

**FILED: WESTCHESTER COUNTY CLERK 06/16/2023 07:19 PM**

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

JOHN FINN and SALVATORE J.  
CONTRISTANO, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

EMPRESS AMBULANCE SERVICE, LLC,

Defendant.

Index No. 61058/2023

CLASS ACTION

**~~REPOSED~~ ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

**THIS MATTER** having been brought before the Court on Motion for Preliminary Approval of a Class Action Settlement, filed by Plaintiffs John Finn and Salvatore J. Contristano (“Plaintiffs”); and the Court having considered the terms and conditions of the Class Action Settlement Agreement and Release (the “Settlement” or “Settlement Agreement”); and for good cause appearing that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm’s length settlement negotiations between competent and experienced counsel for both Plaintiffs and Defendant Empress Ambulance Service, LLC (“Defendant”).

IT IS ON THIS 27<sup>th</sup> DAY OF November, 2023 ORDERED AS FOLLOWS:

**PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

1. The Settlement Agreement, attached to Plaintiffs’ Motion for Preliminary Approval as Exhibit 1, 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. This Court has jurisdiction over the claims at issue in this lawsuit, the Parties, and the subject matter herein.

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3. This Order is based on Section 901, *et seq.* of the New York Civil Practice Law and Rules (“NY CPLR”).

4. The terms of the Parties’ Settlement Agreement are hereby conditionally approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that, subject to the Final Approval Hearing, the Settlement is fair, reasonable, and adequate, within the range of reasonableness, and that Notice of the proposed Settlement should be given as provided for in the Settlement Agreement.

#### **PROCEDURAL HISTORY**

5. On or about July 14, 2022, Empress discovered that an unauthorized individual or individuals had gained access to Empress’s network systems. Empress conducted an investigation and determined that the unknown parties first accessed Empress’s computer networks on May 26, 2022 and copied files on July 13, 2022.

6. Empress has determined that the Personal Information of approximately 307,687 persons may have been accessed in the Network Incident. On or about September 9, 2022 Empress notified patients, as well as the U.S. Department of Health and Human Services’ Office of Civil Rights, that the unauthorized individual(s) had access to the following Personal Information of the Empress patients and other affiliated persons (including Plaintiffs): patient names, dates of service, insurance information, and for some, Social Security numbers.

7. On September 22, 2022, Plaintiff Finn commenced the lawsuit captioned as *Finn v. Empress Ambulance Services, Inc. d/b/a Empress EMS*, No. 7:22-cv-08101, in the United States District Court for the Southern District of New York, alleging numerous claims for relief.

8. After *Finn* was filed in the Southern District of New York, numerous related actions were filed in New York state court (subsequently removed to federal court) and New York federal court (collectively, “Later-Filed Actions”).<sup>1</sup>

9. All Later-Filed Actions were subsequently stayed by Judge Kenneth M. Karas pending settlement efforts. *Finn*, November 14, 2022 text Order.

10. Following mediation between counsel for Plaintiff Finn and Empress’s Counsel, and many subsequent weeks of negotiations to round out the Settlement Agreement, the parties executed the Settlement Agreement.

11. On May 11, 2023, Plaintiffs John Finn and Salvatore J. Contristano commenced this Action against Empress, No. 61058/2023, in the Supreme Court of the State of New York County of Westchester, now pending before the Honorable Gretchen Walsh.

12. Plaintiffs filed their motion for preliminary approval on June 16, 2023.

#### **SETTLEMENT BENEFITS**

13. The Settlement creates of a non-reversionary common Settlement Fund in the amount of \$1,050,000.00. Compensation will be paid from the Settlement Fund to Class Members who submit timely and valid Claim Forms that are approved by the Settlement Administrator. Claims will be subject to review by the Settlement Administrator. For defective claims, the

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<sup>1</sup> See *Contristano v. Empress Ambulance Service, LLC*, No. 7:22-cv-09322-KMK (S.D.N.Y. Sept. 28, 2022); *Egan v. Empress Ambulance Service, LLC*, No. 7:22-cv-08584-KMK, (S.D.N.Y. Oct. 7, 2022); *Normand v. Empress Ambulance Services, Inc. d/b/a Empress EMS*, No. 7:22-cv-08590-KMK (S.D.N.Y. Oct. 9, 2022); *Cardwell v. Empress Ambulance Service, LLC d/b/a Empress Emergency Medical Services f/k/a Empress Ambulance Service, Inc.*, No. 7:22-cv-08603-KMK (S.D.N.Y. Oct. 10, 2022); *Colon v. Empress Ambulance Service LLC, d/b/a Empress Emergency Medical Services*, No. 7:22-cv-09322-KMK (S.D.N.Y. Oct. 11, 2022); *Castaldo v. Empress Ambulance Services, LLC, d/b/a Empress*, No. 7:22-cv-08663-KMK (S.D.N.Y. Oct. 12, 2022); *Ford v. Empress Ambulance Service LLC d/b/a Empress EMS*, No. 1:22-cv-08679-KMK (S.D.N.Y. Oct. 12, 2022); *Saunders v. Empress Ambulance Service LLC d/b/a Empress EMS*, No. 7:22-cv-0877-KMK (S.D.N.Y. Oct. 14, 2022).

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Settlement Administrator will provide Claimants an opportunity to cure. The Settlement Fund will be used to provide the following Settlement Benefits:

**Cash Settlement Payments**

14. Class Members who have suffered documented out-of-pocket expenses that are more likely than not a result of the Network Incident may submit a Claim Form for payment of up to \$10,000 for reimbursement of Documented Losses. Claimed Documented Losses must be supported by Reasonable Documentation and are losses that are not otherwise recoverable through insurance.

15. In the alternative to the Documented Loss Payments, Class Members may submit a Claim Form electing to receive a pro rata cash Settlement Payment, i.e., a Cash Fund Payment. The amount of the Cash Fund Payment will be calculated in accordance with the Settlement Agreement.

**Credit Monitoring and Insurance Services**

16. In addition to or instead of electing one of the cash payment Settlement Benefits, all Class Members may submit a claim for 12 months of credit monitoring and insurance services ("CMIS") provided by TransUnion. The CMIS Settlement Benefit will provide three credit bureau monitoring services and \$1 million in identity theft insurance. This Settlement Benefit will be available to Class Members irrespective of whether they took advantage of any previous offering of credit monitoring from Empress. Individuals who elected to utilize a previous offering of CMIS from Empress, or who obtained CMIS services from another provider because of the Network Incident, will be permitted to postpone activation of their CMIS Settlement Benefit for up to 12 months.

### **Data Security Commitments and Prospective Relief**

17. The Settlement provides for additional non-monetary, prospective relief in the form of additional security enhancements to Empress's data security measures. *See* SA ¶ 2.1. Empress has agreed to adopt, continue, and/or implement these measures for a period of no less than three years from the Settlement Effective Date. All Settlement Class Members will get the benefit of this relief irrespective of whether they file a Claim Form.

### **SETTLEMENT CLASS CERTIFICATION**

18. For purposes of settlement only, the Court conditionally certifies the following Settlement Class as defined in the Settlement Agreement:

All natural persons who are residents of the United States whose Personal Information was potentially compromised in the Network Incident and were sent via U.S. Mail notice by Empress that their Personal Information may have been compromised in the Network Incident. Excluded from the Settlement Class are: (1) the Judges presiding over the Action and members of their families; (2) Empress, its subsidiaries, parent companies, successors, predecessors, and any entity in which Empress or its parents, have a controlling interest, and its current or former officers and directors; (3) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period; and (4) the successors or assigns of any such excluded natural person.

19. The Court finds, only for purposes of preliminarily approving the settlement, that the requirements of NY CPLR § 901, *et seq.* are satisfied and that a class action is an appropriate means of resolving this litigation. All the prerequisites for class certification under NY CPLR § 901(a)(1)–(5) and § 902 are present and satisfied.

20. NY CPLR § 901(a)(1)–(5): The Settlement Class Members are identifiable and too numerous to be joined. Common questions of law and fact exist as to all Settlement Class Members. Those common questions of law and fact predominate over individual issues and should be resolved in one proceeding with respect to all Settlement Class Members. The Class

Representatives' claims are typical of those of the Class. The class action mechanism is superior to alternative means for adjudicating and resolving this Action.

21. NY CPLR § 902(1)–(5): The Court has considered the following factors and determined that they weigh in favor of preliminary settlement approval, and that the action may proceed as a class action:

- a. the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- b. the impracticability or inefficiency of prosecuting or defending separate actions;
- c. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- d. the desirability or undesirability of concentrating the litigation of the claim in the particular forum; and
- e. the difficulties likely to be encountered in the management of a class action.

22. The Court has also considered the following factors (*see, e.g., In re Colt Indus. S'holder Litig.*, 155 AD2d at 160), and finds that each of the following factors weighs in favor of preliminary approval: the likelihood of success, the extent of support from the parties, the judgment of counsel, the presence of bargaining in good faith, and the nature of the issues of law and fact.

#### **SETTLEMENT CLASS COUNSEL AND THE CLASS REPRESENTATIVES**

23. For the purposes of settlement only and pending final approval by this Court of the Settlement Agreement, the Court finds that Plaintiffs John Finn and Salvatore J. Contristano are adequate Class Representatives for the Settlement Class and they are provisionally designated and appointed as the Class Representatives.

24. For purposes of settlement only and pending final approval by this Court of the Settlement Agreement, the Court finds that the following attorneys are experienced and adequate counsel and are provisionally designated as Class Counsel:

Tina Wolfson  
Andrew W. Ferich  
AHDoot & Wolfson, PC

Ben Barnow  
Anthony L. Parkhill  
Barnow and Associates, P.C.

#### **NOTICE TO THE SETTLEMENT CLASS**

25. The Court approves the proposed form of Notice and the Notice Plan. The Notice to be provided is hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of NY CPLR § 904(b), *et seq.*, due process, the Constitution of the United States, the laws of New York, and all other applicable laws. The Notice is accurate, objective, informative, and provides the Settlement Class with all the information necessary in simple and easy-to-read terms to make an informed decision regarding their participation in the Settlement and its fairness. The Court also approves the manner and timing of the Notice to the Settlement Class as set forth in Section 6 of the Settlement Agreement, and hereby orders that the Notice to the Settlement Class shall be affected in accordance with the Settlement Agreement.

26. The Claim Form, Long Form Notice, and Summary Notice, attached as Exhibits A, D, and F, respectively, to the Settlement Agreement, are constitutionally adequate and are hereby approved. The Notice contains all essential elements required to satisfy considerations of fairness

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and due process. The Court further finds that the form, content, and method of providing the Settlement Class Notice, 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 or exclude themselves from the Settlement; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members.

27. The Notice Plan set forth in the Settlement Agreement provides the best notice practicable under the circumstances and is hereby approved.

28. The Notice Date shall be January 8, 2024 ~~4~~ **no later than 35 days after entry of the Preliminary Approval Order**];

29. Prior to any dissemination of the Summary Notice and prior to the Notice Date, the Settlement Administrator shall cause the Settlement Website to be launched on the internet. The Settlement Administrator shall create the Settlement Website. The Settlement Website shall contain information regarding how to submit Claim Forms (including submitting Claims Forms electronically through the Settlement Website) and relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, the Settlement Agreement, this Preliminary Approval Order, and the operative complaint in the Action, as well as the date, time, and place of the Final Approval Hearing. The Settlement Website shall also include a toll-free telephone number and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall further allow for submission of Requests of Exclusion electronically through the Settlement Website.



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30. The Settlement Administrator is directed to carry out Notice and the Notice Plan, as set forth in the Settlement Agreement.

31. Within fourteen (14) days after the issuance of this Order, Empress will provide the Settlement Administrator with a list of any and all names, mailing addresses, telephone numbers, and email addresses of any and all Class Member that it has in its possession, custody, or control.

32. No later than the Notice Date, or such other time as may be ordered by the Court, the Settlement Administrator will send the Summary Notice (in Postcard form) by U.S. Mail, postage prepaid, to all Class Members.

33. For any Summary Notice that has been mailed via U.S. Mail and returned by the Postal Service as undeliverable, the Settlement Administrator will re-mail the notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail.

34. The Settlement Administrator will perform any further investigations deemed appropriate by the Settlement Administrator to effectuate Notice, including using the National Change of Address (“NCOA”) database maintained by the United States Postal Service, in an attempt to identify current mailing addresses for individuals or entities whose names are provided by Empress.

#### **EXCLUSIONS AND OBJECTIONS**

35. Class Members will have sixty (60) days from the Notice Date to object to or to submit a request for exclusion from the Settlement. Any Settlement Class Member may submit a Request for Exclusion from the Settlement at any time during the Opt-Out Period. To be valid, the Request for Exclusion must be postmarked or received by the Settlement Administrator on or before the end of the Opt-Out Period. In the event a Class Member submits a Request for Exclusion to the Settlement Administrator via US Mail, such Request for Exclusion must be in writing and

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must identify the case name *Finn, et al. v. Empress Ambulance Service, LLC*, NO. 61058/2023; state the name, address and telephone number of the Class Member seeking exclusion; be physically signed by the person(s) seeking exclusion; and must also contain a statement to the effect that “I hereby request to be excluded from the proposed Settlement Class in *Finn, et al. v. Empress Ambulance Service, LLC*, NO. 61058/2023.”

36. Any Class Member who wishes object to the Settlement, the Settlement Benefits, Service Awards, and/or the Fee Award and Costs, or to appear at the Final Approval Hearing and show cause, if any, for why the Settlement should not be approved as fair, reasonable, and adequate to the Class, why a final Judgment should not be entered thereon, why the Settlement Benefits should not be approved, or why the Service Awards and/or the Fee Award and Costs should not be granted, may do so, but must proceed as set forth in this Paragraph. No Class Member or other person will be heard on such matters unless they have filed in this Action the objection, together with any briefs, papers, statements, or other materials the Class Member or other person wishes the Court to consider on or before March 8, 2024 [exactly 60 days following the Notice Date]. All written objections and supporting papers must clearly (a) identify the case name and number; (b) state the Class Member’s full name, current mailing address, and telephone number; (c) contain a statement by the Class Member that he or she believes themselves to be a member of the Settlement Class; (d) include proof that the Class Member is a member of the Settlement Class (e.g., copy of the settlement notice, copy of the original notice of the Network Incident); (e) identify the specific factual and legal grounds for the objection; (f) identify whether the Objection is an objection to the Settlement in part or in whole; (g) state whether the objection applies only to the objector, a subset of the Settlement Class, or the entire Settlement Class; (h) identify all counsel representing the Class Member, if any; (i) include a list, including case name, court, and docket number, of all

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other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past five (5) years; (j) include all documents or writings that the Class Member desires the Court to consider; (k) contain a statement regarding whether the Class Member (or counsel of his or her choosing) intends to appear at the Final Approval Hearing; and (l) contain the signature of the Class Member or the Class Member's duly authorized attorney or representative.

37. Any objections to the Settlement must be submitted to the Settlement Administrator, Class Counsel, and to the Court either by mailing them to 111 Dr. Martin Luther King Jr. Blvd. White Plains, NY 10601, or by filing them in person at the Supreme Court of the State of New York, Westchester County. Any Settlement Class Member who does not submit a timely, written objection or who does not comply with the procedures set forth in this Order will be deemed to have waived all such objections and will, therefore, be bound by all proceedings, order and judgments in the action, which will be preclusive in all pending or future lawsuits or other proceedings.

38. Any Settlement Class Member who does not make their objections in the manner and by the date set forth herein shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

39. Without limiting the foregoing, any challenge to the Settlement Agreement, this Preliminary Approval Order, and the Final Approval Order and Judgment shall be pursuant to appeal under the NY CPLR and not through a collateral attack.

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40. Class Counsel is authorized to retain Settlement Administrator, Epiq Class Action and Claims Solutions, Inc. and/or its affiliate Hilsoft Notifications (together, "Epiq"), as the Settlement Administrator in accordance with the terms of the Settlement Agreement and this Order. All costs incurred in notifying the Settlement Class, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

41. Empress's Counsel and Class Counsel are authorized to use and disclose information as is contemplated and necessary to effectuate the terms and conditions of the Settlement Agreement and to protect the confidentiality of the names and addresses of the members of the Settlement Class and other confidential information pursuant to the terms of this Order.

42. If the Settlement Agreement is terminated or not consummated for any reason whatsoever, this conditional certification of the Settlement Class shall be void. The Defendant has reserved all its rights to oppose any and all future class certification motions on any grounds. Similarly, Plaintiffs reserve all rights, including the right to move for any and all future class certification and/or to continue with the litigation.

43. On Apr. 13, 2024 at 9:30 a.m./~~p~~m. [**no earlier than 120 days following entry of the Preliminary Approval Order**], a Final Approval Hearing will be held in Courtroom 105 of the Supreme Court of the State of New York County of Westchester. The date and time of the Final Approval Hearing may, from time to time and without further notice to the Settlement Class (except those Settlement Class Members who file timely and valid objections), be continued or adjourned by order of the Court; and

44. Neither this Order, nor the Settlement Agreement, nor any other settlement-related document, nor anything contained herein or therein or contemplated hereby or thereby, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other settlement-related document, shall constitute, be construed as or be deemed to be evidence of or an admission or concession by Defendant as to the validity of any claim that has been or could have been asserted against them or as to any liability by them as to any matter set forth in this order, or as to the propriety of class certification for any purposes other than for purposes of the current proposed settlement.

45. Defendant's deadline to file any responsive pleading to this action and any action for which a consolidation motion has been filed or could be filed is hereby **STAYED** in light of the proposed Settlement.

46. Should the Court deny Preliminary Approval or Final Approval of the proposed Settlement, Defendant's deadline to file answer, move, or otherwise plead shall be forty-five (45) days from the date of any order denying Preliminary or Final Approval.

47. In the event Settlement Agreement and the proposed Settlement are terminated in accordance with the applicable provisions of the Settlement Agreement, the Settlement Agreement, the proposed Settlement, and all related proceedings shall, except as expressly provided to the contrary in the Settlement Agreement, become null and void, shall have no further force and effect, and Settlement Class Members shall retain all of their current rights to assert any and all claims and arguments thereto against Defendant and any other Released Persons, and Defendant and any other Released Persons shall retain any and all of their current defenses and arguments thereto (including, but not limited to, arguments that the requirements of NY CPLR §§ 901, *et seq.* are not satisfied for purposes of continued litigation). The Action shall thereupon revert

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forthwith to its respective procedural and substantive status prior to the date of execution of the Settlement Agreement and shall proceed as if the Settlement Agreement and all other related orders and papers had not been executed. In such event, any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

48. The Motion for Preliminary Approval of the proposed settlement is hereby **GRANTED.**

**IT IS SO ORDERED, ADJUDGED, AND DECREED:**

Date: Nov. 27, 2023

  
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Honorable Gretchen Walsh