

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

RICHARD ROGERS and MICHAEL STEWART, individually and on behalf of all others similarly situated,

*Plaintiffs,*

v.

BNSF RAILWAY COMPANY, a Delaware corporation,

*Defendant.*

No. 2019-CH-04393

Hon. Pamela McLean Meyerson

**Judge Pamela McLean Meyerson**

**MAR 05 2024**

**Circuit Court – 2097**

**PRELIMINARY APPROVAL ORDER**

This matter having come before the Court on Plaintiffs’ Unopposed Motion in Support of Preliminary Approval of Class Action Settlement (“Motion”), the Court having reviewed in detail and considered the Motion and the Class Action Settlement Agreement (“Settlement Agreement”) between Plaintiffs Richard Rogers and Michael Stewart (“Plaintiffs”), and Defendant BNSF Railway Company (“Defendant”), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Settlement Agreement.
2. The terms of the Settlement Agreement are preliminarily approved as fair, reasonable, and adequate. There is good cause to find that the Settlement Agreement was negotiated at arm’s-length between the Parties, who were represented by experienced counsel and negotiated through an experienced neutral, Judge Matthew F. Kennelly of the U.S. District Court for Northern District of Illinois.

3. For settlement purposes only, the Court finds that the prerequisites to class action treatment under Section 2-801 of the Illinois Code of Civil Procedure – including numerosity, commonality and predominance, adequacy, and appropriateness of class treatment of these claims – have been preliminarily satisfied.

4. The Court hereby conditionally certifies, pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for the purposes of settlement only, the following Settlement Class consisting of:

“All individuals whose fingerprint information was registered using an Auto-Gate System at any of BNSF’s four Illinois facilities at any time between April 4, 2014 through the date of the Preliminary Approval Order.”

5. For settlement purposes only, Plaintiffs Richard Rogers and Michael Stewart are appointed as Class Representatives.

6. For settlement purposes only, the following counsel are hereby appointed as Class Counsel:

Myles McGuire  
Evan M. Meyers  
David L. Gerbie  
Brendan Duffner  
MCGUIRE LAW, P.C.  
55. W. Wacker Dr., 9th Fl.  
Chicago, IL 60601

Jon Loevy  
Michael I. Kanovitz  
LOEVY & LOEVY, P.C.  
311 N. Aberdeen St., 3rd Floor  
Chicago, Illinois 60607

7. The Court finds that the Class Representatives and Class Counsel have and will fairly and adequately represent and protect the interests of the absent members of the Settlement Class in accordance Section 2-801 of the Illinois Code of Civil Procedure.

8. The Court recognizes that, pursuant to the Settlement Agreement, Defendant retains all rights to object to the propriety of class certification in the above-captioned matter should the Parties return to litigation if the Settlement is not finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved and the Parties return to litigation, this Court’s

preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

9. The Court approves, in form and content, the Class Notice attached to the Settlement Agreement as Exhibit A, and finds that it meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfies Due Process.

10. The Court finds that the planned notice set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances, satisfies fully the requirements of Due Process and any other applicable law, such that the Settlement Agreement and Final Approval Order will be binding on all Settlement Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the Class Notice in ways that are not material, or in ways that are appropriate to update the Class Notice for purposes of accuracy or formatting for publication.

11. Epiq Class Actions & Claims Solutions is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement.

12. The Settlement Administrator may proceed with the distribution of Class Notice as set forth in the Settlement Agreement.

13. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including with respect to Released Claims as set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have

previously initiated other litigation or proceedings against Defendant or the Released Parties relating to the claims released under the terms of the Settlement Agreement.

14. Any individual within the Settlement Class may request exclusion from the Settlement Class by expressly stating their request in a written exclusion request. Such exclusion requests must be postmarked, no later than the Objection/Exclusion Deadline **Tuesday, May 7, 2024**.

15. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing their name, address, and telephone number; a statement that they wish to be excluded from the Settlement Class; and their signature. A request to be excluded that is sent to an address other than that designated in the Notice, or is not postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound as a Settlement Class Member by the Agreement, if approved. So-called “mass” or “class” exclusion requests shall not be accepted or valid. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Class, may request exclusion from the Settlement Class of any other person within the Settlement Class.

16. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound by the Settlement or any order or judgment of the Litigation; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement.

17. Class Counsel may file any motion seeking an award of attorneys' fees, costs and expenses, as well as Service Awards for the Class Representatives, in accordance with the terms of the Settlement Agreement, no later than **Tuesday, April 16, 2024**.

18. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees, costs, and expenses that Class Counsel intend to seek or the payment of the Service Awards to the Class Representatives, may do so, either personally or through an attorney, by filing a written objection, together with the supporting documentation set forth below in Paragraph 19 of this Order, with the Clerk of the State Court, and served upon the Settlement Administrator no later than **Tuesday, May 7, 2024**. Addresses for the Settlement Administrator and the Clerk of State Court are as follows:

<b>Settlement Administrator:</b> Epiq Systems, Inc. P.O. Box 5803 Portland, OR 97228	<b>Clerk of State Court:</b> Clerk of the Circuit Court of Cook County Chancery Division 50 W. Washington Street, #802 Chicago, IL 60602
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19. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) their full name, address, email address, and current telephone number; (ii) the case name and number of the above captioned case; (iii) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (iv) the identification of any other objections they have filed, or have had filed on their behalf, in any other class action cases in the last four years; and (v) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of their counsel. Objections not filed and served in accordance with this Order

shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys' fees, costs, and expenses, to the payment of any Service Award(s), and to the Final Approval Order and the right to appeal same.

20. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with this Order may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Class Counsel's Fee and Expense Application and/or the request for Service Awards to the Class Representatives are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates their intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in their written objection the identity of any witnesses they may call to testify, and all exhibits they intend to introduce into evidence at the Final Approval Hearing, which shall be attached to such written objection.

21. Any Settlement Class Member who does not make their objection to the Settlement in the manner provided herein, or who does not also timely provide copies to Counsel for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection by

appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

22. All papers in support of the Final Approval of the Settlement shall be filed no later than seven (7) days before the Final Approval Hearing.

23. Pending the final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, 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 Parties.

24. A hearing (the "Final Approval Hearing") shall be held before the Court on **June 17, 2024 at 2:00 p.m.** via Zoom. The Meeting ID is **928 9663 2736**. The Password is **813107**. Parties who cannot log on via Zoom may join the call by dialing **312-626-6799**. Then, when prompted, enter the Zoom Meeting ID, and follow prompts as appropriate. The Final Approval Hearing shall be held before the Court 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;
- (b) to determine whether the Settlement is fair, reasonable, and adequate, and should be approved;
- (c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing Released Claims as set forth in the Settlement Agreement;
- (d) to consider the application for an award of attorneys' fees, costs, and expenses of Class Counsel;
- (e) to consider the application for Service Awards to the Class Representatives;

- (f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and
- (g) to rule upon such other matters as the Court may deem appropriate.

25. The Final Approval Hearing may be postponed, adjourned, transferred, continued, or conducted by remote means by order of the Court without further notice to the Settlement Class Members, although Class Counsel will publish any such modifications to the Final Approval Hearing on the Settlement Website. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

26. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

27. The Court approves the Chicago Bar Foundation and the American Red Cross as equal *cypres* recipients of any uncashed checks according to the terms set forth in the Settlement Agreement.

28. All discovery and other proceedings in this case are stayed until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

29. For clarity, the deadlines set forth above and in the Settlement Agreement are as follows:

- Notice to be completed by:** Tuesday, March 26, 2024
- Fee and Expense Application:** Tuesday, April 16, 2024
- Objection/Exclusion Deadline:** Tuesday, May 7, 2024
- Final Approval Submissions:** Monday, June 10, 2024

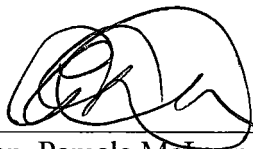


**Final Approval Hearing:**

**Monday, June 17, 2024 at 2:00 PM**

**IT IS SO ORDERED.**

ENTERED: \_\_\_\_\_



Hon. Pamela McLean Meyerson  
Circuit Court Judge  
Circuit Court of Cook County, Illinois

**Judge Pamela McLean Meyerson**

**MAR 05 2024**

**Circuit Court - 2097**