

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SUZANNE J. ADAMS PART 39M

Justice

-----X

ROBERT GUARNASCHELLI,
Plaintiff,

- v -

EAST RIVER MEDICAL IMAGING, P.C.,
Defendant.

INDEX NO. 656099/2023
MOTION DATE 12/15/2023
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 10, 11, 12, 13, 14, 15, 19
were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Upon the foregoing documents, it is it is ordered that plaintiff's motion pursuant to CPLR § 602 to consolidate this action with the actions titled *Dunne v. East River Medical Imaging, P.C.*, Index No. 656169/2023, and *Carovillano v. East River Medical Imaging, P.C.*, Index No. 656162/2023, both pending before this court, is granted, with no opposition. All three matters arise out the same incident which occurred on or about August 31, 2023, which plaintiff alleges was a breach of defendant's database by unauthorized third parties, resulting in present and future harm to plaintiff. Pursuant to CPLR §602(a), "[w]hen actions involving a common question of law or fact are pending before a court, the court, upon motion ... may order the actions consolidated." Here, it is undisputed that all three actions arise out of the same alleged breach and involve the same questions of fact and law. No opposition has been filed.

Accordingly, it is hereby

ORDERED that the motion is granted and the above-captioned action is consolidated in this court with *Dunne v. East River Medical Imaging, P.C.*, Index No. 656169/2023, and

Carovillano v. East River Medical Imaging, P.C., Index No. 656162/2023, both also pending in this court; and it is further

ORDERED that the consolidation shall take place under Index No. 656099/2023 and the consolidated action shall bear the following caption:

 ROBERT GUARNASCHELLI, JOHN DUNNE and
 NICHOLAS CAROVILLANO, on behalf of themselves
 and all others similarly situated,

Plaintiffs,

-against-

EAST RIVER MEDICAL IMAGING, P.C.,

Defendant.

and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court (60 Centre Street, Room 141 B), who shall consolidate the documents in the actions hereby consolidated and shall mark his records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that service of this order upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk*

Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/suptmanh); and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the New York State Courts Electronic Filing System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is hereby directed to reflect the consolidation by appropriately marking the court’s records; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the aforesaid *Protocol*; and it is further

ORDERED that Benjamin F. Johns of Shub & Johns LLC and Jean Martin of Morgan & Morgan are hereby appointed as Interim Co-Lead Class Counsel to lead the consolidated action and to ensure the orderly protection of the consolidated action act on behalf of plaintiffs and the class members, with the responsibilities set forth below:

- a. Determine and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the court and opposing parties the position of the Plaintiffs on all matters arising during pretrial proceedings;
- b. Coordinate the initiation and conduct of discovery on behalf of plaintiffs and the putative class consistent with the requirements of the Federal Rules of Civil Procedure;
- c. Convene meetings amongst counsel;
- d. Conduct settlement negotiations on behalf of plaintiffs and the putative class(es);
- e. Negotiate and enter into stipulations with opposing counsel as necessary for the conduct and efficient advancement of the litigation;


- f. Monitor the activities of all counsel to ensure that schedules are being met and unnecessary expenditures of time and funds are avoided;
- g. Perform such other duties as may be incidental to the proper coordination of plaintiff's pretrial activities or authorized by further order of this court;
- h. Serve as the primary contact for communications between the court and other plaintiffs' counsel;
- i. Ensure that all notices, orders, and material communications are properly distributed (to the extent that they are not otherwise served on plaintiffs' counsel via NYSCEF);
- j. Communicate with defense counsel as necessary to promote the efficient advancement of this litigation;
- k. Make available to other plaintiffs' counsel documents produced by defendant; and
- l. Allocate attorneys' fees;

and it is further

ORDERED that Israel David of Israel David LLC is appointed as Liaison Counsel; and it is further

ORDERED that pursuant to the Part 39 Rules, the parties to the newly consolidated matter shall agree upon a Preliminary Conference Order and submit a draft of same via email to the Part Clerk of Part 39 for the court's review and signature within 30 days of the entry of this order.

This constitutes the decision and order of the court.

<p><u>2/5/2024</u> DATE</p>	 <hr/> <p>SUZANNE J. ADAMS, J.S.C.</p>													
<p>CHECK ONE:</p> <p>APPLICATION:</p> <p>CHECK IF APPROPRIATE:</p>	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"><input type="checkbox"/> CASE DISPOSED</td> <td style="width: 50%;"><input checked="" type="checkbox"/> NON-FINAL DISPOSITION</td> </tr> <tr> <td><input checked="" type="checkbox"/> GRANTED</td> <td><input type="checkbox"/> GRANTED IN PART</td> </tr> <tr> <td><input type="checkbox"/> SETTLE ORDER</td> <td><input type="checkbox"/> SUBMIT ORDER</td> </tr> <tr> <td><input type="checkbox"/> INCLUDES TRANSFER/REASSIGN</td> <td><input type="checkbox"/> FIDUCIARY APPOINTMENT</td> </tr> <tr> <td></td> <td><input type="checkbox"/> OTHER</td> </tr> <tr> <td></td> <td><input type="checkbox"/> REFERENCE</td> </tr> </table>	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT		<input type="checkbox"/> OTHER		<input type="checkbox"/> REFERENCE	
<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION													
<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART													
<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER													
<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT													
	<input type="checkbox"/> OTHER													
	<input type="checkbox"/> REFERENCE													