continuance of Final Approval 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 Members. If the Court alters any of those dates or times, the revised dates and times must be posted on the Settlement Website maintained by the Claims Administrator and may also be posted on the Court’s public docket for this case, and such posting shall constitute adequate notice to all Settlement Class Members and all other interested parties of such proceedings and dates.

22. **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 Order include but are not limited to the following deadlines. Any deadline set forth in this Order that is different from a date provided in the Settlement Agreement governs over the terms of the Settlement Agreement unless ordered otherwise by the Court:

EVENT/DEADLINE	DATE
Defendant Required to Provide a List of Settlement Class Members to the Claims Administrator	29 July 2025
Notice Deadline	29 August 2025
Deadline for Plaintiffs to File a Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards	26 September 2025
Objection Deadline	28 October 2025
Opt-Out Deadline	28 October 2025
Deadline for Settlement Class Members to Submit Claim Forms	1 December 2025 ³

³ As the parties' request of ninety (90) days after the Notice Deadline would place the deadline on the Thanksgiving holiday, 27 November 2025, the Court sets the date to the first business day thereafter.

EVENT/DEADLINE	DATE
Deadline for Plaintiffs to File Motion for Final Approval of Class Action Settlement	1 December 2025
Deadline for the Claims Administrator to Provide All Objections and Opt-Out Notices to the Court, Class Counsel, and Defendant's Counsel	8 December 2025
<u>Final Approval Hearing</u>	<u>10:00 am ET, 15 December 2025</u>

SO ORDERED, this 15th day of July 2025.

/s/ Matthew T. Houston

Matthew T. Houston
Special Superior Court Judge
for Complex Business Cases