

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Aug 24, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NATHAN HOFSTADER and  
RICHARD CERENZIA, individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

v.

EMERGENCY PHYSICIAN  
SERVICES P.S., PROVIDENCE  
HEALTH AND SERVICES,  
SACRED HEART MEDICAL  
CENTER, and PROVIDENCE  
HOLY FAMILY HOSPITAL,

Defendants.

No. 2:18-cv-00062-SMJ

**PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT**

Before the Court, without oral argument, is Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement, ECF No. 50. After extensive arm’s-length negotiations and two mediations conducted before Magistrate Judge John T. Rodgers, Plaintiffs Nathan Hofstader and Richard Cerenzia, and Defendants Providence Health and Services Washington (“PHS-WA”) (named as Providence Holy Family Hospital and Sacred Heart Medical Center), and Providence Health and Services (“PHS”), entered into a class action Settlement Agreement for

1 injunctive relief, which is subject to review under Fed. R. Civ. P. 23(b)(2).

2 Plaintiffs ask the Court to (1) grant preliminary approval of the Settlement,  
3 (2) conditionally certify the proposed Settlement Class, and (3) approve their  
4 proposed notice to the class. Defendants do not oppose the motion.

5 The Court has reviewed the Settlement Agreement, as well as the documents  
6 submitted and the proceedings and entire file to date in this matter. Based upon  
7 preliminary examination, the Court is fully informed and grants the motion.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 **1.** Plaintiffs' Unopposed Motion for Preliminary Approval of Class  
10 Action Settlement, **ECF No. 50**, is **GRANTED**.

11 **2. *Preliminary Approval of Proposed Settlement.*** The Agreement, its  
12 terms, and any appended exhibits are preliminarily approved as fair,  
13 reasonable, and adequate; they are hereby incorporated as though fully  
14 set forth in this Order. *See Lane v. Facebook, Inc.*, 696 F.3d 811, 818  
15 (9th Cir. 2012); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th  
16 Cir. 1998) (noting that when settlement precedes formal class  
17 certification, approval of a settlement requires a "higher standard of  
18 fairness"). Capitalized terms shall have the meanings attributed to  
19 them in the Agreement. The Court finds that (a) the Agreement  
20 resulted from extensive arm's-length negotiations, and (b) the

1 Agreement is sufficient to warrant notice thereof to members of the  
2 Settlement Class.

3 **3. *Class Certification for Settlement Purposes Only.*** Pursuant to Federal  
4 Rule of Civil Procedure 23, the Court, for settlement purposes only,  
5 conditionally certifies the following Settlement Class: All individuals  
6 (or their guardians or representatives) who from February 20, 2014,  
7 until the date the Motion for Preliminary Approval is filed with the  
8 Court, who received emergency care medical treatment from a PHS-  
9 WA affiliated hospital, or a PHS affiliated hospital in Washington  
10 State.

11 In connection with the certification, the Court makes the  
12 following preliminary findings:

13 **A.** The Settlement Class satisfies Rule 23(a)(1) because the Class  
14 appears to be so numerous that joinder of all members is  
15 impracticable;

16 **B.** The Settlement Class satisfies Rule 23(a)(2) because there  
17 appear to be questions of law or fact common to the Class;

18 **C.** The Settlement Class satisfies Rule 23(a)(3) because the claims  
19 of the Plaintiffs named in the caption appear to be typical of the  
20 claims being resolved through the proposed Settlement;

1           **D.**    The Settlement Class satisfies Rule 23(a)(4) because the named  
2            Plaintiffs appear to be capable of fairly and adequately  
3            protecting the interests of the above-described Class in  
4            connection with the proposed Settlement and because counsel  
5            representing the Class are qualified, competent, and capable of  
6            prosecuting this action on behalf of the Class;

7           **E.**    The Settlement Class satisfies Rule 23(b)(3) because, for  
8            purposes of Settlement approval and administration, common  
9            questions of law and fact appear to predominate over questions  
10           affecting only individual Class Members and because the  
11           settlement with the above-described Class appears to be superior  
12           to other available methods for the fair and efficient resolution of  
13           the claims of the Class. The Class appears to be sufficiently  
14           cohesive to warrant settlement by representation.

15           In making the foregoing findings, the Court has exercised its discretion  
16           in conditionally certifying a Settlement Class.

17           **4.    Class Representatives.** For settlement purposes only, the Court hereby  
18           designates Plaintiffs NATHAN HOFSTADER and RICHARD  
19           CERENZIA as class representatives (“Class Representatives”)

1 pursuant to Rule 23 and finds that they have and will continue to fairly  
2 and adequately protect the interests of the Settlement Class.

3 **5. *Class Counsel.*** For settlement purposes only, the Court designates  
4 Abbas Kazerounian and Ryan McBride of the Kazerouni Law Group,  
5 APC and Boyd M. Mayo of The Mayo Law Group as Class Counsel  
6 for purposes of settlement. For purposes of these settlement  
7 proceedings, the Court finds that Class Counsel are competent and  
8 capable of exercising their responsibilities.

9 **6. *Settlement Administrator.*** The Court appoints ILYM Group, Inc. as  
10 the Settlement Administrator that shall fulfill the settlement  
11 administration functions, duties, and responsibilities as set forth in the  
12 Agreement.

13 **7. *Final Fairness Hearing.*** A final approval hearing (the “Final Fairness  
14 Hearing”) is **SET for February 9, 2021 at 1:30 PM in Spokane,**  
15 Washington for the Court to determine whether the Agreement is fair,  
16 reasonable, and adequate, and to give final approval. The Court may  
17 reset the Final Fairness Hearing at any time without notice.

18 **8. *Notice.*** The Court approves the form and content of the notice set forth  
19 as Exhibit A of the Agreement, ECF No. 50-4. It also approves the  
20 form and content of the banner advertisement set forth as Exhibit D of

1 the Agreement, ECF No. 50-6. Both notices are hereby incorporated  
2 as though fully set forth in this Order. Within twenty-eight (28) days  
3 of entry of this Order, ILYM Group, Inc. shall deliver notice to all  
4 Class Members who can be identified with reasonable effort and  
5 published in the manner set forth in the Agreement. Notices sent by  
6 U.S. Mail or email and published shall be substantially in the same  
7 form as Exhibit A, ECF No. 50-4.

8 **9. Findings Concerning Notice.** The Court finds that the notice and the  
9 manner of its dissemination described in the Agreement constitutes the  
10 best practicable notice under the circumstances and is reasonably  
11 calculated, under all the circumstances, to apprise Class Members of  
12 the pendency of this action, the terms of the Agreement, and their right  
13 to object to or exclude themselves from the Settlement Class. The  
14 Court finds that the notice plan is reasonable; that it constitutes due,  
15 adequate, and sufficient notice to all persons entitled to receive notice;  
16 and that it meets the requirements of due process, Rule 23, and any  
17 other applicable laws.

18 **10. Exclusion from Settlement Class.** Each Class Member who wishes to  
19 exclude himself or herself from the Settlement Class and follows the  
20 procedures set forth in Section 7, paragraph 35 of the Agreement shall

1 be excluded. Any Class Member may exclude himself or herself from  
2 the Settlement and Release, and from the Settlement’s binding effect,  
3 by completing an online opt-out form on the Settlement Website by  
4 the Opt-Out Deadline. The request must include the individual’s name  
5 and address; a statement that he or she wants to be excluded from the  
6 settlement in *Hofstader et al v. Emergency Physician Services, P.S., et*  
7 *al.* United States District Court for the Eastern District of Washington,  
8 Case No. 2:18-cv-00062-SMJ; and the individual’s signature. Any  
9 Class Member who does not timely and validly request to opt out shall  
10 be bound by the terms of this Agreement.

11 **11. *Objections and Appearances.***

12 **A. *Objections.*** Class Members who wish to object to the Settlement  
13 must file with the Court and submit to Class Counsel and  
14 Defendant’s counsel a written statement objecting to the  
15 settlement as described in Section 7, paragraph 36 & 37 of the  
16 Agreement. Such written statement must be electronically filed  
17 or postmarked or delivered to Class Counsel and Defendant’s  
18 counsel no later than the Notice Deadline. The notice shall  
19 provide instructions regarding how to make objections. All  
20

1                   untimely objections or objections that do not conform with the  
2                   Agreement shall be barred.

3                   **B. *Responses to Objections.*** Papers responding to any objections  
4                   to the Settlement shall be filed and served no later than fourteen  
5                   (14) days after the Notice Deadline.

6                   **C. *Appearance at Final Fairness Hearing.*** Any objecting Class  
7                   Member who wishes to address the Court at the Final Fairness  
8                   Hearing must indicate his or her intent to do so in writing to  
9                   Class Counsel at the same time that the Class Member submits  
10                  the objection. Class Counsel will inform the Court and  
11                  Defendant's counsel accordingly.

12                **12. *Papers for Fees and Expenses.*** No later than fourteen (14) days before  
13                the Notice Deadline, Class Counsel shall file a motion for final  
14                approval of the Settlement and request for attorneys' fees and costs.  
15                The papers in support of final approval, including the request for  
16                attorneys' fees and costs, shall be made available on the settlement  
17                website after filing. If oral argument is requested, the motion will be  
18                heard on **February 9, 2021 at 1:30 PM in Spokane, Washington.**

19                **13. *Discretion of Counsel.*** Counsel are hereby authorized to take  
20                reasonable steps in connection with approval and administration of the




1 Settlement not materially inconsistent with this Order or the  
2 Agreement, including, without further approval of the Court, making  
3 minor changes to the content of the Notice that they jointly deem  
4 reasonable or necessary.

5 **14. *Stay of Proceedings Pending Approval of the Settlement.*** All  
6 proceedings, dates, and deadlines currently before the Court are  
7 **STRICKEN** pending final approval of the settlement, except as may  
8 be necessary to implement the settlement or comply with the terms of  
9 the Agreement.

10 **15. *Reservation of Rights and Retention of Jurisdiction.*** The Court  
11 reserves the right to adjourn or reset the date of the Final Fairness  
12 Hearing without further notice to the Class Members and retains  
13 jurisdiction to consider all further applications arising out of or  
14 connected with the proposed Settlement.

15 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
16 provide copies to all counsel.

17 **DATED** this 24<sup>th</sup> day of August 2020.

18  
19   
20 SALVADOR MENDOCELA, JR.  
United States District Judge