

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

BARB LHOTA *et al.*, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

MICHIGAN AVENUE IMMEDIATE  
CARE, S.C.

Defendant.

Case No. 2022-CH-06616

Judge: Hon. Pamela McLean Meyerson

**Judge Pamela McLean Meyerson**

**APR 05 2023**

**Circuit Court -- 2097**

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

This matter having come before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") between Plaintiffs Barb Lhota, Qixin Chen, Beichen Shi, Jorge Newberry, Mondoukpe Seyive Bani A Medegan Fagla, Cristina Heer, Morgan Strunsky and Richard Delano Cornell ("Plaintiffs"), on their own behalf and on behalf of the Settlement Class (as defined below), and Defendant Michigan Avenue Immediate Care, S.C. ("MAIC" or "Defendant," together with Plaintiffs, the "Parties"), as set forth in the Settlement Agreement between the Parties, attached as **Exhibit 1** to the Declaration of Raina Borrelli in Support of Plaintiff's Motion for Preliminary Approval, and the Court having duly considered the papers and arguments of counsel, the Court hereby **GRANTS** this Motion and **ORDERS** as follows:

**PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

1. Unless defined herein, all capitalized terms in this Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order") shall have the meanings ascribed to them in the Settlement Agreement.

2. This Court has subject matter jurisdiction of these Lawsuits and over all claims raised therein and all Parties thereto, including the Settlement Class.

3. This Order is based on 735 ILCS 5/2-801 through 806.

4. *The Parties have represented that,*  
On or about May 2022, MAIC discovered a cybersecurity disruption on its computer network. MAIC launched an investigation, with the assistance of third-party cybersecurity specialists, to determine the nature and scope of the event. On or about May 21, 2021, the investigation determined that an unauthorized third-party cybercriminal gained access to MAIC's systems, and that information contained in those systems may have been compromised by the third-party threat actor (the "Data Incident"). On or about May 21, 2022, MAIC determined that the personally identifiable information ("PII"), protected health information ("PHI"), and/or protected biometric information ("PBI") of 144,104 individuals that it maintained on its systems may have been compromised in the Data Incident. The compromised PII, PHI, and PBI in the Data Incident may have included name, address, date of birth, Social Security number, driver's license number, treatment information, and health insurance information. On June 30, 2022, MAIC reported to the Department of Health and Human Services that 144,104 individuals' information had been potentially compromised in the Data Incident. MAIC also published a Notice of Data Incident.

5. On November 7, 2022, Plaintiff Barb Lhota filed the instant lawsuit. Plaintiff Lhota alleges seven causes of action for: (1) Negligence; (2) Negligence Per Se; (3) Breach of Implied Contract; (4) Unjust Enrichment; (5) Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act ("CFA"), 815 Ill. Comp. Stat. §§ 505/1 *et seq.*; (6) Breach of Fiduciary Duty; and (7) Invasion of Privacy

6. In addition to the instant Lawsuit, four other lawsuits related to the Data Breach, which alleged similar and additional causes of action, were filed in various Illinois state and federal courts—(1) *Chen et al. v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022-CH-07101 (Ill. Cir. Ct. Cook Cnty.) (2) *Newberry v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022-07128 (Ill. Cir. Ct. Cook Cnty.); (3) *Seyive Bani A Medegan Fagla et al. v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022-CH-07692 (Ill. Cir. Ct. Cook Cnty.); and (4) *Cornell v. Michigan Avenue Immediate Care, S.C.*, Case No. 1:22-cv-03885 (N.D. Ill.). In addition to the causes of action in the instant lawsuit, the *Cornell* Lawsuit also included causes of action for: (1) Bailment, (2) Intrusion Upon Seclusion, (3) Declaratory Judgment, and (4) additional state data breach and (5) consumer protection statutes in States beyond Illinois.

7. The Defendant has denied the allegations, causes of action and claims.

8. On November 2, 2022, the Parties engaged in a global mediation with Hon. Stuart E. Palmer (Ret.) of JAMS. Prior to the mediation, MAIC produced informal discovery to Plaintiffs' Counsel, including information about the cause and scope of the Data Incident and information about the class size. At the mediation, the Parties were able to reach an agreement on the principal terms of settlement for these matters, subject to final mutual agreement on all necessary documentation. Since then, the Parties continued to negotiate in good faith and at arms' length, the finer details of the Settlement and drafted and finalized this Settlement Agreement and accompanying Notice and other exhibits.

9. Plaintiffs summarize the relevant terms of the proposed Settlement as follows:

10. Alternative Cash Payments. Settlement Class Members may file claims for \$50.

11. Documented Out-of-Pocket Losses. In the alternative to Alternative Cash Payments, Settlement Class Members are eligible for compensation for unreimbursed ordinary

*may file claims*

losses up to a total of \$2,500.00 per Settlement Class Member, upon submission of a valid Claim Form and supporting documentation (except for claims for lost time). Ordinary losses may include: (a) out-of-pocket expenses incurred as a result of the Data Incident, such as the following: (i) bank fees, (ii) long distance phone charges, (iii) cell phone charges (only if charged by the minute), (iv) data charges (only if charged based on the amount of data used), (v) postage, and (vi) gasoline for local travel; (b) fees for credit reports, credit monitoring, or other identity theft insurance product purchased between November 1, 2021 and the Claims Deadline;<sup>1</sup> and (c) up to four (4) hours of lost time, calculated at \$25/hour, for time spent responding to issues raised by the Data Incident. The maximum amount any one claimant may ~~recover~~ <sup>claim</sup> under documented ordinary losses is \$2,500.00.

12. Limitation on Monetary Relief. MAIC will pay \$850,0000 into a nonreversionary settlement fund from which all claims, attorneys' fees, costs, expenses, and settlement administration costs will be paid. In the event that the claims received do not exceed the settlement fund, all claims will be increased on a *pro rata* basis. In the event that the number of claims exceeds the settlement fund, all claims will be decreased on a *pro rata* basis.

13. <sup>Based upon the representations of the parties,</sup> The Court finds that: (i) there is a good cause to believe that the settlement is fair, reasonable, and adequate; (ii) the Settlement Agreement has been negotiated at arm's length between experienced attorneys familiar with the legal and factual issues of this case; and (iii) the settlement warrants Notice of its material terms to the Settlement Classes for its consideration and reaction.

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<sup>1</sup> This list of reimbursable documented ordinary losses is not meant to be exhaustive, but is exemplary. Settlement Class Members may make claims for any documented ordinary losses reasonably related to the Data Incident or to mitigating the effects of the Data Incident. The Settlement Administrator shall have the discretion to determine whether any claimed loss is reasonably related to the Data Incident.

### CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

14. The Court has conducted a preliminary evaluation of the settlement set forth in the Settlement Agreement. Based on this preliminary evaluation, the Court finds that the Settlement Agreement meets all applicable requirements of 735 ILCS 2-801, for settlement purposes only, and hereby conditionally certifies the Settlement Class as follows:

***Settlement Class:*** All 144,104 persons whose PII, PHI, and/or PBI was potentially compromised in the cybersecurity incident involving Michigan Avenue Immediate Care, S.C. ("MAIC") computer network on or about May 2022, and who were the subject of the Notice of Data Incident that MAIC published on June 30, 2022.

15. Excluded from the Settlement Classes are:

(i) officers and directors of MAIC and/or the Related Entities; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) members of the judiciary who have presided or are presiding over this matter and their families and staff; and (iv) 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.

16. The Settlement Class is sufficiently numerous that joinder of all members is impracticable, that there are questions of law and fact common to members of the Settlement Class that predominate, that the representative parties will fairly and adequately protect the interests of the Settlement Class, and that class treatment is an appropriate method for the fair and efficient adjudication of the controversy.

17. The Settlement Agreement and the proceedings and statements made pursuant to the Settlement Agreement or papers filed relating to the Settlement Agreement and this Preliminary Approval Order, are not and shall not in any event be described as, construed as,

offered or received against any of the Released Entities, including MAIC, as evidence of and/or deemed to be evidence of any presumption, concession, or admission by any of the Released Persons, including MAIC, of the truth of any fact alleged by Plaintiff; the validity of any claim that has been or could have been asserted in the Lawsuits or in any litigation; the deficiency of any defense that has been or could have been asserted in the Lawsuits or in any litigation; or any liability, negligence, fault, or wrongdoing of any of the Released Persons, including MAIC. MAIC has denied and continues to deny the claims asserted by Plaintiffs. Notwithstanding, nothing contained herein shall be construed to prevent a Party to the Lawsuits from offering the Settlement Agreement into evidence for the purpose of enforcing the Settlement Agreement.

18. The certification of the Settlement Class shall be binding only with respect to the settlement of the Lawsuits. In the event that the Settlement Agreement fails to become effective, is overturned on appeal, or does not become final for any reason, the Settlement Agreement shall be null and void *ab initio*, the Parties shall be restored to their respective positions in the Lawsuits as of the date of the signing of the Settlement Agreement, and no reference to the Settlement Class and/or the Settlement Agreement, or any documents, communications, or negotiations related in any way thereto shall be made for any purpose.

#### **NOTICE AND SETTLEMENT ADMINISTRATION**

19. Pursuant to the Settlement Agreement, RG/2 Group is hereby appointed as the Settlement Administrator and shall be required to perform all of the duties of the Settlement Administrator as set forth in the Settlement Agreement and this Preliminary Approval Order.

20. The forms of the Short Form Notice and Long Form Notice, as revised and submitted to the Court, and the Claim Form, attached as Exhibit 3 to the Settlement Agreement, are constitutionally adequate and are hereby approved. The Notice contains all essential elements

required to satisfy state statutory requirements and due process under 735 ILCS 5-2/801, the United States Constitution, the Illinois Constitution, and other applicable laws. The Court further finds that the form, content, and method of providing 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.

21. The Notice program set forth in the Settlement Agreement, and described below, satisfies the requirements of 735 ILCS 5-2/801, provides the best notice practicable under the circumstances, and is hereby approved.

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

23. Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Settlement Class Counsel and MAIC Counsel to file with the Court an appropriate affidavit or declaration from the Settlement Administrator with respect to its compliance with the Court-approved Notice Program.

### **EXCLUSIONS AND OBJECTIONS**

#### *Exclusions*

24. The Notice shall inform each Settlement Class Member of his or her right to request exclusion from the Settlement Class and to not be bound by this Settlement Agreement, if within the forty-five (45)-Day period beginning upon the Notice Commencement Date (the "Opt-Out Period"), the Settlement Class Member personally signs and timely submits, completes, and mails

a request to be excluded from the Settlement Class (“Opt-Out Request”) to the Settlement Administrator at the address set forth in the Notice. To be effective, an Opt-Out Request must be postmarked no later than the final date of the Opt-Out Period (the “Opt-Out Deadline”).

25. For a Settlement Class Member’s Opt-Out Request to be valid, it must (a) state the case name, *Lhota v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022-CH06616 (Ill. Cir. Ct. Cook Cnty.); (b) the Settlement Class Member’s full name, address, and telephone number; (c) the Settlement Class Member’s personal and original signature (or the personal and original signature of a Person previously authorized by law to act on behalf of the Settlement Class Member with respect to the claims asserted in the Lawsuits); and (c) clearly manifest a Person’s intent to be excluded from the Settlement.

26. All Settlement Class Members who submit timely and valid Opt-Out Requests shall: (a) receive no benefits or compensation under the Settlement Agreement; (b) shall gain no rights from the Settlement Agreement; (c) shall not be bound by the Settlement Agreement; and (d) shall have no right to object to the Settlement or proposed Settlement Agreement or to participate at the Final Approval Hearing. All Settlement Class Members who do not request to be excluded from the Settlement Class shall be bound by the terms of the Settlement Agreement, including the Release contained therein, and the Final Order and Judgment thereon, regardless of whether he or she files a Claim Form or receives any benefits from the Settlement.

27. An Opt-Out Request or other request for exclusion that does not <sup>materially</sup> fully comply with the requirements set forth above, or that is not timely submitted or postmarked, or that is sent to an address other than that set forth in the Notice, shall be invalid, and the person submitting such request shall be treated as a Settlement Class Member and be bound by the Settlement Agreement, including the Release contained therein, and the Final Order and Judgment entered thereon.



28. No person shall purport to exercise any exclusion rights of any other person, or purport: (a) to opt-out Settlement Class Members as a group, in the aggregate, or as a class involving more than one Settlement Class Member; or (b) to opt-out more than one Settlement Class Member on a single paper, or as an agent or representative. Any such purported Opt-Out Requests shall be void, and the Settlement Class Member(s) who is or are the subject of any such purported Opt-Out Requests shall be treated as a Settlement Class Member and be bound by the Settlement Agreement, including the Release contained herein, and by all proceedings, orders, and judgments in the Lawsuits, including the Final Order and Judgment, unless he or she submits a valid and timely Opt-Out Request.

#### *Objections*

29. Any Settlement Class Member who wishes to object to the Settlement Agreement must submit a timely, written notice of his or her Objection by no later than forty-five (45) days from the Notice Commencement Date (the "Objection Deadline").

30. To object to the Settlement, a Settlement Class Member must file a timely, written notice of his or her Objection in the appropriate form with the Clerk of the Court. The Objection must also be delivered or mailed to Settlement Class Counsel and MAIC's Counsel. The deadline for filing Objections shall be included in the Notice.

31. Such notice shall: (i) state the case name, *Lhota v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022-CH-06616 (Ill. Cir. Ct. Cook Cnty.); (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) the identity of any attorney(s) representing the objector; (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing;

(vi) a statement identifying all class action settlements objected to by the Settlement Class Member in the previous five years; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

32. Any Settlement Class Member who fails to <sup>materially</sup> comply ~~in full~~ with the requirements for objecting set forth in this Settlement Agreement, the Notice, and any applicable orders of this Court shall forever waive and forfeit any and all rights he or she may have to raise any objection to the Settlement Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing, shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means, and shall be shall be bound by the Settlement Agreement, including the Release contained therein, and by all proceedings, orders, and judgments in the Lawsuits, including the Final Order and Judgment.

33. The exclusive means for any challenge to the Settlement Agreement is through the provisions set forth in the Settlement Agreement. Any challenge to the Settlement Agreement, the Final Order and Judgment, or any judgment to be entered upon final approval, shall be pursuant to appeal and not through a collateral attack. Any objecting Settlement Class Member who appeals final approval of the Settlement Agreement <sup>may</sup> ~~will~~ be required to post an appeal bond.

#### APPOINTMENTS

34. For settlement purposes only, the Court hereby approves the conditional appointment of Plaintiffs Barb Lhota, Qixin Chen, Beichen Shi, Jorge Newbery, Mondoukpe Seyive Bani A Medegan Fagla, Cristina Heer, Morgan Strunsky and Richard Delano Cornell as Class Representatives for the Settlement Class.

35. For settlement purposes only, the Court hereby approves the conditional appointment of Turke and Strauss LLP; Wolf Haldenstein Adler Freeman & Herz, LLC; Milberg

Coleman Bryson Phillips Grossman, PLLC, Zimmerman Law Offices, P.C., and Mason LLP as Settlement Class Counsel and finds that they are competent and capable of exercising the responsibilities of Settlement Class Counsel.

### **TERMINATION**

36. This Preliminary Approval Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions, if the Settlement is not finally approved by the Court or is terminated in accordance with section 12 of the Settlement Agreement.

37. If the Settlement Agreement is terminated or disapproved, or if the Effective Date does not occur for any reason, then: (i) the Settlement Agreement and all orders entered in connection with the Settlement Agreement shall be rendered null and void; (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Lawsuits or in any other proceeding for any purpose, and any judgment or order entered by the Courts in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*; (iii) MAIC shall be responsible for all Notice and Claims Administration Costs incurred prior to the termination or disapproval; (iv) all Parties shall be deemed to have reverted to their respective positions and status in the Lawsuits as of the date the Settlement Agreement was executed and shall jointly request that a new case schedule be entered by the Courts in the Lawsuits; and (v) MAIC shall have no payment, reimbursement, or other financial obligation of any kind as a result of this Settlement Agreement, other than as stated in Sub-Part (iii) above.

### **FINAL APPROVAL HEARING**

38. No later than 14 days prior to the Objection and Opt-Out Deadlines, Plaintiffs must file their papers in support of Settlement Class Counsel's application for fees, costs, and expenses and Service Awards. And no later than August 1, 2023, Plaintiffs must file their papers in support of final approval of the Settlement Agreement.

39. A Final Approval Hearing shall be held before the Court on August 15, 2023, at 2:00 p.m. by Zoom (Meeting ID 928 9663 2736; Password 813107, or via telephone at (312) 626-6799) for the following purposes:

- a. to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met, and that the Class Representatives and Settlement Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;
- b. to determine whether the settlement is fair, reasonable, and adequate, and should be approved by the Court;
- c. to determine that Notice (1) was implemented pursuant to the Settlement Agreement and Preliminary Approval Order, (2) constitutes the best practicable notice under the circumstances, (3) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Classes of the pendency of the Lawsuit and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing, (4) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and (5) fulfills the requirements of the Illinois

Code of Civil Procedure, the Due Process Clause of the both the United States and Illinois Constitutions, and the rules of the Court;

- d. to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;
- e. to consider the application for an award of attorneys' fees, costs, and expenses;
- f. to consider the application for Service Awards to the Class Representatives;
- g. to consider all payments to be made pursuant to the Settlement Agreement;
- h. to dismiss the action with prejudice; and
- i. to rule upon such other matters as the Court may deem appropriate.

40. All proceedings in the Lawsuit other than those related to approval of the Settlement Agreement pending entry of the Final Order and Judgment are stayed.

41. No Settlement Class Member may prosecute, institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Persons and any such actions are enjoined or stayed.

**SUMMARY OF DEADLINES**

42. The preliminary approval of the Settlement Agreement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Preliminary Approval Order, include, but are not limited to:

<b><u>Event</u></b>	<b><u>Deadline</u></b>
<b>Class Member Information Deadline</b>	Within 7 days of Preliminary Approval Order, MAIC will provide Settlement Administrator with Class Member Information

<u>Event</u>	<u>Deadline</u>
<b>Notice Commencement Date</b>	Within 30 days of entry of Preliminary Approval Order, Settlement Administrator shall send Notice by email and/or mail to all Settlement Class Members
<b>Motion for Attorneys' Fees, Costs, Expenses, and Service Awards</b>	14 days before the Opt-Out/Objection Deadlines
<b>Deadline to Opt-Out/Object From Settlement</b>	Within 45 days after Notice Commencement Date
<b>Claims Deadline</b>	90 days after Notice Commencement Date
<b>Motion for Final Approval of Class Action Settlement</b>	August 1, 2023.
<b>Final Approval Hearing</b>	August 15, 2023 at 2:00 p.m.

**IT IS ORDERED.**

Judge Pamela McLean Meyerson

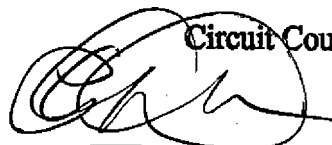
APR 05 2023

Dated: \_\_\_\_\_  
Circuit Court -- 2097

Judge Pamela McLean Meyerson

APR 05 2023

Circuit Court -- 2097



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THE HONORABLE PAMELA  
McLEAN MEYERSON  
CIRCUIT COURT JUDGE