

The Order of the Court is stated below:

Dated: May 23, 2023
01:18:23 PM

/s/ LAURA SCOTT
District Court Judge



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Attorneys for Plaintiff Jerry Lukens

IN THE THIRD DISTRICT COURT SALT LAKE COUNTY, STATE OF UTAH	
JERRY LUKENS, individually and on behalf of all others similarly situated, <p style="text-align: center;">Plaintiff,</p> <p>v.</p>	ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
UTAH IMAGING ASSOCIATES, INC., a Utah corporation,	Case No.: 210906618
Defendant.	Honorable Laura Scott

ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

The Court, having considered Plaintiff’s Unopposed Motion for Preliminary Approval of the Class Action Settlement (“Motion for Preliminary Approval”), the supporting Memorandum, the Parties’ Settlement Agreement, the proposed Postcard Notice (also known as the “Short-Form Notice”), Long-Form Notice, and Claim Form, and being otherwise fully advised in the premises, finds and orders as follows:

PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

1. The Settlement Agreement is incorporated fully herein by reference. The definitions used in the Settlement Agreement are adopted in this Order and shall have the same meaning ascribed in the Settlement Agreement.

2. The Court has jurisdiction over the claims at issue in this Litigation, Plaintiff Jerry Lukens (“Plaintiff” or “Class Representative”), individually and on behalf of the Settlement Class, and Defendant Utah Imaging Associates, Inc. (“UIA”).

3. The Court finds that the Parties’ Settlement Agreement is fair, reasonable, and adequate and is within the range of possible approval, and was entered into after extensive, arm’s-length negotiations, such that it is hereby preliminarily approved, and that notice of the Settlement should be provided to the Settlement Class Members.

4. Pending the Final Approval Hearing, all proceedings in the Litigation, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are hereby stayed.

Procedural Posture and History of Negotiations

5. This is a putative class action brought by Plaintiff arising out of a Data Incident in which Plaintiff alleges UIA discovered on September 4, 2021, and that this attack may have resulted in cyber-criminals accessing and obtaining the personally identifying information and personal health information (“PII/PHI”) of the Settlement Class Members.

6. Plaintiff filed a putative class action in this Court: *Lukens v. Utah Imaging Associates, Inc.*, No. 210906618. Plaintiff alleged the following counts: negligence, negligence per se, breach of fiduciary duty, breach of implied contract, unjust enrichment, violation of the Utah Consumer Sales Practices Act (“UCSPA”).

7. On February 14, 2022, UIA filed a motion to dismiss Plaintiff’s complaint, which Plaintiff opposed on February 28, 2022, and UIA filed a reply in support of on March 7, 2022. The Court ruled that the motion was granted as to Plaintiff’s claims for unjust enrichment and UCSPA violations, but denied on all other grounds. The motion to dismiss order was entered on May 12, 2022.

8. The parties agreed to mediate the Litigation. On June 27, 2022, the Parties participated in a full-day mediation with the Honorable John W. Thornton (Ret.) of JAMS. This mediation did not result in a settlement. However, the Parties continued to engage in arm’s length negotiations until they were able to reach an agreement in principle. Thereafter, the Parties negotiated the details of the Settlement Agreement and its exhibits.

Settlement Benefits

9. Settlement Class Members may qualify and submit a Claim Form for either a cash payment, which is estimated to be approximately \$50, or the following benefits:

- a. Compensation for Ordinary Losses: All Settlement Class Members who submit a valid Claim Form, and who do not select the cash fund payment, are eligible to recover compensation for up to \$150.00 of their ordinary out-of-pocket expenses, that were incurred between September 4, 2021, and the Claims Deadline, as a result of the Data Incident, including: (i) cost to obtain credit reports; (ii) fees related to credit freezes; (iii) card replacement fees; (iv) late fees; (v) overlimit fees; (vi) interest on payday loans taken as a result of the Incident; (vii) other bank or credit card fees; (viii) postage, mileage, and other incidental expenses resulting from lack of access to an existing account; and (ix) and costs associated with credit monitoring or identity theft insurance if purchased as a result of the Data Incident. The claim form will require such losses to be supported by documentation substantiating the full extent of the amount claimed.
- b. Compensation for Lost Time: All Settlement Class Members who submit a valid Claim Form, and who do not select the cash fund payment, may claim up to 3.5 hours of lost time, at \$25.00 an hour, if at least one half-hour of documented time was spent dealing with the Data Incident. The Claim Form will require all such lost time to be reasonably described and supported by an attestation under penalty of perjury that the time spent was reasonably incurred dealing with the Data Incident.
- c. Compensation for Extraordinary Losses: All Settlement Class Members who submit a valid Claim Form, and who do not select the cash fund payment, are also

eligible to recover compensation for up to \$5,000 of documented monetary loss directly arising from identity theft or other fraud perpetrated on or against the Settlement Class Member on or after September 4, 2021, as a result of the Data Incident. This category of compensation requires documentation plausibly supporting that the loss was not reimbursed by any other source, the loss was more likely than not caused by the Data Incident, the loss is not already covered by the “Compensation for Ordinary Losses” category, and the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

- d. Credit Monitoring Protections: In addition to the aforementioned benefits, Settlement Class Members who submit a valid Claim Form, and who do not select the cash fund payment, may submit a claim for 24 months of credit monitoring and identity theft insurance.

10. The cash payment that Settlement Class Members can elect, in lieu of the other benefits, is subject to pro rata increase or decrease depending on the amount of money remaining in the Settlement Fund after all other distributions are made.

CLASS CERTIFICATION

11. For the purposes of settlement only, and pursuant to Utah R. Civ. P. 23(e) (“Rule 23(e)”), the Court provisionally certifies the class, defined as follows: “all persons whose PII and/or PHI was potentially compromised as a result of the Data Incident that Defendant

discovered on or about September 4, 2021, including all persons who were sent a letter notifying them of the Data Incident. Defendant's officers and directors are excluded from the Settlement Class, as well as (i) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of perpetrating, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge."

12. The Court provisionally finds, pursuant to Rule 23(e), that, for purposes of this settlement only, the: (a) the Settlement Class is so numerous that joinder of all Settlement Class members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the Class Representative's claims are typical of the Settlement Class's claims; (d) the Class Representative will fairly and adequately protect the Settlement Class's interests; and (e) questions of law or fact in this Litigation predominate over any questions affecting only individual members of the Settlement Class, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

SETTLEMENT CLASS COUNSEL AND THE CLASS REPRESENTATIVES

13. Plaintiff Jerry Lukens is hereby provisionally designated and appointed as the Class Representative. The Court provisionally finds that the Class Representative is similarly situated to absent Settlement Class Members, and is typical of the Settlement Class, and, therefore, he will be an adequate Class Representative.

14. The Court finds that Andrew W. Ferich of Ahdoot & Wolfson PC and Ben Barnow and Anthony L. Parkhill of Barnow and Associates, P.C. are experienced and adequate counsel and are provisionally designated as Class Counsel.

NOTICE TO SETTLEMENT CLASS

15. The forms of the Claim Form, Long-Form Notice, and Postcard Notice attached as **Exhibits A, B, and C**, respectively, to the Settlement Agreement, are constitutionally adequate, and are hereby approved. The Notice contains all essential elements required to satisfy the notice requirements and Due Process. The Court further finds that the form, content, and method of providing notice to the Settlement Class, as described in the Settlement Agreement, including the exhibits thereto: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the Settlement, their rights under the Settlement, including, but not limited to, their rights to object to Settlement; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members. The Parties, by agreement, may revise the notice in ways that are appropriate to update the notice for purposes of accuracy and clarity, and may adjust the layout of those notices for efficient electronic presentation and mailing.

16. The Notice Program set forth in the Settlement Agreement satisfies Rule 23(e), provides the best notice practicable under the circumstances, and is hereby approved.

17. The Settlement Administrator is directed to carry out the Notice Program as set forth in the Settlement Agreement.

18. Within thirty (30) days after entry of this Order (i.e., the Notice Date), the Settlement Administrator shall mail the Postcard Notice to all Settlement Class Members in the manner set forth in the Settlement Agreement. Contemporaneously with the mailing, the Settlement Administrator shall cause copies of the Settlement Agreement, Postcard Notice, Long-Form Notice, and Claim Form, in forms available for download, to be posted on the Settlement Website.

CLAIMS, OPT-OUTS, AND OBJECTIONS

19. The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, make a claim, or decide whether they would like to opt-out or object.

20. Settlement Class Members will have ninety (90) Days after the Notice Date to complete and submit a Claim Form to the Settlement Administrator.

21. Settlement Class Members have the right and ability to exclude themselves from the Settlement Class. To be excluded from the Settlement, the Settlement Class Member must send a letter to the Settlement Administrator no later than sixty (60) days after the Notice Date, unequivocally stating he or she wants to be excluded from the Settlement in the Litigation, and include his or her name, address, telephone number and signature. If the opt-out is untimely or otherwise fails to comply with any of the provisions in the Settlement Agreement for a valid opt-out, it shall not be considered a valid opt-out. All persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall not receive any benefits of and/or be bound by the terms of the Settlement Agreement.

22. Settlement Class Members who comply with the requirements of this paragraph may object to the Settlement. A Settlement Class Member who seeks to object to the Settlement must file timely, written notice of his or her objection. To be considered, objections must (i) set forth the Settlement Class Member's full name, current address, and telephone number; (ii) contain the Settlement Class Member's original signature; (iii) state that the Settlement Class Member objects to the Settlement, in whole or in part; (iv) set forth a statement of the legal and factual basis for the Objection; and (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position.

23. To be timely, Objections must be filed with the Court and served on Class Counsel and Defendant's Counsel no later than sixty (60) Days after the Notice Date (i.e., the Objection Deadline).

24. Class Counsel and Defendant's Counsel may, but need not, respond to the objections, if any, by means of a memorandum of law served prior to the Final Approval Hearing.

25. An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court (as well as serve the notice on Class Counsel and Defendant's Counsel) by the Objection Deadline. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objecting Settlement Class Member who will appear at the Final Approval

Hearing, including the attorney(s) name, address, phone number, e-mail address, state bar(s) to which counsel is admitted, as well as associated state bar numbers.

26. Any Settlement Class Member who fails to timely file and serve an objection and notice, if applicable, of his or her intent to appear at the Final Approval Hearing in person or through counsel pursuant to the Settlement Agreement, as detailed in the Long-Form Notice, and otherwise as ordered by the Court, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

27. Any Settlement Class Member who does not submit a timely objection in complete accordance with the Settlement Agreement and the Long-Form Notice, or as otherwise ordered by the Court, shall not be treated as having filed a valid Objection to the Settlement and shall forever be barred from raising any objection to the Settlement.

ADMINISTRATION OF THE SETTLEMENT

28. Class Counsel and UIA, with the assistance of the Settlement Administrator, have created a process for assessing the validity of claims and a payment methodology to Settlement Class Members who submit timely, valid Claim Forms. The Court hereby preliminarily approves the Settlement benefits to the Settlement Class, and the plan for distributing Settlement benefits as described in Sections IV-VI of the Settlement Agreement.

29. The Court appoints Epiq Class Action and Mass Tort Solutions, Inc. as the Settlement Administrator.

30. The Court directs the Settlement Administrator to effectuate the distribution of Settlement benefits according to the terms of the Settlement Agreement should the Settlement be finally approved.

31. Settlement Class Members who qualify for Settlement benefits and who wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the notice.

32. If the Final Approval Order and Final Judgment are entered, all Settlement Class members who fail to submit a claim in accordance with the requirements and procedures specified in the notice shall be forever barred from receiving any Settlement benefit and will in all other respects be subject to and bound by the provisions of the Settlement Agreement, including the releases contained therein, and the Final Approval Order and Final Judgment.

33. Prior to the Final Approval Hearing, Class Counsel and UIA shall cause to be filed with the Court an appropriate affidavit or declaration regarding compliance with the provisions of the Settlement Agreement relating to the Notice Program.

FINAL APPROVAL HEARING

34. A Final Approval Hearing shall be held on **Wednesday, November 8, 2023 at 9:00 a.m. MST** at the Salt Lake City District Court, located at 450 South State Street, Salt Lake City, Utah 84114, to be noticed on the Settlement Website.

35. The Court may allow the Parties and any objectors to appear at the Final Approval Hearing by telephone or videoconference.

36. At the Final Approval Hearing, the Court will determine whether: (1) this Litigation should be finally certified as a class action for settlement purposes pursuant to the Utah Rules of Civil Procedure; (2) the Settlement should be finally approved as fair, reasonable, and adequate; (3) Class Counsel's application for attorneys' fees, costs, and expenses should be approved; (4) the Class Representative's request for a service award should be approved; (5) the Parties, their respective attorneys, and the Settlement Administrator should consummate the Settlement in accordance with the terms of the Settlement Agreement; (6) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; and (7) the Litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement.

37. Plaintiff's application for attorneys' fees, costs, expenses, and the service award and all supporting papers shall be filed with the Court at least fourteen (14) Days prior to the Objection Deadline.

38. Plaintiff's Motion for Final Approval of the Class Action Settlement and all supporting papers shall be filed with the Court at least fourteen (14) Days prior to the Objection Deadline.

RELEASE

39. Upon entry of the Court's Final Approval Order and the Final Judgment, the Class Representative and all Settlement Class Members, whether or not they have filed a Claim Form within the time provided, shall be permanently enjoined and barred from asserting any claims (except through the Claim Form procedures) against UIA and the Released Persons arising from the Released Claims, and the Representative Plaintiff and Settlement Class Members

conclusively shall be deemed to have fully, finally, and forever released any and all such Released Claims.

TERMINATION

40. In the event that the Effective Date does not occur, class certification shall be automatically vacated and this Preliminary Approval Order, and all other orders entered, and releases delivered in connection herewith, shall be vacated and shall become null and void.

SUMMARY OF DEADLINES

41. The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement and this Order include, but are not limited to:

EVENT	DATE
Defendant to provide the Class Member Information to Settlement Administrator	7 Days after entry of Preliminary Approval Order
Notice Date	30 Days after entry of Preliminary Approval Order
Opt-Out and Objection Deadlines	60 Days after Notice Date
Deadline for Class Members to Submit Claim Forms	90 Days after Notice Date
Deadline for Plaintiffs to File Motion for Attorneys’ Fees, Costs, Expenses, and Service Award for Class Representative	14 Days prior to the Objection Deadline
Deadline for Plaintiffs to File Motion for Final Approval of Class Action Settlement	14 Days prior to the Objection Deadline
Final Approval Hearing	COURT TO FILL IN DATE NO EARLIER THAN 110 DAYS AFTER PRELIMINARY APPROVAL ORDER

42. Upon application of the Parties and good cause shown, the deadlines set forth in this Order may be extended by order of the Court, without further notice to the Settlement Class. Settlement Class Members must check the Settlement Website regularly for updates and further detail regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Approval Hearing, and/or to extend the deadlines set forth in this Order, without further notice of any kind to the Settlement Class.

ORDERED this 23rd day of May, 2023.

/s/ Judge Laura S. Scott

Honorable Laura Scott
District Court Judge