

**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

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

**WHEREAS**, on November 27, 2023, a Preliminary Approval Order was entered by the Court preliminarily approving the proposed Settlement pursuant to the terms of the Parties' Settlement Agreement, and directing that Notice be given to the Settlement Class.

**WHEREAS**, pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement, of the right of members of the Settlement Class to object or opt-out, and of the right of members of the Settlement Class to be heard at a Final Approval Hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether the Final Approval Order and Judgment should be entered dismissing this Action with prejudice;

**WHEREAS**, a Final Approval Hearing was held on April 3, 2024. Settlement Class Members were notified of their right to appear at the Final Approval Hearing in support of or in opposition to the proposed Settlement, the award of attorney's fees, costs, and expenses to Class Counsel, and Service Awards to Class Representatives.

**NOW, THEREFORE,** the Court having heard the presentation of Class Counsel and Empress's Counsel, having reviewed all of the submissions presented with respect to the proposed Settlement, having determined that the Settlement is fair, reasonable, and adequate, having considered the application for attorney's fees, expenses, and costs made by Class Counsel and the application for a Service Awards to the Class Representatives, and having reviewed the materials in support thereof, and good cause appearing:

**THIS COURT FINDS AND ORDERS AS FOLLOWS:**

1. The capitalized terms used in this Final Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

2. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all parties thereto, including the Settlement Class.

3. The Court hereby approves the Settlement, including the plans for implementation and distribution of the settlement relief, and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class Members, within the authority of the Parties and the result of extensive arm's-length negotiations. The Parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

4. There is one (1) objection and one (1) opt out to the Settlement. Those Settlement Class Members who timely and properly opted out from the settlement are identified in **Exhibit 1** hereto.

5. The Settlement Class, which will be bound by this Final Approval Order, shall include all members of the Settlement Class who did not submit timely and valid requests to be excluded from the Settlement Class.

6. For the purposes of the Settlement and this Final Approval Order, the Court hereby:

a. certifies the following Settlement Class pursuant to NY CPLR §§ 901, *et seq.*: “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.

b. appoints Plaintiffs John Finn and Salvatore J. Contristano for settlement purposes only, as Class Representatives for the Settlement Class. The Court finds that the Class Representatives are similarly situated to absent Settlement Class Members and are typical of the Settlement Class, and, therefore, they will be adequate Class Representatives.

c. appoints Tina Wolfson and Andrew W. Ferich of Ahdoot & Wolfson, PC and Ben Barnow and Anthony J. Parkhill of Barnow and Associates, P.C. as Class Counsel; and

d. finds the dissemination of Notice to Settlement Class Members: (a) was successfully implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably

calculated, under the circumstances, to apprise Class Members of (i) the pendency of the Action; (ii) their right to submit a claim (where applicable) by submitting a Claim Form; (iii) their right to exclude themselves from the Settlement Class; (iv) the effect of the proposed Settlement (including the releases to be provided thereunder); (v) Class Counsel's motion for a Fee Award and Costs and for Service Awards to the Class Representatives; (vi) their right to object to any aspect of the Settlement, and/or Class Counsel's motion for Service Awards to the Class Representatives and for a Fee Award and Costs; and (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and sufficient notice to all natural persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of NY CPLR §§ 901, *et seq.*, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

7. All persons who have not made their objections to the Settlement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

8. Within the time periods set forth in the Settlement Agreement, the Settlement Benefits provided for in the Settlement Agreement shall be paid to the Settlement Class Members submitting valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

9. The Release set forth in Section 4 of the Settlement Agreement is expressly incorporated herein in all respects. Upon the Effective Date, and in consideration of the Settlement Benefits, the Class Representatives and all Class Members identified in the settlement class list in accordance with Section 6.4 of the Settlement Agreement, on behalf of themselves, their heirs, assigns, executors, administrators, predecessors, and successors, and any other person purporting to claim on their behalf, release and discharge all Released Claims, including Unknown Claims,

against each of the Released Parties and agree to refrain from instituting, directing, or maintaining any lawsuit, contested matter, adversary proceeding, or miscellaneous proceeding against each of the Released Parties that relates to the Network Incident or otherwise arises out of the same facts and circumstances set forth in the class action complaint in this Action.

10. More specifically, Class Representatives and Settlement Class Members who have not timely opted out of the Settlement release “Released Claims” against Defendant and all Released Parties, defined Settlement Agreement, as follows:

[A]ny claim, liability, right, demand, suit, obligation, damage, including consequential damage, loss or cost, punitive damage, attorneys’ fees, costs, and expenses, action or cause of action, of every kind or description—whether known or Unknown (as the term “Unknown Claims” is defined herein), suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that was or could have been asserted on behalf of the Settlement Class in the Action related to or arising from the compromise of any Class member’s Personal Information arising out of the Network Incident. “Released Claims” do not include any claims against any entity other than Released Parties and are subject to Section 4.1 [of the Settlement Agreement].

Released Claims shall not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the settlement contained in the Settlement Agreement and shall not include the claims of the persons identified in **Exhibit 1** to this Order, who have timely and validly excluded themselves from the Settlement Class.

11. Pursuant to the Settlement Agreement, “Unknown Claims” means:

[A]ny and all Released Claims that Empress or any Class Representative or Class Member does not know or suspect to exist in his, her, or its favor as of the Effective Date and which, if known by him, her, or it, might have materially affected his, her, or its decision(s) with respect to the Settlement. Class Representatives and Class Counsel acknowledge, and each Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

Settlement Class Members, including Plaintiffs, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the

subject matter of the Released Claims, but Plaintiffs expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

12. All Settlement Class Members who did not validly and timely opt-out are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal, or jurisdiction, asserting any claims against Defendant released pursuant to the Settlement Agreement.

13. The terms of the Settlement Agreement and this Final Approval Order shall have maximum *res judicata*, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorney's fees, costs, interest or expenses which were or could have been asserted in the Litigation or in any third party action.

14. The Final Approval Order, the Settlement Agreement, the Settlement which it reflects, and all acts, statements, documents, or proceedings relating to the Settlement are not, and shall not be construed as, or used as an admission by or against Defendant of any fault, wrongdoing, or liability on the part of Defendant or of the validity or certifiability for litigation of any claims.

15. The Court finds Service Awards of \$1,500 per each of the two Settlement Class Representative are fair and reasonable. The amounts are to be paid out of the Settlement Fund, in accordance with the Settlement Agreement.

16. The Court hereby approves an award of attorney's fees in an amount of \$\_\_\_\_\_ and litigation costs and expenses in an amount of \$\_\_\_\_\_. These amounts are to be paid out of the Settlement Fund, in accordance with the Settlement Agreement. The Court finds these amounts to be fair and reasonable pursuant to NY CPLR § 909 to determine a reasonable fee in a class action.

17. The Court has considered the one (1) objection to the Settlement. The Court finds and concludes that the lone objection is without merit and is hereby overruled.

18. The above-captioned Action is hereby dismissed against Defendant in its entirety, with prejudice. Except as otherwise provided in this Final Approval Order, the Parties shall bear their own costs and attorney's fees. Without affecting the finality of the Judgment entered, the Court reserves jurisdiction over the implementation of the Settlement, including enforcement and administration of the Settlement Agreement.

19. This Final Approval Order resolves all claims against all parties in this Action and is a final order. The Clerk is directed to file this Final Approval Order and the Judgment in this matter, and the Court reserves jurisdiction over the consummation and enforcement of the Settlement.

20. Should any non-distributable residual of the Settlement Fund remain following distribution of the Settlement Benefits, the Parties shall petition the Court to distribute the residual to a non-profit recipient pursuant to and in adherence with the terms of paragraph 3.10 of the Settlement Agreement.

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

Date: \_\_\_\_\_, 2024

\_\_\_\_\_  
Honorable Gretchen Walsh



# **EXHIBIT 1**



**Exclusion Report**

***Finn v Empress Ambulance Services***

| <b>Number</b> | <b>First Name</b> | <b>Middle Name</b> | <b>Last Name</b> | <b>Timely or Late</b> |
|---------------|-------------------|--------------------|------------------|-----------------------|
| 1             | ELLIS             |                    | MASON            | Timely                |