

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

<p>ERIC KROBATH, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>SOUTH NASSAU COMMUNITIES HOSPITAL, a New York Corporation; and JOHN DOES 1 through 25, inclusive,</p> <p style="text-align: center;">Defendant.</p>	<p>Index No. 602113/2015</p> <p>Hon. Randy Marber J.S.C.</p> <p>Motion Seq. 11 Motion Date: 03/09/21 XXX</p>
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FINAL APPROVAL ORDER AND FINAL JUDGMENT

WHEREAS, Plaintiff and Settlement Class Representative¹ Eric Krobath, individually and on behalf of the Settlement Class, and Defendant South Nassau Communities Hospital (“SNCH” or “Defendant” or “Hospital”) entered into a Settlement Agreement and Release (“Settlement Agreement”), which this Court preliminary approved on November 19, 2020. *See* Order Granting Preliminary Approval to Proposed Class Action Settlement Agreement and Preliminary Certification of Settlement Class (“Preliminary Approval Order”) (NYSCEF Doc. No. 195). The Court also provisionally certified the Settlement Class for settlement purposes only (*id.* at 2-3); approved the Notice Program, including the form, substance, and distribution plan of the Notices (*id.* at 4); and scheduled the Fairness Hearing to take place on March 9, 2021 (*id.* at 3).

WHEREAS, pursuant to the Settlement Agreement and subject to the terms and

¹ Capitalized terms are defined in the Settlement Agreement.

conditions therein, including Court approval, SNCH agreed to provide Settlement Consideration, including, but not limited to, the following, in exchange for the agreement of Plaintiff and the Proposed Settlement Class to fully, finally, and forever resolve, discharge, and release their claims:

- (i) refunds to Class Members who paid in excess of 37.5% of Chargemaster rates, which total approximately \$805,000 (Settlement Agreement, ¶ 3.a.);
- (ii) write-downs of accounts receivables for Class Members to a percentage of Chargemaster rates that is generally equivalent to the rates at which Empire Blue Cross Blue Shield reimburses the Hospital, which total more than \$19,000,000 (*id.* at ¶ 3.b.);
- (iii) a total payment of up to \$7,500 in an incentive award to the Settlement Class Representative (*id.* at ¶ 18);
- (iv) payment of up to \$470,000.00 (plus the amount of any uncashed refund checks) to Settlement Class Counsel for their attorneys' fees and costs incurred in this bringing and litigating this action (*id.* at ¶ 16).

WHEREAS, this matter came before the Court on Plaintiff's Motion for Final Approval of Proposed Class Action Settlement and Attorneys' Fees and Reimbursement of Costs ("Final Approval and Motion for Attorneys' Fees and Costs"), including the supporting memoranda of law and accompanying Affirmation of Oren Giskan and related exhibits, seeking:

- (1) final approval of the proposed Settlement,
- (2) certification of the Settlement Class for settlement purposes only,
- (3) the entry of final judgment, and
- (4) payment of attorneys' fees and expenses to Settlement Class Counsel and the

Incentive Award to the Settlement Class Representatives (Mot. Seq. 11);

at 11:00AM *via Microsoft Teams*
WHEREAS, on March 9, 2021, the Court held a Fairness Hearing about which all Settlement Class Members were given notice. Pursuant to CPLR 904, 907, 908, and 909 and New York General Business Law ("GBL") § 349(h), the Court considered: (i) the fairness, reasonableness, and adequacy of the proposed Settlement Agreement, including the releases contained in Paragraphs 4 and 5 of the Settlement Agreement (the "Releases"); (ii) the reasonableness and sufficiency of the Notice given to the Settlement Class, including conformity with due process; (iii) whether the claims process comported with the Court's Preliminary Approval Order; (iv) the fairness and reasonableness of amount of Settlement Class Counsel Attorneys' Fees and Costs requested; and (v) the fairness and reasonableness of an Incentive Award to the Settlement Class Representative *and (vi) that no class Member objected to the Settlement + terms herein* and, based on those considerations, determined whether to grant final certification of the Settlement Class, final approval of the Notice Program and claims process, and final approval of the Settlement.

WHEREAS, having duly considered the Settlement Agreement and Exhibits annexed thereto, the Parties' submissions in support of the Final Approval Motion and Motion for Attorneys' Fees and Costs, submissions by Settlement Class Members in accordance with the Preliminary Approval Order, the record and all prior proceedings had in this action, for good cause shown, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

I. DEFINED TERMS

1. This Final Approval Order and Final Judgment incorporates by reference the definitions in the Settlement Agreement and all capitalized terms used, but not defined herein, shall have the same meanings as in the Settlement Agreement.

II. JURISDICTION AND VENUE

1. The Court retains sole and exclusive jurisdiction to consider all further matters arising out of or connected with the Settlement.

2. Venue is proper in this Court and in Nassau County.

3. This Court is an appropriate forum for litigating Plaintiff's and the Settlement Class's claims for a number of reasons: (i) SNCH maintains its hospital and offices in the state of New York and County of Nassau; (ii) Plaintiff and the Settlement Class assert that the subject claims arise under or otherwise implicate New York state law; and (iii) Plaintiff and the Settlement Class are former SNCH patients who received medical treatment, and were billed, in New York. See *Pino Alto Partners*, 21 misc. 3d 1114(A), 2008 WL 4603469, *7-8 ("As to the fourth factor under CPLR 902, the desirability of this forum is manifest given the residence of the likely class members and the Commercial Division's familiarity with contract issues and complex litigation.").

III. FINAL APPROVAL OF THE SETTLEMENT

4. The Court finally approves the Settlement, together with all exhibits thereto, as fair, reasonable and adequate. The Court finds that the Settlement was reached in the absence of collusion, is the product of informed, good faith, arms' length negotiations between the Parties and their capable and experienced counsel. The Court approves the Settlement and orders the Parties to perform their obligations pursuant to the Settlement Agreement and to achieve the Effective Date.

5. This Court hereby dismisses this Action with prejudice and without costs (except as otherwise provided in the Settlement Agreement and this Final Approval Order and Final Judgment), except that this Court shall retain jurisdiction to the extent necessary to enforce the Settlement.

Handwritten initials: RJA/SJC

6. The Court approves the Releases contained in Paragraphs 4-5 of the Settlement Agreement, which shall take effect upon the Effective Date.

IV. SETTLEMENT CLASS CERTIFICATION

7. The Court finds that, for the sole purposes of the Settlement, the requirements for certification of a Settlement Class pursuant to CPLR 901 and 902 are satisfied. Specifically, for the purposes of this Settlement only, the Court finds that: (i) the Settlement Class is sufficiently numerous; (ii) common questions of fact and law predominate over individual questions; (iii) the claims or defenses of the representative party are typical of the claims or defenses of the Class; (iv) the representative party will fairly and adequately protect the interests of the class; (v) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

8. The Court finally certifies the following Settlement Class:

All individuals who were billed at South Nassau Communities Hospital's full Chargemaster Rates for emergency screening, stabilization, or treatment services at one of South Nassau Communities Hospital's emergency care facilities in New York State, and who did not have their payments made by an insurer or government health care program, from April 3, 2009 to June 30, 2020.

Excluded from this certified class are (1) those patients who did not tender payment against their accounts and whose balances have been charged off in full without being subject to any present or future collection activity; and (2) the Hospital, and its officers, directors, legal representatives, heirs, successors, or assigns, and any judicial officer assigned to this matter and his/her immediate family.

9. The Court finally certifies Plaintiff Eric Krobath as the Settlement Class Representative for the certified Settlement Class.

10. The Court finally certifies Giskan Solotaroff & Anderson LLP as Settlement Class Counsel for the certified Settlement Class.

11. The Court finds that the Settlement Class Representative and Settlement Class Counsel fairly and adequately represented the interests of the Settlement Class at all times in connection with this Action and the Settlement.

V. SETTLEMENT NOTICE TO CLASS

12. This Court finds that the Notice Program and the Notice provided to Settlement Class members: fully satisfied the requirements of constitutional due process, the CPLR 904 and 908, and any other applicable laws; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all persons entitled thereto. Settlement Class Counsel and/or Defendant's Counsel has filed with the Court proof that the Court-approved Notices were provided to Settlement Class Members in compliance with the procedures set forth in the Agreement and the Preliminary Approval Order.

VI. RELEASES AND INJUNCTIONS

13. It is hereby ordered that, upon the Effective Date, Plaintiff and all Settlement Class Members, shall be deemed to have provided the Releases contained in Paragraphs 4 and 5 of the Settlement Agreement. The Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement.

14. Plaintiff and all Settlement Class Members are permanently enjoined from instituting any action seeking to prosecute any Released Claims against SNCH to the fullest extent provided in Paragraphs 4 and 5 of the Settlement Agreement.

15. The Releases provided for in Paragraphs 4 and 5 of the Settlement Agreement shall not preclude any action to enforce the terms of the Settlement Agreement and are not intended to include the release of any rights or duties of the Parties arising out of the Settlement Agreement.

16. Without affecting the finality of this Final Approval Order and Judgment in any way, this Court retains continuing jurisdiction of all matters relating to the modification, interpretation, administration, implementation, effectuation, and enforcement of the Settlement. Settlement Class Counsel are to continue in their role to oversee all aspects of the Settlement. Upon notice to Settlement Class Counsel, SNCH may seek from this Court such further orders or process as may be necessary to prevent or forestall the assertion of any of the Released Claims in any forum, or as may be necessary to protect and effectuate the Settlement and this Final Approval Order.

17. If the Effective Date does not occur or if this Final Approval Order and Judgment is not finally upheld on appeal, all orders, judgments, stipulations, and Releases provided for in Paragraphs 4 and 5 of the Settlement Agreement relating to this Settlement shall be null and void. Nothing in any order or judgment relating to this Settlement (including, without limitation, the Preliminary Approval Order and this Final Approval Order and Judgment) shall be used in any way by any Party to argue for or against class certification or for or against any issue of liability or damage.

18. Judgment shall be, and hereby is, entered dismissing this Action in its entirety with prejudice, except as provided herein or in the Settlement Agreement. The Court finds that there is no just reason for delay and expressly directs immediate entry by the Clerk of the Court of judgment as set forth herein pursuant to CPLR 5016.

VII. ATTORNEYS' FEES AND INCENTIVE AWARD

19. Payment to Class Counsel in the amount of \$470,000.00 (plus the amount of any uncashed refund checks) for attorneys' fees, costs, and expenses incurred in litigating this Action is hereby approved as reasonable compensation for Settlement Class Counsel's work, which has


resulted in a substantial benefit to the Settlement Class and created a Settlement benefit that will be provided to the Settlement Class Members in accordance with the terms of the Settlement Agreement, which award of attorneys' fees and costs shall be paid directly by SNCH to Settlement Class Counsel as provided in the Settlement Agreement. No other attorneys' fees, costs, or expenses shall be paid by SNCH.

*RJM
JSC*

20. An incentive and service award payment in the total amount of \$7,500 for the Named Plaintiff, Eric Krobath, in settlement of his claims and in recognition of his services as Class Representative, is approved as fair and reasonable. Plaintiff shall not be entitled to any other incentive or service award payment under the Settlement Agreement, but the incentive award shall not bar or otherwise prevent Plaintiff from receiving refunds or non-monetary relief owed to him during the Class Period.

Dated: March 9, 2021

SO ORDERED:


Hon. Randy Marber J.S.C.

XXX

ENTERED

Mar 12 2021

NASSAU COUNTY
COUNTY CLERK'S OFFICE