

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CARLA TRACY, DARRYL
BOWSKY, and DEBORAH
HARRINGTON, individually and
*on behalf of all others similarly
situated,*

Plaintiffs,

v.

ELEKTA, INC., and
NORTHWESTERN MEMORIAL
HEALTHCARE,

Defendants.

Judge Steven D. Grimberg

Case No. 1:21-cv-02851

**ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Before this Court is Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement (ECF No. 89) and Plaintiffs’ Motion for Attorneys’ Fees and Litigation Expenses (ECF No. 88). The Court has reviewed the Motion and Memorandum in Support of Final Approval, and the Settlement Agreement [ECF No. 84-1] (“Settlement Agreement”)¹ entered into between Plaintiffs Carla Tracy,

¹ Defined terms, not defined herein, have the meaning defined in the Settlement Agreement [ECF No. 84-1].

Darryl Bowsky, and Deborah Harrington both individually and on behalf of the Settlement Class and Defendants Elekta, Inc. (“Elekta”) and Northwestern Memorial Healthcare (“NWM”) (collectively “Defendants”). After reviewing Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement, the Court concludes the Settlement consisting of an \$8,900,000 non-reversionary common fund is fair, reasonable, and adequate. Plaintiffs’ Motion for Final Approval of Class Action Settlement (ECF No. 89) and Plaintiffs’ Motion for Attorneys’ Fees and Litigation Expenses (ECF No. 88) are hereby **GRANTED**.

1. For purposes of this Final Judgment, adopts the defined terms as set forth in the Settlement Agreement for any term not otherwise defined herein.

2. On August 28, 2024, the Court entered an Order Granting Preliminary Approval of Class Action Settlement (ECF No. 85) (“Preliminary Approval Order”) that preliminarily approved the Settlement Agreement and established a hearing date to consider the final approval of the Settlement Agreement and Plaintiffs’ Motion for Attorneys’ Fees.

3. The Court’s Preliminary Approval Order approved the Short Form Settlement Notice, Long Form Notice, Claim Form, and found the direct mailing distribution, met the requirements of Fed. R. Civ. P. 23 and due process, and was the best notice practicable under the circumstances, constituting due and sufficient notice to all persons entitled to notice.

IT IS HEREBY ORDERED:

4. The Settlement Agreement is fair, reasonable, and adequate, as expressed further herein. The Court also finds the Settlement Agreement was entered into in good faith, at arm's length, and without collusion. The Court approves and directs consummation of the Settlement Agreement.

5. The Court has and reserves jurisdiction over the Settlement Agreement, and for purposes of the Settlement, the Court has and reserves jurisdiction over the Parties to the Settlement.

6. There is no just reason for delay of entry of final judgment with respect to the foregoing.

7. Plaintiffs' claims are dismissed with prejudice, including all claims of the Class against Defendants, without costs and fees except as explicitly provided for in the Settlement Agreement.

8. There have been no objections to the settlement filed with the Court, nor have any been received by the Settlement Administrator. (Declaration of Settlement Administrator, ¶ 17, ECF No. 89-2).

9. The distribution, form, and content of the Notice has been achieved pursuant to the Preliminary Approval Order and the Settlement Agreement, and Notice to Class Members complied with Fed. R. Civ. P. 23 and due process.

10. Defendants have complied with the requirements of 28 U.S.C. § 1715 regarding the CAFA Notice.

11. The Court appoints Class Counsel as provided in the Preliminary Approval Order, appointing Terence R. Coates of Markovits, Stock & DeMarco, LLC, and Bryan L. Bleichner of Chestnut Cambronne PA as Class Counsel.

12. Plaintiffs Carla Tracy, Darryl Bowsky, and Deborah Harrington are appointed as Class Representatives. The Court finds that the Class Representatives are similarly situated to absent Class Members, are typical of the Class, and are adequate Class Representatives. The Court further finds that Class Counsel and the Class Representatives have fairly and adequately represented the Class.

13. The Court certifies the following Classes for settlement purposes under Fed. R. Civ. P. 23(a) and 23(b)(3), subject to the Class exclusions set forth in the Settlement Agreement:

The Nationwide Class:

All persons residing in the United States who had their Sensitive Information hosted by Elekta compromised as a result of the Data Security Incident.

The Illinois GIPA Subclass:

All persons residing in the State of Illinois who had Genetic Information hosted by Elekta compromised as a result of the Data Security Incident.

14. The Court finds that the Classes defined above satisfy the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3) for settlement purposes because: (a) the Class consists of approximately 489,932 Settlement Class Members and is so numerous that joinder of all Class Members would be impracticable; (b) there are issues of law and fact that are common to the Classes; (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 Class Members; (d) the Class Representatives and Class Counsel have fairly and adequately protected the interests of the Classes, and the Class Representatives have no interests antagonistic to, or in conflict with, the absent Class Members and have retained experienced and competent Class Counsel to prosecute this matter on behalf of the Classes; (e) questions of law or fact common to Class Members predominate over any questions affecting individual class members; and (f) a class action and class settlement are superior to other methods available for a fair and efficient resolution of this controversy.

15. The Court grants Plaintiffs' Motion for Attorneys' Fees and Litigation Expenses (ECF No. 88). The Court awards Class Counsel \$2,966,666.66 in attorneys' fees and reimbursement of litigation expenses of \$23,688.19 to be paid according to the terms of the Settlement Agreement. These amounts for attorneys' fees and reimbursement of litigation expenses are fair and reasonable.

16. The Court, having considered the negotiation of, terms of, and all materials submitted concerning the Settlement Agreement; having considered Plaintiffs' and the Classes' likelihood of success both of maintaining this action as a class action and of prevailing on the claims at trial, including the possibility that Defendants could prevail on one or more of its defenses, having considered the range of the Plaintiffs' possible recovery (and that of the Class) and the complexity, expense, and duration of the litigation; and having considered the substance and amount of opposition to the proposed settlement, it is hereby determined that:

- a. Plaintiffs and Class Counsel have adequately represented the proposed Classes;
- b. The terms of the Settlement Agreement were negotiated at arm's length with vigorous advocacy by experienced counsel for both Plaintiffs and Defendants;
- c. The outcome and uncertainty of the litigation, including class certification and potential summary judgment motions, existed when the Settlement was reaching making the compromise under the Settlement Agreement fair and reasonable under the circumstances;

- d. The value of immediate recovery outweighs the possibility of future relief that would likely occur, if at all, only after further protracted litigation, trial and possible appeals;
- e. The Parties have in good faith determined the Settlement Agreement is in their respective best interests, including both Plaintiffs and Class Counsel determining that it is in the best interest of Class Members;
- f. The aggregate consideration for the Classes – including the Settlement Fund, funded by Elekta – is commensurate with the claims asserted and being released as part of the Settlement; and
- g. The terms of the Settlement Agreement treat the Class Members equitably relative to each other and fall within the range of settlement terms that would be considered a fair, reasonable, and adequate resolution of the litigation.

17. Therefore, pursuant to Rule 23(e), the terms of the Settlement Agreement are finally approved as fair, reasonable, and adequate as to, and in the best interest of, the Classes and each of the Class Members. Class Members who did not opt-out of the Settlement are bound by this Final Approval Order. The Settlement Agreement and its terms shall have *res judicata* and preclusive effect in all pending

and future lawsuits or other proceedings as to Released Claims and waivers applicable thereto.

18. The Court approves the distribution and allocation of the Settlement Fund under the Settlement Agreement. To the extent that any funds remain in the Qualified Settlement Fund more than one-hundred twenty (120) days after distribution of the Settlement Payments, those funds will be distributed to the American Cancer Society, the Court-approved Non-Profit Residual Recipient, as a *cy pres* distribution subject to the terms of the Settlement Agreement.


19. This Final Approval Order, and all statements, documents, or proceedings relating to the Settlement Agreement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendants of any claim, any fact alleged in the litigation, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of Defendants or of the validity or certifiability for this litigation or other litigation of any claims or class that have been, or could have been, asserted in the litigation.

20. Notwithstanding the above, the Settlement Agreement and this Final Approval Order may be filed in any action by Defendants, Class Counsel, or Class Members seeking to enforce the Settlement Agreement or the Final Approval Order.

21. The Settlement Agreement and Final Approval Order shall not be construed or admissible as an admission by Defendants that Plaintiffs' claims or any similar claims are suitable for class treatment.

The Clerk of Court is **DIRECTED** to close this case.

SO ORDERED this 7th day of January, 2025.


Hon. Steven D. Grimberg
United States District Judge