

RECEIVED

APR - 8 2022

ROOM 521

IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS—CIVIL TRIAL DIVISION

NANETTE KATZ, CHRISTINA KRESKI,
Britney Richardson, as parent guardian of
S.H., a minor, and NGHI TA, individually
210402045-Katz Vs Einstein Healthcare Network all others similarly situated,

Plaintiffs,



21040204500047

EINSTEIN HEALTHCARE NETWORK,

Defendant.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PA

APRIL TERM, 2021

NO. 02045

DOCKETED

APR - 8 2022

R. FOOTELL
COMMERCE PROGRAM

**ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT, CERTIFYING THE SETTLEMENT CLASS,
AND PROVIDING FOR NOTICE TO THE SETTLEMENT CLASS**

The parties to the above-captioned action (the “Action”) filed against Einstein Healthcare Network have agreed to settle the Action pursuant to the terms and conditions set forth in the executed Settlement Agreement (the “Settlement”).¹ This Action arose out of a data breach in which an unknown third party allegedly gained access to certain email accounts belonging to Defendant’s employees, which contained protected identifying information (“PII”) and protected health information (“PHI”) belonging to Plaintiffs and Settlement Class Members, between August 5, 2020 and August 17, 2020 (the “Incident”). The Parties reached the Settlement through arms’ length negotiations with the assistance of an experienced and well-respected mediator, Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP.

Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiffs and the Settlement Class Members would fully, finally, and forever resolve, discharge and release their claims in exchange for (1) Defendant paying claims made by Plaintiffs

¹ All capitalized terms in this Order have the same meaning as defined in the Settlement, unless otherwise defined herein.

and Class Members for various losses to a maximum sum of \$1,500,000.00; (2) Defendant paying up to \$375,000 in attorneys' fees and reasonable costs and expenses to Class Counsel, subject to Court approval, to be paid separately and not subject to the maximum claim ceiling of \$1,500,000.00; (3) Defendant paying service awards in the amount of \$1,500 each to Plaintiffs Nanette Katz, Christina Kreski, and Nghi Ta, and a service award in the amount of \$1,000 to Britney Richardson as parent guardian of S.H., subject to Court approval; and (4) Defendant paying the settlement administration expenses, including the notice to the Settlement Class, Claims Administration, and claims Dispute Resolution.

The Settlement Agreement was filed with the Court as an attachment to Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, and for Certification of the Settlement Class. Upon considering Plaintiffs' motion; the Settlement and all exhibits thereto; the record in these proceedings; the representations, arguments, and recommendations of counsel; and the requirements of law, the Court finds:

- 1) for settlement purposes only, the proposed Settlement Class meets the requirements of Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709, and should be certified;
- 2) Plaintiffs Nanette Katz; Christina Kreski; Britney Richardson, as parent guardian of S.H.; and Nghi Ta and their counsel identified below should be appointed Class Representatives and Class Counsel;
- 3) the Settlement is the result of informed, good-faith, arms' length negotiations between the Parties and their capable and experienced counsel; was reached with the assistance of an experienced, highly qualified mediator; and is not the result of collusion;
- 4) the Settlement is within the range of reasonableness and should be preliminarily approved;

- 5) the proposed Notice Program and proposed forms of notice satisfy Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action; class certification; the terms of the Settlement; Class Counsel's intent to request an award of attorneys' fees, litigation costs, and expenses and request Service Awards for Plaintiffs; and their rights regarding opting-out of the Settlement Class and objecting to the Settlement;
- 6) RG/2 Claims Administration should be appointed as the Notice Specialist and Claims Administrator;
- 7) Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP should be appointed to serve as Claims Referee;
- 8) good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Pennsylvania Rule of Civil Procedure 1714, to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether to grant Class Counsel's Fee Application and request for Service Awards for Plaintiffs; and
- 9) the other related matters pertinent to the preliminary approval of the Settlement should also be approved.

Based on the foregoing, IT IS HEREBY ORDERED AND ADJUDGED as follows:

Conditional Class Certification and Appointment of Class Representatives and Class Counsel.

1. The Court finds, for settlement purposes only, that the factors delineated in Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709 are present and that certification of the proposed Settlement Class is appropriate under Rule 1710. The Court, therefore, certifies the following Settlement Class:

all individuals residing in the United States whose PHI and/or PII was involved in the Incident and who received notice of the settlement.

Excluded from the Class are the Defendant, its parents, subsidiaries, affiliates, officers, and directors, any entity in which it has a controlling interest, all Settlement Class members who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

2. The Court preliminarily concludes that, for the purposes of approving this Settlement only and for no other effect on the Action, should the proposed Settlement not ultimately be approved or should the Effective Date not occur, the proposed Settlement Class likely meets the requirements for certification under Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709:

- a. the proposed Settlement Class is easily identifiable and so numerous that joinder of all members of the class is impracticable;
- b. there are questions of law and/or fact common to the proposed Settlement Class;
- c. Plaintiffs' claims are typical of the claims of the members of the proposed Settlement Class;
- d. Plaintiffs will fairly and adequately represent the interests of the members of the proposed Settlement Class;
- e. common issues will likely predominate over individual issues; and
- f. Class Counsel are qualified to serve as counsel for Plaintiffs in their individual capacity as well as their representative capacity for the proposed Settlement Class.

3. The Court appoints Nanette Katz; Christina Kreski; Britney Richardson, as parent guardian of S.H.; and Nghi Ta as Class Representatives for the proposed Settlement Class.

4. The Court appoints the following firms as Class Counsel:

Jean S. Martin
MORGAN & MORGAN COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Tel: (813) 223-5505
jeanmartin@forthepeople.com

Linda P. Nussbaum
NUSSBAUM LAW GROUP, P.C.
1211 Avenue of the Americas, 40th Floor
New York, NY 10036
Tel: (917) 438-9102
lnussbaum@nussbaumpc.com

Kenneth J. Grunfeld
GOLOMB SPIRT GRUNFELD, P.C.
1835 Market Street, Suite 2900
Philadelphia, Pennsylvania 19103
Tel: (215) 346-7338
kgrunfeld@GolombLegal.com

Gayle M. Blatt
**CASEY GERRY SCHENK RANCAVILLA
BLATT & PENFIELD, LLP**
110 Laurel Street
San Diego, California 92101
Tel: (619) 238-1811
gmb@cglaw.com

Kelly K. Iverson
LYNCH CARPENTER, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, Pennsylvania 15222
Tel: (412) 322-9243
kelly@lcllp.com

Preliminary Approval of the Settlement.

5. The Court preliminarily approves the Settlement, together with all exhibits thereto, as fair, reasonable, and adequate. The Court finds the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arms' length negotiations between the Parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator, Bennett G. Picker, Esq. The Court further finds the Settlement, including the exhibits thereto, is within the range of reasonableness and possible judicial approval,

such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant final approval to the Settlement and enter Final Judgment.

Approval of Notice, Notice Program, Claim Form, and Direction to Effectuate Notice

6. The Court approves the form and content of Notices and Claim Form, substantially in the forms attached as Exhibits A, B, and C to the Settlement. The Court further finds the Notice Program, described in Paragraph 3.2 of the Settlement, is the best practicable under the circumstances. The Notice Program is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the Settlement, Class Counsel's Fee Application and request for Service Awards for Plaintiffs, and their rights regarding opting-out of the Settlement Class and objecting to the Settlement. The Notice and Notice Program constitute sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements.

7. The Court directs that RG/2 Claims Administration act as the Settlement Administrator.

8. The Settlement Administrator shall implement the Notice Program, as set forth below and in the Settlement, using substantially the form of Notice and Claim Form attached as Exhibits A, B, and C to the Settlement and approved by this Order. Notice shall be provided to the Settlement Class Members pursuant to the Notice Program, as specified in Paragraph 3.2 of the Settlement and approved by this Order. The Notice Program shall include the mailed Short Notice and the Long Notice posted on the Settlement Website, as set forth in the Settlement and below.

Mailed Notice Program

9. The Settlement Administrator shall administer the Mailed Notice Program. Within twenty-one (21) days from the date the preliminary approval order is entered, Defendant will provide the names, email addresses, and/or last known addresses of persons within the Settlement Class (“Class Member Information”) to the Settlement Administrator. Within thirty (30) days from the date the preliminary approval order is entered, the Settlement Administrator shall mail the Short Notice to the postal address provided to Defendant by Settlement Class Members when the Settlement Class Members conducted transactions with Defendant, or other reasonable alternative means.

10. The Settlement Administrator shall provide Class Counsel and Defendant’s counsel an affidavit confirming the Mailed Notice was completed in a timely manner. Class Counsel shall file such affidavit with the Court in conjunction with Plaintiffs’ motion for Final Approval of the Settlement.

Settlement Website and Toll-Free Settlement Line

11. The Settlement Administrator shall establish a Settlement Website as a means for persons in the Settlement Class to obtain notice of, and information about, the Settlement. The Settlement Website shall be established as soon as practicable following Preliminary Approval, but no later than before commencement of the Notice Program. The Settlement Website shall include hyperlinks to the Settlement, Short Notice, Long Notice, Claim Form, signed Preliminary Approval Order, and other important case documents. These documents shall remain on the Settlement Website for at least six months after Final Approval is entered.

12. The Settlement Administrator shall establish and maintain a toll-free telephone line for persons in the Settlement Class to call with Settlement-related inquiries, and to provide information to persons who call with or otherwise communicate such inquiries (except that the Settlement Administrator shall not give, and shall not be expected to give, legal advice).

13. The Settlement Administrator is directed to perform all substantive responsibilities with respect to effectuating the Notice Program, as set forth in the Settlement Agreement.

Final Approval Hearing, Opt-Outs, and Objections

14. The Court directs that a Final Approval Hearing shall be scheduled for Sept. 15, 2022, at 9:30 a.m./p.m., to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether Class Counsel's Fee Application and request for Service Awards for Plaintiffs should be granted.

15. The Court directs that any person within the Settlement Class definition who wishes to be excluded from the Settlement Class may exercise the right to opt-out of the Settlement Class by following the opt-out procedures set forth in the Long Notice at any time before the Opt-Out Deadline. To be valid and timely, opt-out requests must be postmarked on or before the Opt-Out Deadline and mailed to the address indicated in the Long Notice. The Opt-Out Deadline shall be 60 days after the Notice Deadline which is 90 days after the date on which the Court entered this Preliminary Approval Order, and shall be specified in the mailed Short Notice and Long Notice on the settlement website. All persons within the Settlement Class definition who do not timely and validly opt-out of the Settlement Class shall be bound by the terms of the Settlement.

16. The Court further directs that any person in the Settlement Class who does not timely and validly opt-out of the Settlement Class may object to the Settlement, Class Counsel's Fee Application and/or the request for Service Awards for Plaintiffs. Objections to the Settlement, Fee Application, and/or request for Service Awards must be filed with the Clerk of the Court, and served concurrently on Class Counsel, Richard M. Golomb, Golomb Spirt Grunfeld PC, 1835 Market Street, Suite 2900, Philadelphia, Pennsylvania 19103; and counsel for Defendant, Jan P. Levine, Troutman Pepper Hamilton Sanders LLP, 3000 Two Logan Square, Philadelphia, Pennsylvania 19103 and Angelo A. Stio III, Troutman Pepper Hamilton Sanders LLP, 301 Carnegie Center, Suite 400, Princeton, New Jersey 08540.

17. For an objection to be considered by the Court, the objection must be postmarked no later than the Objection Deadline, which shall be 90 days after the date on which the Court entered this Preliminary Approval Order, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the case name for *Katz v. Einstein Healthcare Network*, Case No. 210402045;
- b. the objector's full name, address, telephone number, and e-mail address (if any);
- c. information identifying the objector as a Settlement Class Member, including proof the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Incident);
- d. a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
- e. the identity of all counsel representing the objector;
- f. a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and
- g. the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and
- h. a list, by 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 within the last three (3) years.

Further Papers in Support of Settlement and Fee Application.

18. Class Counsel shall file their Fee Application and request for Service Awards for Plaintiffs no later than twenty (20) days prior to the Opt-Out/ Objection Deadline.

19. Plaintiffs shall file their Motion for Final Approval of the Settlement no later than twenty (20) days prior to the Final Approval Hearing.

Effect of Failure to Approve the Settlement.

20. In the event the Settlement is not approved by the Court, the Effective Date fails to occur, or for any reason the Parties fail to obtain a final judgment as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

- a. All orders and findings entered in connection with the Settlement shall become null and void, and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding.
- b. Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendant or Plaintiffs on any point of fact or law.
- c. The certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action based on the Settlement and/or certification of the Settlement Class. Defendant shall not be precluded from challenging class certification in further proceedings in the Action or in any other action. No agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiffs, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Action or any other action.
- d. Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Notice, court filings, orders, and public statements, may be used as evidence. In addition, neither the

fact of, nor any documents relating to, either party's withdrawal from the Settlement, any failure of the Court to approve the Settlement, and/or any objections or interventions may be used as evidence.

Stay/Bar of Other Proceedings.

21. All proceedings in this Action are stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiffs, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from asserting any Released Claims against any of the Released Parties.

22. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing, and the actions that must precede it:

EVENT	DEADLINE
Establish the Settlement Website and toll-free telephone line.	As soon as practicable following the entry of the Preliminary Approval Order and prior to the commencement of the Notice Program.
Complete the Initial Mailed Notice.	No later than 30 days from the date of the entry of the Preliminary Approval Order.
Objection and Requests for Exclusion (Opt-Out) Deadline.	No later than 90 days from the date of the entry of the Preliminary Approval Order.
Claims Deadline	No later than 120 days after the entry of the Preliminary Approval Order.
File Class Counsel's Fee Application and Request for Service Awards for Plaintiffs	No later than 20 days before Objection/Opt-Out Deadline
File Plaintiffs' Motion for Final Approval of the Settlement	No later than 20 days before the Final Approval Hearing.
Final Approval Hearing (no earlier than 120 days from the date of the entry of the Preliminary Approval Order)	Will be held on <u>Sept. 15</u> , 2022, at <u>9:30</u> , a.m./p.m., via Zoom. The Final Approval Hearing Zoom link is available on the Court's Website at: https://www.courts.phila.gov/livestreams/civil/hearings/

4/4/22 