

STATE OF NORTH CAROLINA  
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22CVS003533-310

DANIEL GREEN, as an individual  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

EMERGEORTHO, P.A.,

Defendant.

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

**WHEREAS**, the above-captioned class action is pending in this Court (the “Action”) and Plaintiff has submitted a Motion for Final Approval of Class Action Settlement, (ECF No. 57);

**WHEREAS**, Plaintiff DANIEL GREEN, individually and on behalf of all others similarly situated (“Plaintiff”) and Defendant EmergeOrtho, P.A., (“EmergeOrtho” or “Defendant”) have entered into a Settlement Agreement, (ECF No. 50.1), that settles the Action and provides for a complete dismissal with prejudice of the claims asserted against Defendant in the Action on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

**WHEREAS**, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement;

**WHEREAS**, by order dated 23 February 2024 (the “Preliminary Approval Order”), (ECF No. 52), this Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c)

ordered that notice of the proposed settlement be provided to potential Settlement Class Members; (d) provisionally appointed Plaintiff Daniel Green as the Class Representative; (e) provisionally appointed Settlement Class Counsel; (f) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; (g) approved and appointed the Claims Administrator; and (g) scheduled a hearing regarding Final Approval of the Settlement;

**WHEREAS**, due and adequate Notice has been given to the Settlement Class;

**WHEREAS**, five Class Members have submitted a Request for Exclusion and none has objected to the Settlement;

**WHEREAS**, the Court conducted a hearing on 11 June 2024 (the “Final Approval Hearing”) to consider, among other things, (a) the Objection(s) to the Settlement; (b) whether the terms and conditions of the Settlement were fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; (c) whether Plaintiff’s Motion for Attorneys’ Fees, Expenses, and Service Award, (ECF No. 60), should be granted; and (d) whether a judgment should be entered dismissing the Action with prejudice as against Defendant; and

**WHEREAS**, the Court has reviewed and considered the Settlement Agreement, all papers filed and proceedings had in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

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

1. **Jurisdiction**: The Settlement involves allegations in Plaintiff's Class Action Complaint that EmergeOrtho failed to safeguard and protect the personally identifiable information and personal health information of its current and former patients and that this alleged failure caused injuries to Plaintiff and the Settlement Class. This Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents**: This Judgment incorporates and makes a part hereof: (a) the Settlement Agreement filed with the Court on 9 February 2024, (ECF No. 50.1); and (b) the Notice documents filed with the Court on 28 May 2024, (ECF No. 58.1, Exs. A–B).

3. **Class Certification for Settlement Purposes**: The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure (the "Rule(s)") and finally certifies the Settlement Class consisting of:

**All individuals who were issued notice by EmergeOrtho stating that their Private Information may have been involved in the Data Incident discovered by EmergeOrtho on or about May 1, 2022.**

(ECF No. 52.) The Settlement Class includes approximately 72,500 persons. The Settlement Class specifically excludes:

(1) the Judge presiding over this Action, and members of their direct families; (2) Defendants, their subsidiaries, parent companies, successors, predecessors, and any entity in which Defendants or their parents have a controlling interest and their current or former officers and directors; and (3) Settlement Class Members who submit a valid a Request for Exclusion prior to the Opt-Out Deadline.

(ECF No. 52.)

4. **Adequacy of Representation**: Pursuant to Rule 23, and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Plaintiff Daniel Green as Class Representative for the Settlement Class and appointing Milberg Coleman Bryson Phillips Grossman, PLLC and Mason, LLP as Settlement Class Counsel. Plaintiff and Class Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of Rule 23.

5. **Notice**: The Court finds that the dissemination of the Notice: (a) was 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 Settlement Class Members of (i) the pendency of the Action, (ii) the effect of the proposed Settlement (including the releases to be provided thereunder), (iii) Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award, (iv) their right to object to any aspect of the Settlement and Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award, (v) their right to exclude themselves from the Settlement Class, and (vi) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and

sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) was carried out as ordered by this Court's Preliminary Approval Order and satisfied the requirements of Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable law and rules. An affidavit of the Claims Administrator's compliance with the notice program has been filed with the Court. (See ECF No. 58.1.)

6. **Exclusion**: Five individuals have timely sought exclusion from the Settlement as of the final date of the Opt-Out Period and thus will not be bound by its terms. The names of those persons are:

FIRST NAME	LAST NAME
Richard	McGraw
Judith	Jarosinski
Bernard	Petro
Phillip	Heath
David	Burke

7. **Objections**: There have been no objections to the Settlement, the Motion for Final Approval of Class Action Settlement, or to Plaintiff's Motion for Attorneys' Fees, Costs, and Service Awards. The deadline for Settlement Class Members to object to, or to exclude themselves from, the Settlement has passed. All Settlement

Class Members are deemed to have waived any objections by appeal, collateral attack, or otherwise.

8. The Settlement Agreement provides, in part, and subject to a more detailed description of the settlement terms in the Settlement Agreement, for EmergeOrtho to pay \$550,000 into a non-reversionary common fund. This amount will be used to fund the following:

- a. A process for Settlement Class Members to submit claims for compensation that will be evaluated by a Claims Administrator mutually agreed upon by Settlement Class Counsel and Defendant.
- b. All Costs of Notice and Settlement Administration.
- c. A Court-approved amount for attorneys' fees and expenses of Settlement Class Counsel not to exceed \$208,315.
- d. A Court-approved Service Award to Class Representative not to exceed \$5,000.
- e. To the extent there are any remaining funds from uncashed checks, the balance will be distributed to Legal Aid of North Carolina, the agreed upon non-profit residual recipient. (ECF No. 62.)

(See ECF No. 50.1.)

9. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Rule 23, this Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement in all respects (including, without limitation: the amount of the Settlement Fund; the Releases provided for in the Settlement Agreement; and the dismissal with prejudice of the claims asserted against Defendant in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class. The Parties and the Claims

Administrator are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions contained in the Settlement Agreement.

10. Upon the Effective Date, the Action shall be, and hereby is, dismissed with prejudice in its entirety as to Defendant, with each party to bear their own costs and attorneys' fees, except as provided in the Settlement Agreement, and all of the claims of the Settlement Class Members shall be, and hereby are, dismissed and released pursuant to the Settlement Agreement.

11. **Binding Effect:** The terms of the Settlement Agreement and this Judgment shall be forever binding on Defendant, Plaintiff, and all other Settlement Class Members (regardless of whether or not any individual Settlement Class Member submitted a Claim Form or seeks or obtains a distribution or benefits from the Net Settlement Fund), as well as their respective successors and assigns.

12. **Releases:** The releases set forth in the Settlement Agreement are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders that, upon the Effective Date, and in consideration of the Settlement benefits described in the Settlement Agreement, each Settlement Class Member shall be deemed to have released, acquitted, and forever discharged Defendant and each of the Released Persons from any and all Released Claims, except as to those persons who have timely and validly requested exclusion from the Settlement Class as identified above.

13. Notwithstanding Paragraph 10 above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

14. **No Admissions:** This Judgment and Order, and the Settlement Agreement, and all papers related thereto, are not, and shall not be construed to be, an admission by Defendant of any liability, claim, or wrongdoing in this Action or in any other proceeding.

15. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award, and (d) the Settlement Class Members for all matters relating to the Action.

16. The Court defers consideration of Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award and will resolve this motion by separate order.

17. **Modification of the Agreement of Settlement:** Without further approval from the Court, Plaintiff and Defendant are hereby authorized to agree to and adopt such amendments or modifications of the Settlement Agreement or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order



of the Court, Plaintiff and Defendant may agree to reasonable extensions of time to carry out any provisions of the Settlement.

18. **Termination of Settlement:** If the Settlement is terminated as provided in the Settlement Agreement or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Settlement Agreement, and this Judgment shall be without prejudice to the rights of Plaintiff, the other Settlement Class Members, and Defendant, and the Parties shall revert to their respective positions in the Action as of 7 February 2023, as provided in the Settlement Agreement.

19. **Entry of Judgment:** There is no just reason for delay of entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final Judgment in the Action.

**SO ORDERED**, this the 19th day of July, 2024.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Chief Business Court Judge