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8 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON

9 Nathan Hofstader, individually and on
 10 behalf of others similarly situated,

11 Plaintiff,

12 v.

13 Emergency Physician Services, P.S.,
 Providence Holy Family Hospital and
 14 Providence Health and Services,

15 Defendants.

Case No. 2:18-cv-00062-SMJ

**Declaration of Boyd M. Mayo in
 Support of Plaintiff's Motion for
 Preliminary Approval of Proposed
 Class Action Settlement**

17
 18 **I, BOYD M. MAYO, declare:**

19 1. I am one of the attorneys for the plaintiffs in this action, Nathan Hofstader and Richard
 20 Cerenzia (the "Plaintiffs"). I am over the age of 18 and am fully competent to make this
 21 declaration. I was admitted to the State Bar of Washington in 2011 and have been a
 22 member in good standing ever since that time. I have litigated cases in both state and
 23 federal courts in Washington State, including the Eastern District of Washington. I am
 24 also admitted to practice before all Washington Courts of Appeal, the Western District of
 25 Washington, and the Ninth Circuit Court of Appeals.
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27 2. If called as a witness, I would competently testify to the matters herein from personal
 28

1 knowledge. The declaration is based upon my personal knowledge, except where
2 expressly noted otherwise.

3 3. I submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of
4 Proposed Class Action Settlement in the action against defendants, Providence Holy
5 Family Hospital and Providence Health and Services (“Defendants”).

6 4. I request to be preliminarily approved as Class Counsel for the proposed settlement class.

7 5. I am unaware of any conflict of interest between Plaintiffs and any settlement class
8 member, or between Plaintiffs and Plaintiffs’ attorneys.
9

10 **FACTUAL & PROCEDURAL BACKGROUND**

11 6. It is my understanding that Defendants provide health services including emergency
12 services to patients in the State of Washington.

13 7. On February 20, 2018, a putative class action complaint relating to Defendants’ alleged
14 failure to provide Plaintiffs and putative class members notice of the availability of charity
15 care, captioned *Nathan Hofstader, individually and on behalf of others similarly situated v.*
16 *Emergency Physician Services, P.S., Providence Holy Family Hospital and Providence*
17 *Health and Services*, U.S. District Court, E.D. Washington Case No. 2:18-cv-00062-SMJ
18 was filed in the United States District Court for the Eastern District of Washington. I am
19 one of the attorneys for Plaintiffs in the case.
20

21 8. Subsequently, Plaintiff amended the complaint to include Plaintiff Richard Cerenzia who
22 also alleged Defendants failed to provide him notice of the availability of charity care.
23

24 9. The Plaintiffs and Defendants exchanged some initial discovery and Defendants took the
25 deposition of Nathan Hofstader.

26 10. Considering the risk to both sides, the parties agreed to participate in a settlement
27 conference.
28

- 1 11. The Honorable John T. Rodgers was assigned by this Court as mediator to mediate the
2 settlement conference. With the Court's approval, the parties stayed further discovery and
3 suspended the proceeding pending the outcome of the settlement conference.
- 4 12. The first settlement conference occurred on August 9, 2018, at the Thomas S. Foley United
5 States Courthouse in Spokane, Washington. Prior to the settlement conference the parties
6 exchanged factual information and documents. At the beginning of the first mediation, the
7 parties presented their respective positions on the substantive Washington law applicable
8 to the case and their positions on class certification issues. The settlement conference
9 ended with some meaningful discussion that led to the parties requesting a second
10 settlement conference with Judge Rodgers.
- 11 13. The second settlement conference was held on October 11, 2018. At the second mediation
12 the parties had comprehensive discussions regarding class settlement. By the end of the
13 second settlement conference, the parties had an agreement in principle regarding class
14 settlement, but needed to conduct further research on one issue.
- 15 14. After the settlement conference, the parties continued discussions regarding the last issue
16 and finally came to a resolution of the issue and a full agreement to settle the case on a
17 FRCP 23(b)(2) class basis.
- 18 15. A Settlement Agreement and Release was signed by the parties on July 16 and 17, 2020.
- 19 16. As a result of the above process and the Parties' representations to each other, I believe
20 that the Parties are fully apprised of the relative strengths and weaknesses of each other's
21 claims and defenses and the potential risks to each party of pursuing further litigation in
22 this matter, and that the settlement is in the best interests of the settlement class members.
- 23 17. Based on the discovery exchanged between the parties and Defendants' representations to
24 me, I believe the putative class size to be approximately 250,000 people.
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THE SETTLEMENT

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18. This Settlement provides injunctive relief to Settlement Class members and other member of the community.

19. Specifically, Defendants have agreed to change their policies and procedures regarding the intake process of patients in the emergency department.

20. Defendants have agreed to make the following policy changes:

- a. The Registrar in the emergency department will, at the time of registration or as soon as possible following the initiation of services to the patient, determine whether the patient is insured or uninsured. If the patient is uninsured (or if the patient is unable to confirm whether he/she has coverage), after the patient’s medical screening exam, the Registrar (or a Financial Counselor) will screen the patient for eligibility for Medicaid or financial assistance as described below.¹ Defendants may refer the patient to a Financial Counselor in any practicable manner, such as by providing the patient with a phone number or other contact information. In all instances, Defendants’ obligations under the Emergency Medical Treatment & Labor Act (“EMTALA”) remain in full force and effect, and EMTALA supersedes and trumps any conflicting provision in this Agreement.
- b. The Registrar will ask the uninsured patient if he/she would like to be screened for Washington Medicaid or Financial Assistance eligibility.
 - i. If the patient declines to be screened for Financial Assistance, the patient will be asked to pay any applicable deposit. If the patient indicates it is a

¹ For the sake of clarity, the Registrar or other of Defendants’ personnel may perform the duties of a Financial Counselor (and vice versa), and Defendants shall be deemed to be in compliance with this agreement so long as the duties described in this paragraph 26 are performed.

1 hardship to pay, the patient may be referred to a Financial Counselor.
2 Defendants may refer the patient to a Financial Counselor in any practicable
3 manner, such as by providing the patient with a phone number or other
4 contact information.

5 ii. If the patient agrees to be screened for Washington Medicaid or Financial
6 Assistance eligibility, the Registrar will either perform the
7 screening/eligibility process or refer the patient to the Financial Counseling
8 team to begin the screening/eligibility process. In all instances, however,
9 Defendants will comply first with EMTALA. A note will be left in the
10 patient's account indicating the patient is being screened for Washington
11 Medicaid and/or Financial Assistance, and the patient cannot be asked to
12 pay any deposit, co-pay, deductible, or other fee pending a determination
13 regarding eligibility. The patient will not be asked to pay any deposit, co-
14 pay, deductible, or other fee pending a determination regarding eligibility.
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17 c. If the uninsured patient wants to be screened for Financial Assistance, that will be
18 noted in the patient's account, and the patient will be informed that a Financial
19 Counselor will follow up with him/her to assist the patient in completing the
20 financial assistance/charity care application process. The patient will also be given
21 contact information for the Financial Counseling team.
22

23 d. The self-pay screening workflow and scripting are documented, so Registrar
24 employees understand the steps to follow.

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26 21. Class members will give up the right to be a named representative in a class action lawsuit
27 against Defendants.
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1 22. Class members will not give up the right to bring an individual lawsuit for monetary
2 damages against Defendants.

3 **RISKS OF CONTINUED LITIGATION**

4 23. Taking into account the burdens, uncertainty and risks inherent in this litigation, Plaintiffs'
5 counsel has concluded that further prosecution of this action could be protracted, unduly
6 burdensome, and expensive, and that it is desirable, fair, and beneficial to the class that the
7 action now be fully and finally compromised, settled and terminated in the manner and
8 upon the terms and conditions set forth in the settlement agreement. This is especially true
9 considering that in order to fully prosecute this case through to trial, there would be a great
10 deal of written discovery, more depositions, and competing expert opinions as to the
11 parties' claims. That said, although counsel for Plaintiffs understand that there are
12 uncertainties associated with complex class action litigation and that no one can predict the
13 outcome of the case, Plaintiffs' counsel are confident that a class of some configuration
14 would be certified here, should the case proceed.

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17 24. The named Plaintiffs believe that the claims asserted in the action have merit. However,
18 taking into account the risks of continued litigation, as well as the delays and uncertainties
19 inherent in such litigation, including the risks in any subsequent appeal of significant
20 orders, they believe that it is desirable that the action be fully and finally compromised,
21 settled and terminated now with prejudice, and forever barred pursuant to the terms and
22 conditions set forth in the settlement agreement.

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24 25. Plaintiffs' counsel has concluded that with the benefits and likely deterrent effects of this
25 class action settlement providing for injunctive relief, and believe the terms and conditions
26 of the settlement agreement are fair, reasonable and adequate to the proposed class, and
27 that it is in the best interests of the proposed class to settle the action.
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1 26. I believe the proposed Settlement is fair, adequate and reasonable.

2 **LITIGATION EXPERIENCE**

3 27. Boyd M. Mayo seeks appointment as Class Counsel in this action for settlement purposes.

4 As will be reflected in both my declaration and the declaration to be submitted by my co-
5 counsel, I am informed and believe that Plaintiffs' counsel are qualified and able to
6 conduct this litigation as a class action.

7
8 28. Since my admission to the Washington bar in 2011, I have been engaged exclusively in the
9 area of consumer rights litigation, primarily in the area of fair debt collections, the defense
10 of debt collection lawsuits, and class action litigation under the Telephone Consumer
11 Protection Act, California's invasion of privacy statutes, under Penal Code § 630 *et seq.*,
12 and false advertising actions concerning consumer products.

13 **BOYD M. MAYO'S**
14 **CONSUMER RELATED EXPERIENCE AND RESULTS**

15 29. I have filed and litigated numerous consumer class actions, including but not limited to the
16 following, which I am or have been personally involved in:

- 17 a. *Gandee v. LDL Freedom Enterprises, LLC*, 176 Wn.2d 598 (2013) (in the consumer
18 class action context, successfully obtained a unanimous Supreme Court decision
19 upholding the denial of Defendants' motion to enforce an arbitration clause on
20 unconscionability grounds, distinguishing the United States Supreme Court's decision
21 in *AT&T Mobility v. Concepcion*, and upholding Washington consumers' right to sue
22 in court).
- 23 b. *Gorden v. Lloyd Ward & Assocs.*, 323 P.3d 1074 (Wash. App. Div. III 2014) (Co-
24 counsel in matter in which the court struck down an arbitration clause, protecting
25 consumers' ability to maintain class action at trial)
- 26 c. *Carlsen v. Global Client Solutions*, 171 Wn.2d 486 (2011) (Briefed certified questions
27 to the Washington State Supreme Court in a consumer class action dealing with issues
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1 of first impression involving interpretation of the Washington Debt Adjusting Act and
2 its applicability to the new evolution of the unsecured debt relief industry, resulting in
3 multi-million dollar court-approved class action settlement)

4 d. *Smith v. JEM Group, Inc.*, 7373 F.3d 636 (9th Cir. 2013) (Consumer class action
5 striking down an arbitration agreement in a Consumer Protection Act class action);

6 e. *Mikelson v. J. Hass Group, LLC* (appointed class counsel in contested consumer class
7 action, resulting in \$500,000.00 court-approved settlement).

8 f. In addition to consumer litigation, I have extensive experience in commercial law and
9 litigation, as well as wrongful conviction litigation, including *Larson v. State of*
10 *Washington*, 194 Wn. App. 722, 375 P.3d 1096) (Wash. App. 2016), review denied,
11 2016 Wash. LEXIS 1333 (Wash., Dec. 7, 2016) (obtained reversal and remand of
12 defense verdict on behalf of three wrongly convicted men, where trial court applied an
13 erroneously high burden of proof and misinterpreted key provisions of the newly
14 enacted Wrongly Convicted Persons Act, obtained denial of State of Washington's
15 Petition for a Writ of Certiorari to the Washington Supreme Court, and successfully
16 obtained \$850,000.00 post-remand verdict).

17 **ADDITIONAL RELEVANT TRAINING,**
18 **SPEAKING/TEACHING ENGAGEMENTS AND ASSOCIATIONS**

19 30. I have been selected for the following:

20 a. *Seattle Met Magazine*: Washington's Best Lawyers, for Corporate and Business
21 law (2019-20);

22 b. *Super Lawyers/Washington Law & Politics*: Washington State Super Lawyer
23 Rising Star, for Class Actions, Mass Torts, and Business Law (2014-20);

24 c. *Spokane-Coeur d'Alene Living Magazine*: Top Spokane Lawyer, Class Actions,
25 Mass Torts, and Business Law (2013-20);

26 d. *Corporate-Vision Magazine*: Consumer Champion of the Month (Feb. 2017);
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- 1 e. *Avvo.com, 10.0 Superb Rating*
- 2 f. Vice Chair, Consumer Protection Committee, Washington State Association for
- 3 Justice (2015-17);
- 4 g. Eagle Member, Washington State Association for Justice (2014-2018);
- 5 h. Editorial Board Member, *Trial News*, Washington State Association for Justice
- 6 (2015-16);
- 7 i. Member, Antitrust, Consumer Protection and Unfair and Deceptive Business
- 8 Practices Section, Washington State Bar Association;
- 9
- 10 j. Trustee, Spokane County Bar Association, Young Lawyer's Division (2012-14)
- 11 k. Spokane County Bar Association
- 12 l. Washington State Bar Association
- 13 m. American Bar Association
- 14 n. Panelist, *Consumer Protection Career Opportunities Panel Discussion*, Gonzaga
- 15 University School of Law, October 25, 2017.
- 16
- 17 o. Presentation, *Essential Tools to Build a Successful Plaintiff Consumer Protection*
- 18 *Law Practice*, "Resist Litigating in the Dark (Part 2): Avoiding Arbitration,"
- 19 October 11, 2017.
- 20 p. Co-Author, *Washington State Consumer Protection Litigation Desk Book*,
- 21 Washington State Association for Justice (October 2017)
- 22
- 23 q. Presentation, *Discussing the Impact of Recent Washington Supreme Court*
- 24 *Jurisprudence on Consumer Protection Act Claims and Deceptive Insurance*
- 25 *Subrogation Tactics*, Washington State Association for Justice (WSAJ) Annual
- 26 Insurance Law Seminar at Spokane, January 28, 2016
- 27
- 28

- 1 r. Boyd M. Mayo, *SCOTUS Continues Pro-Arbitration Trend in DirecTV v.*
2 *Imburgia*, 577 U.S. __ (2015), WSAJ Trial News (February 2016).
- 3 s. Boyd M. Mayo, *Washington Needs Private Enforcement of its Consumer*
4 *Protection Laws on Payday Lending*, WSAJ Trial News (April 2013).
- 5 t. Matthew J. Zuchetto and Boyd M. Mayo, *Opening the Courthouse Door by*
6 *Invoking Section 3 of the Federal Arbitration Act*, WSAJ Trial News (April 2012).
- 7 u. Matthew J. Zuchetto and Boyd M. Mayo, *Debt Adjusting in Washington State and*
8 *the Washington Supreme Court's decision in Carlsen v. Global Client Solutions,*
9 *LLC*, 171 Wn.2d 486 (2011), WSAJ Trial News (Feb. 2012).
- 10 v. Boyd M. Mayo, *Monetary Liability for Involuntary Servitude?: South Carolina*
11 *Needs to Abandon the Negative Incentive Approach and Grant Absolute Immunity*
12 *to Indigent Criminal Defense Attorneys Appointed Under Rule 608*, 3 Charleston L.
13 *Rev.* 573, 709 (2009)

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15 **EXHIBITS**

- 16
- 17 31. Attached as **Exhibit A** is a true and correct copy of the Long Form Notice.
- 18 32. Attached as **Exhibit B** is a true and correct copy of Settlement Agreement between the
19 parties.
- 20 33. Attached as **Exhibit C** is a true and correct copy of the draft banner advertisement that will
21 be used for notice to class members.
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1 I declare under penalty of perjury under the laws of Washington and the United States of
2 America that the foregoing is true and correct, and that this declaration was executed on July 17,
3 2020.

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Respectfully submitted,

The Mayo Law Group, PLLC

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Date: July 17, 2020

s/ **Boyd M. Mayo**
Boyd M. Mayo
Attorneys for Plaintiff

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