

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

DAVID ANDREONI, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

No. D-202-CV-2022-05463

**RADIOLOGY ASSOCIATES OF
ALBUQUERQUE, P.A., d/b/a RAA
IMAGING, ADVANCED IMAGING, LLC
d/b/a HIGH RESOLUTION,**

Defendants.

PRELIMINARY APPROVAL ORDER

This matter comes before the Court upon Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement, which was filed on February 8, 2024 (the “Motion”). The Court has reviewed the Motion, the February 8, 2024 memorandum in support, the February 8, 2024 declaration of J. Gerard Stranch IV in support of the Motion, and the February 9, 2023 Addendum, which attaches a partially-executed copy of the Class Action Settlement Agreement and its exhibits (the summary notice, the detailed notice, the claim form, etc.). Being fully advised, the Court finds that a hearing on the Motion is not necessary. *See, e.g.*, LR2-119(E) NMRA. The Court further finds that the Motion should be granted.

Plaintiff, David Andreoni, and Defendants, Radiology Associates of Albuquerque, P.A. d/b/a RAA Imaging, and Advanced Imaging, LLC d/b/a High Resolution d/b/a Gifted Healthcare, have entered into a proposed Class Action Settlement Agreement (the “Settlement”), which is attached as Exhibit 1 to the February 9, 2024 Addendum. Plaintiff has moved the Court to grant preliminary approval to the Settlement under New Mexico Rules of Civil Procedure for the District Courts 1-023(E), to approve the form and method for giving notice of the proposed Settlement to

the Settlement Class, and to schedule a final approval hearing on the Settlement after the deadlines to object to, or opt out of, the Settlement have passed. Defendants do not oppose the motion.

It is hereby **ORDERED** as follows:

1. Terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement.

2. This Court has jurisdiction over the subject matter of this lawsuit and jurisdiction over the Class Representative and Defendants in the above-captioned case (the “Parties”).

3. The Court finds that the Court will likely be able to certify the proposed Settlement Class for purposes of entry of judgment, defined as:

All individuals whose Personal Information was potentially compromised as a result of the Data Incident.¹ The Class specifically excludes (i) the Judge assigned to evaluate the fairness of this settlement and the judge’s immediate family (including any members of the Court’s staff assigned to this case); (ii) Defendants’ officers and directors, and (iii) 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 Data Incident or who pleads nolo contendere to any such charge.

4. Specifically, the Court finds that the requirements of Rule 1-023 (A) and 1-023 (B)(3) appear to be met:

- a. The class is so numerous that joinder of all members is impracticable, as there are thousands of class members;
- b. There are questions of law or fact common to the class based upon the claims raised in the lawsuit relating to the Data Incident that predominate over questions affecting only individual members;
- c. The claims of the Class Representative are typical of the claims of the Settlement Class as they arise from the Data Incident;

¹ “Data Incident” means the incident from approximately July 22, 2021 to August 3, 2021, and from December 22, 2020, to July 15, 2021, during which an unauthorized third party gained access to Defendants’ data systems, resulting in unauthorized access to the Plaintiff’s and Class Members’ personally identifying information and other sensitive, non-public financial information (collectively, “Personal Information”).

- d. The Class Representative and Class Counsel will fairly and adequately protect the interests of the Settlement Class;
- e. Questions of law or fact common to the Class Members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating this lawsuit.

5. The Court finds that the terms of the Settlement [JAA] **appear to be, on a preliminary evaluation and without having considered any objections that may be filed in the future**, within the range of a fair, reasonable, and adequate compromise under the circumstances of this case. Specifically, the Court finds that, **again on a preliminary evaluation**:

- (A) the Class Representative and Class Counsel have adequately represented the Class;
- (B) the proposal was negotiated at arm's length;
- (C) the relief provided for the class appears adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; and
 - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
- (D) the proposal treats class members equitably relative to each other.

6. The Court therefore preliminarily approves the Settlement and directs the parties to the Settlement Agreement to perform and satisfy the terms and conditions that are triggered by such preliminary approval.

6. The Court likewise approves the form and method of notice provided for in the Settlement and finds that it complies with the applicable rules and the requirements of Due Process, **[JAA] subject to the submission of proof of the effectiveness of the method and manner of the provision of notice to all members of the Settlement Class**. The Court appoints Kroll

Settlement Administration LLC, as Settlement Administrator and orders the Settlement Administrator and the Parties to implement the notice program set forth in the Settlement.

7. A final approval hearing (the “Final Approval Hearing”) shall be held before the undersigned on **May 7, 2024 at 3:00 p.m. by Zoom**, for the purpose of: (a) determining whether the Settlement Class should be finally certified for entry of judgment on the Settlement **[JAA] including an evaluation of any objections, the effectiveness of the method and manner of the provision of notice to all members of the Settlement Class, and any opt-outs**; (b) determining whether the Settlement Agreement is fair, reasonable, and adequate and should be finally approved; (c) determining whether a Final Approval Order should be entered; and (d) considering Class Counsel’s application for an award of attorneys’ fees and expenses. The Court may adjourn, continue, and reconvene the Final Approval Hearing pursuant to oral announcement without further notice to the Class, and the Court may consider and grant final approval of the Settlement, with or without minor modification and without further notice to the Class.

8. Members of the Settlement Class shall be afforded an opportunity to request exclusion from the Class. A request for exclusion from the Class must comply with the requirements for form and timing set forth in the Detailed Notice included in the Settlement. Members of the Settlement Class who submit a timely and valid request for exclusion shall not participate in and shall not be bound by the Settlement. Members of the Settlement Class who do not timely and validly opt out of the Class in accordance with the Detailed Notice shall be bound by all determinations and judgments in the action concerning the Settlement.

9. Class Members who have not excluded themselves shall be afforded an opportunity to object to the terms of the Settlement Agreement. Any objection must: comply with the requirements for form and timing set forth in the Detailed Notice included in the Settlement. If the

Class Member or his or her Counsel wishes to speak at the Final Approval Hearing, he or she comply with the requirements for form and timing set forth in the Detailed Notice included in the Settlement.

10. Any Class Member who does not make his or her objection known in the manner provided in the Settlement Agreement and Detailed Notice **[JAA] may** be deemed to have waived such objection and **[JAA] may** forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement Agreement.

11. Any request for intervention in this action for purposes of commenting on or objecting to the Settlement Agreement must meet the requirements set forth above, including the deadline for filing objections, and also **[JAA] satisfy the requirements of Rule 1-024 NMRA.**

12. Any lawyer intending to appear at the Final Approval Hearing must be authorized to represent a Class Member, must be duly admitted to practice law before this Court, and must file a written appearance. Copies of the appearance must be served on Class Counsel and counsel for Defendants.

14. Class Counsel shall file a motion for approval of the attorneys' fees, expenses, and service awards to be paid from the Settlement Fund, along with any supporting materials, on the deadline provided in the Settlement.

15. If the Settlement does not become effective or is rescinded pursuant to the Settlement, the Settlement and all proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the Class Representative and Defendants, and all Orders issued pursuant to the Settlement shall be vacated **[JAA] upon motion of any party.**

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

IT IS SO ORDERED.

Dated: **March 15, 2024**



Joshua A. Allison
District Court Judge

This Order may deviate from the proposed form(s) of Order originally submitted.

Respectfully submitted,

O'STEEN & HARRISON, PLC



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