

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

ALAYNA WOODS, JENNIFER NELSON,
on behalf of herself and on behalf of her
minor child, E.N.-H., DANA BERKLEY on
behalf of her minor child, M.B., JAMELLA
MONTGOMERY, SUSAN HALL, ARGIRO
TZIAKAS, CHRISTINA KOVALSKY, and
ANDREW BLAKEMORE, on behalf of
themselves and all others similarly situated,

Index No. 904730-23

Plaintiffs,

-against-

ALBANY ENT & ALLERGY SERVICES,
P.C.,

Defendant.

~~PROPOSED~~ PRELIMINARY APPROVAL ORDER

WHEREAS, this is a consolidated action consisting of four putative class actions: (1) *Woods v. Albany ENT & Allergy Services, P.C.*, Index No. 904730-23; (2) *M.B. ex rel. Berkley v. Albany ENT & Allergy Services, P.C.*, Index No. 904919-23; (3) *Montgomery v. Albany ENT & Allergy Services, P.C.*, Index No. 905088-23; and (4) *Hall v. Albany ENT & Allergy Services, P.C.*, Index No. 905162-23 (the “Civil Actions”);

WHEREAS, Plaintiffs Alayna Woods, Jennifer Nelson, on behalf of herself and on behalf of her minor child, E.N.-H., Dana Berkley on behalf of her minor child, M.B., Jamella Montgomery, Susan Hall, Argiro Tziakas, Christina Kovalsky, and Andrew Blakemore, on behalf of themselves and all others similarly situated (collectively, “Plaintiffs”) and Defendant Albany ENT & Allergy Services, PC (“AENT” or “Defendant”) have entered into a Settlement Agreement (the “Settlement Agreement”) that fully and finally settles the above-captioned litigation and

provides for a complete dismissal with prejudice for all claims arising out of the Security Incident that have been or could have been asserted against Defendant in the Civil Actions on the terms and conditions set forth in the Settlement Agreement, subject to and contingent on the approval of the Court;

WHEREAS, Plaintiffs have made an application, pursuant to Article 9 of the Civil Practice Law and Rules, for an order preliminarily approving the Settlement in accordance with the Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only, appointing Plaintiffs as Settlement Class Representatives, appointing Class Counsel as counsel for the Settlement Class, appointing Postlethwaite & Netterville, APAC (“P&N”) as Claims Administrator, and allowing notice to Settlement Class Members as more fully described herein;

WHEREAS, the Court has read and considered: (a) Plaintiffs’ Motion for Preliminary Approval of the Settlement, and the papers filed and arguments made in connection therewith; (b) the Settlement Agreement and exhibits attached thereto; and (c) all prior pleadings and proceedings heretofore had herein; and

WHEREAS, unless otherwise defined herein, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Class Certification for Settlement Purposes Only**. For settlement purposes only and pursuant to CPLR 901(a), 903, and 907, the Court certifies, solely for purposes of effectuating the proposed Settlement, a Settlement Class in this matter defined as follows:

All individuals whose Personal Information was compromised in the Security Incident.

The Settlement Class includes approximately 224,486 people. The Settlement Class specifically excludes: (i) AENT and its officers and directors; (ii) all Settlement Class Members who timely

and validly request exclusion from the Settlement Class; (iii) the presiding judge, and his or her staff and family; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident or who pleads nolo contendere to any such charge.; and (3) Settlement Class Members who submit a valid a Request for Exclusion prior to the Opt-Out Deadline.

2. **Class Findings.** The Court provisionally finds, for settlement purposes only, that the requirements of CPLR 901(a) have been met, including: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims of the Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Class Representatives and Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Class Representatives has no interest antagonistic to or in conflict with the Settlement Class and has retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

3. **Settlement Class Representatives and Settlement Class Counsel.** Alayna Woods, Jennifer Nelson, on behalf of herself and on behalf of her minor child, E.N.-H., Dana Berkley on behalf of her minor child, M.B., Jamella Montgomery, Susan Hall, Argiro Tziakas, Christina Kovalsky, and Andrew Blakemore are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are

similarly situated to absent Class Members and therefore typical of the Class and that they will be adequate Class Representatives.

The Court finds that Danielle Perry of Mason LLP, Daniel O. Herrera of Cafferty Clobes Meriwether & Sprengel, LLP, and William B. Federman of Federman & Sherwood are experienced and adequate counsel and are hereby provisionally designated as Class Counsel.

4. **Preliminary Settlement Approval.** The Court hereby preliminarily approves the Settlement, as embodied in the Settlement Agreement, as being fair, reasonable and adequate to the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described below.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on August 7, 2024, at 10:30 am., in Courtroom Room of the Supreme Court of the State of New York, County of Albany Courthouse in-person ~~[by videoconference]~~ for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate to the Settlement Class; (b) to determine whether a proposed Judgment should be entered dismissing the Action with prejudice against Defendant; (c) to determine whether the Motion of Class Counsel for a Fee Award and Costs should be approved; (d) to determine whether the motion of the Class Representatives for service award payment(s) should be approved; and (e) to consider any other matters that may be properly brought before the Court in connection with the Settlement. Notice of the Settlement and the Final Approval Hearing shall be given to the Settlement Class Members as set forth in Paragraph 8 of this Order.

6. The Court may adjourn the Final Approval Hearing without further notice to the Settlement Class Members, and may approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class Members.

7. **Retention of Claims Administrator and Manner of Giving Notice.** Class Counsel is hereby authorized to retain P&N (the “Claims Administrator”) to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claims as set forth more fully in the Settlement Agreement.

8. **Approval of Form and Content of Notice.** The Court (a) approves, as to form and content, the Long Form Notice and the Short Form Notice, attached to the Settlement Agreement as Exhibits A and B, and (b) finds that the mailing and distribution of the Notice 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 Civil Actions, of the effect of the proposed Settlement (including the releases to be provided thereunder), of Class Counsel’s request for Fee Award and Costs, of Class Representatives’ request(s) for service award payment(s), of their right to object to the Settlement, Class Counsel’s request for fee award and costs, and/or Class Representatives’ request(s) for service award payment(s), of their right to exclude themselves from the Settlement Class, and of their right to appear at the Final Approval Hearing; (iii) constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of CPLR 904 and 908, the New York and United States Constitutions (including the Due Process Clause and other provisions guaranteeing due process of law), and all other applicable law and rules. The date and time of the Final Approval Hearing shall be included in the Notice before they are mailed and distributed.

9. **Participation in the Settlement.** Settlement Class Members must submit a claim in order to qualify for benefits under the Settlement. After Final Order and Judgment is entered, all Settlement Class Members who do not exclude themselves from the Settlement may submit a

claim form to receive reimbursement for Ordinary and Extraordinary Losses incurred as a result of the Security Incident, or receive an Alternative Cash Payment of fifty (\$50) dollars in lieu of expense(s) reimbursement, and may claim Credit Monitoring Services in the manner provided for in the Settlement Agreement. Pursuant to Paragraph 2.1.4 of the Settlement Agreement, Defendant's obligation to pay for reimbursements for out-of-pocket expenses and alternative cash payments shall not exceed \$550,000 in the aggregate. If the total of valid claims exceeds \$550,000.00, each claim shall be reduced *pro rata*. This aggregate cap shall not apply to the costs of business practice changes, credit monitoring, notice and claims administration, or attorneys' fees, costs, and service awards.

10. Settlement Class Members who do not submit a valid request for exclusion, pursuant to Paragraph 12 of this Order, will be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Order and Judgment, even if they do not submit a claim.

11. **Distribution and Allocation Plan.** Settlement Class Representatives and Defendant have created a process through which Settlement Class Members can submit claims to the Settlement Administrator. The Court preliminarily approves the process described in the Settlement Agreement and directs that the Claims Administrator effectuate the evaluation of submitted claims and distribution of Settlement benefits according to the terms of the Settlement Agreement, should the Settlement be finally approved.

12. **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 Claims Administrator at the address provided in the Notice, postmarked no later than sixty (60) days from the date of Notice (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 Final Order and Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of 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 Order and Judgment, including Settlement Class Members who have previously litigated 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 notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

13. **Objections and Appearances.** 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 filed with the Clerk of the Court, Albany County Courthouse, Room 102, 16 Eagle Street, Albany, NY 12207, and contain the case name and docket number for *Woods et al. v. Albany ENT & Allergy Services, PC*, Index No. 904730-23, no later than sixty (60) days from the date on which notice program commences, 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 5.1 of the Settlement Agreement, which is as follows: (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 Security Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) a statement as to whether the

objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vii) a list of all settlements to which the objector and/or their counsel have objected in the preceding three (3) years; and (viii) 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

14. Any Settlement Class Member who fails to comply with the provisions in Paragraph 13 shall 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 Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if Final Order and Judgment is entered. If Final Order and Judgment 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, the service award request, or the fee request.

15. **Termination of Settlement.** In accordance with the Settlement Agreement, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement, then this 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. 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.

16. **Use of Order.** This Order shall be of no force or effect if Final Order and Judgment is not entered or there is no Effective Date, and it shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the certifiability of any class. 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 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 litigation or in any other lawsuit.

17. **Stay of Proceedings and Temporary Injunction.** Until otherwise ordered by the Court, the Court stays all proceedings in the Civil Actions other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs, and any and all other members of the Settlement Class, from commencing or prosecuting any and all of the Released Claims against the Released Entities.

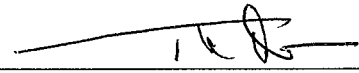
18. **Settlement Administration Fees and Expenses.** All reasonable costs incurred with notifying Settlement Class Members of the Settlement and administering the Settlement shall be paid by the Defendant as set forth in the Settlement Agreement.

19. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

20. **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:

- Commencement of Notice Program:** 15 days after entry of Preliminary Approval;
- Notice Completion Deadline:** 45 days after entry of Preliminary Approval;
- Motion for Final Approval Deadline:** 14 days before Final Approval Hearing;
- Motion for Service Awards, Attorneys' Fees and Costs Deadline:** 14 days prior to the Objection Deadline and Opt-Out Deadline;
- Opt-Out Deadline:** 60 days after Notice Program commences;
- Objection Deadline:** 60 days after Notice Program commences;
- Claims Deadline:** 90 days after Notice Program commences;
- Replies in Support of Final Approval, Service Awards and Fee Requests Deadline:** 7 days before Final Approval Hearing;
- Final Approval Hearing:** at least 90 days after entry of Preliminary Approval.

IT IS SO ORDERED this 8th day of July, 2024



Hon. Thomas Marcelle