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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nathan Hofstader and Richard Cerenzia, individually and on behalf of others similarly situated, Plaintiffs, v. **Emergency Physician Services, P.S., Providence Holy Family Hospital, Sacred Heart Medical Center, and Providence Health and Services,** Defendants.	**Case No.: 2:18-cv-00062-SMJ** **Unopposed Motion For:** **1. Preliminary Approval of the Terms of the Proposed Settlement;** **2. Conditional Certification of a Settlement Class; and** **3. Approval of Proposed Notice to the Class**

I. INTRODUCTION

In this putative Washington class action, Plaintiffs Nathan Hofstader and Richard Cerenzia (collectively referred to as "Plaintiffs") on behalf of themselves and others similarly situated, assert that Providence Health and Services ("Providence") and the Washington hospitals affiliated with Providence[1] (jointly referred to as "Defendants") violated the Washington Consumer Protection Act by failing to notify Plaintiffs and class members of the availability of charity care.

II. BACKGROUND

The Washington Consumer Protection Act ("WCPA") protects consumers against "unfair or deceptive acts or practices in the conduct of any trade or commerce." *See* RCW 19.86.020. The Charity Care Act requires Defendants to grant free or discounted care to qualifying uninsured or underinsured hospital patients for "appropriate hospital-based medical services" "if the responsible party is cooperative with the hospital's reasonable efforts to reach a final determination

[1] The hospitals affiliated with Providence include Providence Centralia Hospital, Providence Holy Family Hospital, Providence Mount Carmel Hospital, Providence Regional Medical Center Everett, Providence Sacred Heart Medical Center & Children's Hospital, Providence St. Joseph's Hospital, Providence St. Mary Medical Center, Providence St. Peter Hospital Providence Holy Family Hospital, Sacred Heart Medical Center, and Kadlec Medical Center.

of sponsorship status" and the patient's income is below 200% of the federal poverty level. WAC 246-453-010(4), (7); WAC 246-453-020(1)(c). Under current guidelines, 200% of the federal poverty level for a family of four in Washington is an income of $55,060 per year.[2] The Charity Care Act requires Defendants to make an "initial determination of sponsorship status … at the time of admission or as soon as possible following the initiation of services to the patient," to determine whether the patient qualifies for free or discounted care. WAC 246-453-020(1)(b). An initial determination "means . . . an indication from the responsible party, pending verification, that he or she may meet the criteria for designation as an indigent person qualifying for charity care." WAC 246-453-010(19). If the responsible party "is cooperative with the hospital's efforts to reach an initial determination of sponsorship status," Defendants may not seek any collections from the patient. WAC 246-453-020(1).

Representing uninsured and underinsured patients, Plaintiffs brought their claims in this case on behalf of themselves and similarly situated patients who 1) received emergency care medical treatment; 2) were uninsured or underinsured by insurance or any third-party source of payment at the time of treatment; and 3) were

[2] Washington State Low-Income Weatherization Program 2019 Income Eligibility Guidelines. http://www.commerce.wa.gov/wp-content/uploads/2019/03/DRAFT-2019-WA-Eligibility-Guidelines-unprotectedversion.pdf

subject to collections by Defendants' or Defendants' agents.

On or about November 21, 2015, Hofstader received emergency services from Holy Family Hospital. Hofstader alleges he was offered and granted charity care, but only after he was sued by a third party debt collector for amounts not paid to Providence. Mr. Hofstader alleges he was forced to hire an attorney to defend the debt collection lawsuit by the third party debt collector, which was dismissed just before trial. At various times from 2011 to 2018, Cerenzia received emergency services from Sacred Heart. Cerenzia alleges he was not offered charity care. Both Plaintiffs allege they were not adequately informed of the availability of charity care at the time of service.

Under the Washington Consumer Protection Act, successful plaintiffs are entitled to recover actual damages, attorneys' fees, costs, and potentially, treble damages for unfair conduct. RCW 19.86.090. In their suit, Plaintiffs sought such damages for themselves and for the members of the class they seek to represent.

Defendants vigorously deny all claims asserted in the Action and deny all allegations of wrongdoing and liability.

Considering the risk to both sides, the parties agreed to participate in a settlement conference. The Honorable John T. Rodgers was assigned by this Court as mediator to mediate the settlement conference. With the Court's approval, the parties stayed further discovery and suspended the proceeding pending the outcome of the settlement conference.

The first settlement conference occurred on August 9, 2018, at the Thomas S. Foley United States Courthouse in Spokane, Washington. Prior to the settlement conference the parties exchanged factual information and documents. At the beginning of the first mediation, the parties presented their respective positions on the substantive Washington law applicable to the case and their positions on class certification issues. The settlement conference ended with some meaningful discussion that led to the parties requesting a second settlement conference with Judge Rodgers.

The second settlement conference was held on October 11, 2018. At the second mediation the parties had comprehensive discussions regarding class settlement. By the end of the second settlement conference, the parties had an agreement in principle regarding class settlement, but needed to conduct further research on one issue. After the settlement conference, the parties continued discussions regarding the last issue and finally came to a resolution of the issue and a full agreement to settle the case on a FRCP 23(b)(2) class basis. A Settlement Agreement and Release was signed by the parties on June 16 and 17, 2020. A copy of the agreement and its exhibits is attached hereto as Exhibit B.

III. MATERIAL TERMS OF THE SETTLEMENT

Injunctive Relief to the Settlement Class

Defendants have agreed to make the following policy changes to the intake

process for emergency patients in their Washington hospitals:

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.[3] 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.

[3] 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.

B. The Registrar will ask the uninsured patient if he/she would like to be screened for Washington Medicaid or Financial Assistance eligibility.

a. 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 hardship to pay, the patient may be referred to a Financial Counselor. 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.

b. If the patient agrees to be screened for Washington Medicaid or Financial Assistance eligibility, the Registrar will either perform the screening/eligibility process or refer the patient to the Financial Counseling team to begin the screening/eligibility process. In all instances, however, Defendants will comply first with EMTALA. A note will be left in the patient's account indicating the patient is being screened for Washington Medicaid and/or Financial Assistance, and the patient cannot be asked to pay any deposit, co-pay, deductible, or other fee pending a determination regarding eligibility. The patient will not

be asked to pay any deposit, co-pay, deductible, or other fee pending a determination regarding eligibility.

C. If the uninsured patient wants to be screened for Financial Assistance, that will be noted in the patient's account, and the patient will be informed that a Financial Counselor will follow up with him/her to assist the patient in completing the financial assistance/charity care application process. The patient will also be given contact information for the Financial Counseling team.

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

Service Awards to Plaintiffs

"Incentive awards that are intended to compensate class representatives for work undertaken on behalf of a class are fairly typical in class action cases." *Jordan v. Nationstar Mortg. LLC*, 2019 U.S. Dist. LEXIS 74833 (E.D. Wash. May 2, 2019) (granting a service award of $20,000 to plaintiff for her involvement in case) (citing *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015)). Incentive awards are generally approved so long as the awards are reasonable and do not undermine the adequacy of the class representatives. *Radcliffe v. Experian Info. Sols.*, 715 F.3d 1157, 1164 (9th Cir. 2013). In assessing the reasonableness of an incentive award, courts look to the number of plaintiffs receiving incentive

payments, the proportion of the payments relative to the settlement amount, and the size of each payment. *Online DVD-Rental*, 779 F.3d at 947.

Here, Defendants have agreed to not oppose requests for service awards for Hofstader and Cerenzia of $2,500 each. This entire litigation would not have been possible without Plaintiffs' involvement and cooperation with Class Counsel. Hofstader agreed to lend his name to the lawsuit, thus subjecting himself to public attention. Furthermore, Hofstader has spent hours engaged in this action, which includes time spent in pre-litigation investigation, reviewing the complaint, assisting with initial disclosures, assisting with written discovery, reviewing motions, attending his own deposition, attending two settlement conferences, reviewing and signing settlement documents, and communicating with Plaintiffs' counsel throughout the litigation.

Cerenzia has spent hours engaged in this action, which includes time spent in pre-litigation investigation, reviewing the complaint, assisting with initial disclosures, assisting with written discovery, reviewing motions, attending two settlement conferences, reviewing and signing settlement documents, and communicating with Plaintiffs' counsel throughout the litigation. Due to the heavy involvement by both Plaintiffs, an award of $2,500 each is reasonable.

Relief to Defendants

In exchange for the relief described above, Plaintiffs and the class members

release Defendants from all class claims (monetary and non-monetary), and all non-monetary individual claims. Class Members specifically retain the right to bring individual monetary claims against the Defendants.

IV. THE CLASS ACTION SETTLEMENT PROCESS

A. Procedure

i. Preliminary Approval

Once a settlement class is certified, the Court examines whether to preliminarily approve the settlement. At the preliminary approval stage, the Court need only consider whether the proposed class action settlement is "within the range of possible approval" and thus may be submitted to members of the prospective class for their acceptance or rejection. Manual for Complex Litigation § 30.45 (3rd ed. 1995). This is different from the ultimate fairness determination for final approval of the settlement. Rather, at this preliminary juncture, the inquiry is limited to whether to notify the class members of the proposed settlement and to proceed with a fairness hearing. *Id*. The Court should grant preliminary approval if the proposed settlement appears to be "the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval." *In re NASDAQ Market Makers*, 176 F.R.D.

at 102.[4]

A strong judicial policy favoring voluntary conciliation and settlement of complex class action litigation exists. *In re Syncor*, 516 F.3d at 1101 (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615 (9th Cir. 1982)). While the district court has discretion regarding the approval of a proposed settlement, it should give "proper deference to the private consensual decision of the parties." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). In fact, when a settlement is negotiated at arms' length by experienced counsel, there is a presumption that it is fair and reasonable. *In re Inter-Op Hip Prosthesis Liab.*

[4] A court should generally grant preliminary approval and direct that notice of the settlement and fairness hearing be disseminated. *See, e.g.*, Newberg & Conte, *Newberg on Class Actions* (Fourth Ed. 2002) § 11.25 pp.38-39, citing *Manual for Complex Litigation*, 3d (1997) § 30.41; *see also In re Traffic Executive Association-Eastern Railroad*, 627 F.2d 631, 634 (2d Cir. 1980) (noting preliminary approval requires a determination that there is "probable cause" to submit the settlement proposal to class members and hold a full-scale fairness hearing); *Acosta v. Trans Union LLC*, 234 F.R.D. 377, 386 (C.D. Cal. 2007) ("To determine whether preliminary approval is appropriate, the settlement need only be fair, as the Court will make a final determination of its adequacy at the hearing on Final Approval, after such time as any party has had a chance to object and/or opt out"); *Satchell v. Federal Express Corp.*, 2007 WL 1114010, at *4 (N.D. Cal. 2007) (granting preliminary approval because proposed settlement appeared to be the result of arm's length negotiations, non-collusive, free of "obvious defects" and "within the range of possible settlement approval").

Litig., 204 F.R.D. 359, 380 (N.D. Cal. 2001).[5]

If the court grants preliminary approval and notice is sent to the class, then in the second step of the settlement approval process the court conducts a final "fairness hearing," at which all interested parties are afforded an opportunity to be heard on the proposed settlement. The ultimate purpose of the fairness hearing is to determine if the proposed settlement is "fair, reasonable, and adequate." *DeHoyos v. Allstate Corp. et al.,* 240 F.R.D. 269, 287 (W.D. Tex. 2007) (Biery, J.); Fed. R. Civ. P. 23(e)(2).

By this motion, Plaintiffs seek to accomplish the first step, i.e. conditional certification for settlement purposes, approval of the plan to provide notice to the individual class members, and preliminary approval of the terms of the settlement. As part of this first step, Plaintiffs will also request appointment of the class representatives, appointment of class counsel, and a certain time and date for the final fairness hearing so that it can be inserted into the notice to the class members. Defendants do not oppose the motion.

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[5] Courts consistently find that "[t]he expense and possible duration of the litigation are major factors to be considered in evaluating the reasonableness of [a]…settlement." *Milstein v. Huck*, 600 F. Supp. 245, 267 (E.D.N.Y. 1984); *Bullock v. Administrator of Estate of Kircher*, 84 F.R.D. 1, 10 (D.N.J. 1979).

B. Standards

Class certification is governed by Federal Rule of Civil Procedure 23. *Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014). Under Rule 23(a), a party seeking certification of a class or subclass must satisfy four requirements: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *Id.* "Class certification is proper only if the trial court has concluded, after a 'rigorous analysis, that Rule 23(a) has been satisfied." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542-43 (9th Cir. 2013) (quoting *Wal-Mart Stores, Inc, v. Dukes*, 131 S. Ct. 2541, 2551, 180 L. Ed. 2d 374 (2011)). The proposed class or subclass must also satisfy the requirements of one of the sub-sections of Rule 23(b), "which defines three different types of classes." *Leyva v. Medline Industries, Inc.*, 716 F.3d 510, 512 (9th Cir. 2013).

However, Courts have also found that for preliminary approval, "the standards are not as stringent as those applied to a motion for final approval." *In re OCA, Inc. Secs & Derivative Litig. 2008* WL 4681369, at *11 (E.D. La. Oct. 17, 2008); *see also MCL* § 21.63 ("At the stage of preliminary approval, the questions are simpler, and the court is not expected to, and probably should not, engage in analysis as rigorous as is appropriate for final approval."). On preliminary approval, courts consider the following facts: whether the settlement (1) discloses any reason to doubt its fairness, (2) has any obvious deficiencies, (3) proposes to

grant preferential treatment to call representatives or segments of the class, (4) proposes excessive compensation to attorneys, and (5) appears to fall within the range of possible approval. *OCA, Inc.,* 2008 WL 4681369 at *11 (internal citations omitted).

Courts often note that a proposed settlement reached through arms length negotiation is entitled to a judicial presumption of fairness. *See DeHoyos*, 240 F.R.D. at 287 ("[T]here is a strong presumption in favor of finding the settlement fair, adequate, and reasonable.") (collecting cases); *see also Klein*, 705 F. Supp. 2d at 650 ("[C]ourts are to adhere to a strong presumption that an arms-length class action settlement is fair-especially when doing so will result in significant economies of judicial resources-absent evidence weighing against approval.").

V. ARGUMENT

A. The Proposed Settlement Merits Preliminary Approval

i. There is No Reason to Doubt the Fairness of this Settlement.

Both parties are represented by competent counsel who are experienced in consumer class action litigation. The parties reached this injunctive class settlement of complex claims during arms-length negotiations, conducted with the assistance of a Federal Magistrate Judge. The injunctive relief will benefit the class members significantly. There is no reason to doubt the fairness of the settlement. *See Decl. of Kazerounian* ¶¶ 25-26*; Decl. of McBride* ¶ 23*; Decl. of Mayo* ¶ 23*; DeHoyos,*

240 F.R.D. at 287 ("Importantly, at least one treatise has held that courts may presume a proposed settlement is fair and reasonable when it is the result of arms' length negotiations.").

ii. **There Are No Obvious Deficiencies in the Settlement.**

The parties have negotiated a reasonable settlement and a program to provide notice of the settlement to the class members that is fully compliant with Fed. R. Civ. P. 23(c)(2)(B). The settlement class members will be notified through an online targeted marketing campaign. All notices will direct class members to an easy to find and easy to remember settlement website. The website will have a long-form notice and important court documents, list important dates, and have online capability of opting out of the settlement.

All class members who do not opt out of the class settlement will be considered a part of the class and give up their right to separately bring a class action lawsuit against Defendant. The settlement provides ample time and reasonable procedures for class members to exclude themselves from the settlement or to object to the settlement if they choose to do so. Furthermore, the class members are not waiving their rights to bring an individual action under the claims brought in this litigation.

In summary, this is an arms' length settlement achieved through multiple settlement conferences and by attorneys who are, on both sides, experienced in

class action litigation. The settlement terms and the process for approval of the settlement are designed to avoid "obvious deficiencies" and Plaintiff's counsel respectfully submits that there are no deficiencies in this settlement.

iii. The Settlement Does Not Improperly Grant Preferential Treatment to Plaintiff or any Segment of the Class.

The settlement does not improperly grant preferential treatment to Plaintiffs or any segment of the class. Plaintiffs will be entitled to the benefit of the policy changes provided by the settlement, as will all other class members. There are no "segments" of the class to be concerned with, nor any sub-classes. Separate from their claims, Plaintiffs, through their counsel will request a service award for Plaintiffs' assistance in the prosecution of this case. However, this award will come, if at all, only by motion to the court after notice to the other class members.

Federal courts consistently approve service awards in class action lawsuits to compensate named plaintiffs for the services that they provide and the burdens that they shoulder during litigation. *See, e.g., Jordan v. Nationstar Mortg. LLC,* 2019 U.S. Dist. LEXIS 74833 (E.D. Wash. May 2, 2019) (Plaintiff received $20,000 for her participation as a class representative). Plaintiffs, through their counsel, will seek an award of up to $2,500. This modest request compares favorably to service awards granted in other consumer class action settlements. *See, e.g., Hall v. L-3 Communs. Corp.*, 2019 U.S. Dist. LEXIS 137491 (E.D. Wash. 2019) (Three

plaintiffs were given service awards of $10,000, $10,000, and $2,000); *See also King v. United SA Federal Credit Union*, 5:09-cv-00937-NSN (W.D. Tex.) (Dkt. #31, Oct. 8, 2010) ($15,000 to each of two representatives).

iv. **The Settlement does Not Excessively Compensate Class Counsel.**

The reasonableness of attorneys' fees will be decided by the Court after Class Counsel files a separate motion for attorneys' fees and posts that motion on the settlement website for class members to review. Class Counsel anticipates that they will request $95,000.00 as compensation for their fee and expenses. A recent case with nearly identical facts and causes of action, *Amireh et al v. UW Medicine/Northwest d/b/a Northwest Hospital & Medical Center,* in King County Superior Court, Cause No. 16-2-14579-5-SEA, was approved for class settlement where the approved attorneys fees were $160,000.00. Court approval of Class Counsel's attorney's fees and costs is not a condition of the settlement.

v. **The Settlement is Within the Range of Reasonableness.**

The settlement is well within the range of reasonableness considering the small sample of precedent that is available. Class counsel believe that the injunctive relief that will be provided to patients going forward is an extraordinary settlement. This injunctive relief will allow Defendants to identify many more patients of low-income households and provide those patients with charity care. The *Amireh* case

came to a similar class settlement that was approved by Judge Catherine Shaffer of the King County Superior Court on March 20, 2018. The *Amireh* Court agreed to a settlement that included reimbursements or forgiveness to patients who were eligible for charity care, and the defendant changed its policies regarding charity care. The Court in *Amireh* also approved a $160,000.00 award for the class counsels' attorneys fees and costs. Therefore, considering the limited precedent in Washington on the issues involved in this case, the proposed class settlement here is reasonable. Furthermore, the class members here will not lose the right to bring individual monetary claims that were brought in this litigation by participating as a class member.

B. Conditional Class Certification For Settlement Only

***i.* The Settlement Class Defined.**

For purposes of the proposed settlement ***only***, Plaintiffs seek certification of a class of people who received emergency treatment from Defendants, but were allegedly not adequately informed of the availability of charity care. Specifically, the parties seek certification of a class defined as:

> All individuals (or their guardians or representatives) who from February 20, 2014, until the date the Motion for Preliminary Approval is filed with the Court, who received emergency care medical treatment from a PHS-WA hospital, or a PHS hospital in Washington State.

Defendants, its employees, and agents are excluded from the Class.

ii. Standards.

The certification requirements of Fed. R. of Civ. P. 23 generally apply even when certification is for settlement purposes. See *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591 (1997). The one exception is that, because no trial is contemplated because of the proposed settlement, a district court need not consider "whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." *Id.* at 620; *accord In re Heartland Payment Systems*, 851 F. Supp. 2d 1040, 1058-1060 (S.D. Tex. 2012). The party seeking certification bears the burden of establishing these requirements by a preponderance of the evidence. Id at 1052.

iii. Rule 23(a) Requirements.

To be certified, the class must first satisfy four threshold requirements of Rule 23 (a), which provides that:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

iv. The Requirements of Fed. R. Civ. P. 23(a) Are Satisfied.

1. Numerosity.

Rule 23 (a)(1) requires that the class be so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). In this case, there are approximately 250,000 class members. *See* Kazerounian Decl. at ¶ 17 *Decl. of McBride* ¶ 17*; Decl. of Mayo* ¶ 17. Therefore, numerosity is clearly satisfied. See *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1038 (5th Cir. 1981) (noting that courts have certified classes with as few as twenty-five or thirty members).

2. Commonality.

Rule 23(a)(2) requires that there be questions of law or fact common to the class. Commonality requires class-wide proceedings to have the ability "to generate common answers apt to drive the resolution of the litigation." *Walmart Stores, Inc. v. Dukes* 131 S. Ct. 2541, 2551 (2011). "Their claims must depend upon a common contention . . . . That common contention, moreover, must be of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* Commonality "is informed by the defendant's conduct as to all class members and any resulting injuries common to all class members." *Heartland*, 851 F. Supp. 2d at 1053 (internal citations omitted). The commonality requirement is satisfied because there are questions of law and

fact common to the Settlement Class that focus on Defendants' alleged common practice of patient intake, which Plaintiffs allege omits affirmative notification of the availability of charity care to the persons in the settlement class. There is also a common question of law as to whether Defendants' alleged intake procedures violate the Washington Charity Care Act.

3. **Typicality.**

Rule 23(a)(3) requires that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Typicality accordingly does not require a complete identity of claims. Rather, the critical inquiry is whether the class representative's claims have the same essential characteristics of those of the putative class. Thus, "[t]ypicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." *Parsons v. Ryan*, 754 F.3d 65 (9th Cir. 2014) (citing *Hanon v. Dataproducts Corp*., 976 F.2d 497, 508 (9th Cir. 1992)).

In this case, Plaintiffs allege that Defendants have failed to sufficiently notify Plaintiffs of the availability of charity care before collecting from Plaintiffs. They make the identical claim on behalf of the class members, and believe that if this case went to trial they could prove the fact that Defendants failed to properly notify Plaintiffs of the availability of charity care. Defendants vigorously deny all claims asserted in the Action and deny all allegations of wrongdoing and liability.

Here, Plaintiffs' claims are based on Defendants' alleged systematic intake processes with emergency patients. Because Plaintiffs' claims arise from the same alleged course of conduct by Defendants, typicality under Rule 23(a)(3) is satisfied. *Parsons*, 754 F.3d 65; *See also Chakejian v. Equifax Info. Servs. LLC*, 256 F.R.D. 492, 498 (E.D. Pa. 2009) (Typicality satisfied in FCRA case where "[t]he claims of Mr. Chakejian's and each of the prospective class members arise from the same course of conduct, and are based on the same theory of liability.").

4. **Adequacy.**

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Plaintiffs' interests are coextensive with, not antagonistic to, the interests of the Settlement Class, because Plaintiffs and absent Settlement Class Members have an equally great interest in the relief offered by the Settlement, and absent Settlement Class Members have no diverging interests. *See, e.g.*, *Heartland*, 851 F. Supp. 2d at 1055-57.

Proposed Class Counsel respectfully suggest that the results achieved in this case are strong evidence of the adequacy of class counsel. Further, Plaintiffs' attorneys are knowledgeable and experienced in class action litigation and are free from conflicts with the class. *See* Decl. of Kazerounian, ¶¶ 5, 27-62 *Decl. of McBride* ¶¶ 5, 27-32*; Decl. of Mayo* ¶¶ 5, 27-30. Plaintiffs' counsel have

vigorously prosecuted this case and understand their fiduciary responsibilities to the class. *Id.*

There is no intra-class conflict between the class representative and the other class members. Plaintiffs understand the case and why it was brought on their behalf. There are no subclasses and every class member, including Plaintiffs, will receive the same injunctive relief.

v. The Requirements of Fed. R. Civ. P. 23(b)(2) Are Satisfied.

1. Common Relief Requested under Rule 23(b)(2).

In addition to satisfying the Rule 23(a) requirements, here, Plaintiff must also satisfy the requirements of Rule 23(b)(2). Rule 23(b)(2) requires that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Parsons*, 754 F.3d at 674.

The key to the (b)(2) class is "the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." *Id.* at 688. In other words, Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class. *Id.* It "does not authorize class certification when each individual class member would be entitled to a *different* injunction or declaratory judgment against

the defendant . . . .” *Id.* (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 131 S. Ct. at 2557)).

These requirements are unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole. *See Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010). That inquiry does not require an examination of the viability or bases of the class members' claims for relief, does not require that the issues common to the class satisfy a Rule 23(b)(3)-like predominance test, and does not require a finding that all members of the class have suffered identical injuries. *See id.*; *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998).

Here, the class settlement includes uniform changes to the Defendants' policies and procedures regarding the intake process in Defendants' emergency department. This injunctive relief agreed upon by the parties is generally applicable to the class members as a whole and any patient who seeks emergency services at Defendants' hospitals. Therefore, the requirements for a 23(b)(2) class are unquestionably satisfied.

vi. **Appointment of Class Representative and Class Counsel.**

Additionally, at the preliminary approval stage, a court that certifies a class must also appoint class counsel. Fed. R. Civ. P. 23(g). In appointing class counsel, the Court must consider: (i) the work counsel has done in identifying or

investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. In this case, for settlement purposes, it is proposed that the named Plaintiffs Nathan Hofstader and Richard Cerenzia be certified as the class representative, and that the law firms of Kazerouni Law Group and The Mayo Law Group, PLLC be appointed as class counsel. As detailed in the declarations of Abbas Kazerounian, Ryan McBride, and Boyd M. Mayo, each firm and attorney amply meets the requirements of Rule 23(g). *See* Decls. of Abbas Kazerounian, Ryan McBride, and Boyd M. Mayo.

C. APPROVAL OF THE NOTICE TO CLASS MEMBERS

i. Standards.

In class actions based on Rule 23(b)(2), class members may be furnished with notice, which need be "the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173, (1974). Rule 23(e)(1) provides that "[t]he Court must direct notice in a reasonable manner to all class members who would be bound by the proposal" and Rule 23(c)(2)(B) sets out the minimum contents of the notice. The Settlement Agreement establishes compliance with both rules.

The notice in this case is being given in order to apprise the class members

that if they do not opt out, they will be giving up the right to bring a class action lawsuit. Class members will still have the right to bring an individual damages action no matter how they respond to the notice given in this case.

ii. **The Notice Plan.**

The notice must be the best practicable, "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (citing *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950)); *cf. Eisen* v. *Carlisle & Jacquelin*, 417 U.S. 156, 174-175 (1974). The notice should describe the action and the plaintiffs' rights in it. *Id.* The due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an "opt out" or "request for exclusion" form to the court. *Id.* However, as stated above, in a 23(b)(2) class settlement, notice is not required. Fed. R. Civ. P. 23(b)(2).

Here, the proposed notice satisfies due process by "provid[ing] class members with the information reasonably necessary for them to make a decision whether to object to the settlement." *In re Heartland*, 851 F. Supp. 2d at 1060 (quoting *In re Katrina Canal Breaches Litig.*, 628 F.3d 186, 197 (5th Cir. 2010)). The notice plan in this case includes a targeted online campaign. The claims administrator ILYM Group, Inc. ("ILYM") believes that five million impressions

will be enough to reach the putative class members here. ILYM will place an agreed upon banner advertisement on multiple websites and target putative class members within Washington that were patients at Defendants' hospitals. The proposed banner would state the following:

> If you visited an emergency department at a Providence hospital (including Kadlec Medical Center) in Washington after February 2014, your rights may be affected by a class action settlement.

The proposed banner advertisement is attached as Exhibit D. The banner advertisement would direct the potential class members to a website where class members would have an option to exclude themselves from the class settlement. The website would also direct class members to class counsel and provide class counsels' contact information to address any questions or concerns that arose from potential class members. The long form notice that will be available on the class settlement website is attached as Exhibit A.

The notice will clearly, concisely, and neutrally apprise class members in plain language of the nature of the action, the definition of the class, the claims, their right to their own attorney, their right to object to the settlement or to exclude themselves, how and when objections or exclusions must be made. For those class members who do not exclude themselves, the notice will advise the class members of the binding effect of the class judgment. Further, the notice directs class

members to the settlement website for more detailed information.

VI. PROPOSED SCHEDULE OF EVENTS

In connection with Preliminary Approval of the Settlement, the Court should also set a date and time for the Final Approval Hearing. Other deadlines in the Settlement approval process, including the deadlines for requesting exclusion from the Settlement Class or objecting to the Settlement, will be determined based on the date of the Final Approval Hearing or the date on which the Preliminary Approval Order is entered. Class Counsel propose the following schedule:

Event	**Date**
Deadline for Online Targeted Campaign Notice Program Implementation	30 days after Preliminary Approval Order
Deadline for filing papers in support of Final Approval of the Settlement	90 days after the Notice Period begins
Deadline for opting-out of Settlement and submission of objections	90 days after Preliminary Approval Order
Responses to Objections	15 days prior to the Final Approval Hearing
The Final Approval Hearing	45 days after Opt-out and Objection Deadline

Deadline for filing papers in support of Class Counsel's application for an award of attorneys' fees and expenses	30 days prior to the Objection Deadline

VII. CONCLUSION

Based on the foregoing, all the requirements of Rule 23 have been met. Recognizing that the parties face substantial risks in pursuing further litigation and the proposed settlement is fundamentally fair, reasonable, and adequate. Additionally, Plaintiffs are represented by counsel who are qualified in class action litigation and have had extensive experience in consumer protection class action lawsuits.

Therefore, Plaintiffs respectfully request that the Court certify the proposed settlement class, preliminarily approve the proposed settlement, approve the plan of providing notice to the class members, appoint Plaintiffs as the class representatives, and appoint Abbas Kazerounian and Ryan L. McBride of Kazerouni Law Group, and Boyd M. Mayo of The Mayo Law Group, PLLC as Class Counsel. The Plaintiffs (without opposition from Defendants) respectfully request that the Court grant preliminary approval of the proposed settlement and enter the Proposed Order filed concurrently with this Motion.

KAZEROUNI LAW GROUP

Date: July 17, 2020

By: /s/ Ryan L. McBride
Abbas Kazerounian, Esq.
Ryan L. McBride
Attorneys for Plaintiffs

THE MAYO LAW GROUP, PLLC

Date: July 17, 2020

By: /s/ Boyd M. Mayo
Boyd M. Mayo, Esq.
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