

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

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	:	
ERIC KROBATH, on behalf of himself and all	:	
others similarly situated,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	Index No. 602113/15
	:	
SOUTH NASSAU COMMUNITIES HOSPITAL, a	:	
New York Corporation; and DOES 1 through 25	:	
inclusive,	:	
	:	
Defendants.	:	
	:	
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**SETTLEMENT AGREEMENT**

This Settlement Agreement is made and entered into as of October 16, 2020 between Eric Krobath (“Class Plaintiff”) and South Nassau Communities Hospital, a New York not-for-profit hospital (the “Hospital,” and collectively with Class Plaintiff, the “Parties”).

**WHEREAS**, the Hospital is a New York not-for-profit corporation that is licensed to operate a general hospital under Article 28 of the New York Public Health Law in Nassau County;

**WHEREAS**, among the services that the Hospital provides to the public is emergency medical diagnosis and treatment;

**WHEREAS**, consistent with its mission, policies, and procedures, together with federal and state law, the Hospital provides emergency medical diagnosis and treatment to all patients

who seek treatment in its Emergency Department, regardless of financial status, health care coverage status, or ability to pay;

**WHEREAS**, the Class Plaintiff commenced this lawsuit (the “Action”) on April 2, 2015 in the New York State Supreme Court, Nassau County (thee “Court”), on behalf of the Hospital’s uninsured emergency room patients, not enrolled in Medicare, Medicaid or other government health care program (“Self-Pay Patients”), who were billed at the Hospital’s full gross charges (“Chargemaster Rates”), and whose accounts were not written off in full by the Hospital without resorting to any form of collection activity;

**WHEREAS**, the Class Plaintiff alleges in his complaint that the Hospital billed self-pay emergency department patients at its Chargemaster rates, which were unreasonable and significantly higher than the amounts paid on behalf of commercially or governmentally insured patients for the same medical treatment/services;

**WHEREAS**, the Class Plaintiff claims that he was a Self-Pay Patient at the time he was treated in the Hospital’s Emergency Department, that he signed the Hospital’s admission/financial agreement (the “Contract”) containing a financial liability provision that did not disclose any price or pricing schedule for the Hospital’s emergency medical diagnosis and treatment, and was later billed at the amount that was excessive, unfair, and unconscionable, which caused him to commence this Action alleging unfair and deceptive business practices in violation of New York General Business Law § 349, and requesting that the Court grant a declaratory judgment determining that the Contract requires Self-Pay Patients to pay no more than the reasonable value of the emergency medical diagnosis and treatment services;

**WHEREAS**, the Hospital denies all of the Class Plaintiff's allegations, and believes that it, at all times, acted legally and in compliance with the provisions of federal law, including the Emergency Medical Treatment and Active Labor Act (42 U.S.C. § 1395dd), the Affordable Care Act (26 U.S.C. § 501r), and state law, including the provisions of the New York Public Health Law;

**WHEREAS**, the Hospital's position in this Action is that it bills all patients for health care services provided to them at its Chargemaster Rates. If a particular patient has health coverage provided by a commercial health insurer or health plan that has a participating provider agreement with the Hospital that provides for discounted reimbursement, then the commercial health insurer or health plan will only be expected to reimburse the Hospital for health care services it provides at the discounted rate. Likewise, if a patient is a beneficiary of a governmental health insurance program (such as Medicare or Medicaid), then that health insurance program will only be expected to reimburse the Hospital for health care services it provides at the reimbursement rates the program has established. If, however, a particular patient has no health coverage, and is thus a Self-Pay Patient, the Hospital has a variety of programs designed to alleviate, and in many cases, eliminate, the cost of the health care services provided;

**WHEREAS**, by Order entered in the Nassau County Clerk's Office on December 12, 2016, the Court granted the Class Plaintiff's motion for class certification under New York CPLR article 9, defining the class as "all individuals who were billed at South Nassau Community Hospital's full Chargemaster rates for emergency screening, stabilization, and/or treatment services/services at one of South Nassau Community 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 the present; and appointing Eric Krobath as the Class

Representative and Giskan Solotaroff & Anderson LLP as counsel for the Class (“Class Counsel”);

**WHEREAS**, the Court’s December 12, 2016 class certification order excluded from the defined and certified class, (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;

**WHEREAS**, the New York State Supreme Court, Appellate Division, Second Department, affirmed the Court’s December 12, 2016 class certification order in a Decision and Order dated December 11, 2019;

**WHEREAS**, the Hospital and Class Plaintiff now wish to resolve the claims and defenses asserted or which could have been asserted in the Action on the terms set forth herein and to stipulate to the entry of an order providing for disposition of all such claims and defenses, without otherwise admitting any issue of fact or law;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with intent to be legally bound, it is hereby agreed by the Parties, subject to the final approval of the Court and any review of such approval by the appellate courts, as follows:

**Settlement Class**

1. For the purposes of this settlement only, Class Plaintiff will seek, and the Hospital will not oppose, an amendment of the Court's defined and certified class (the "Settlement Class"), which shall be amended, defined, and certified as follows:

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.

The individuals who meet this definition shall be referred to as "Class Members." In connection with this Settlement, the Parties have agreed to end the Class Period on June 30, 2020.

**Settlement Consideration**

2. Subject to the termination rights and other conditions stated in this Settlement Agreement, Class Plaintiff and the Hospital agree, as consideration for the settlement of the Action as described herein, that they will jointly propose to the Court a Judgment and Order Granting Final Approval of Settlement an Order in substantially the form annexed hereto as Exhibit C ("Final Approval Order"). The Settlement shall become effective following the later of (i) all deadlines for any person to seek appellate review of the order granting Final Approval of this Settlement Agreement have elapsed without such review having been sought, or (ii) all

possible appeals from such order have been concluded and the order has been affirmed without substantial modification (the “Effective Date”).

3. The Parties agree that a material condition of this settlement is the entry by the Court in this Action of a Final Approval Order awarding the following relief:

a. No later than 30 days from the Effective Date, the Hospital shall refund to all Class Members any amounts that they paid to the Hospital for emergency medical treatment or services during the class period that was in excess of 37.5% of the Hospital’s Chargemaster Rates. These refund checks must be cashed within 120 days of the original mailing. Notwithstanding anything foregoing to the contrary, any Class Member who properly opts out of this settlement in accordance with the Court’s Final Approval Order shall not be entitled to this relief.

b. No later than 30 days from the Effective Date, the Hospital shall write down the current pending accounts receivables of all Self-Pay Patients who received emergency medical treatment at the Hospital to a percentage of Chargemaster Rates that is generally equivalent to the rates at which Empire Blue Cross Blue Shield reimburses the Hospital for these services provided to its members. The Hospital estimates that the amount of this write-down is approximately \$19.5 million.

c. No later than 60 days from the Effective Date, the Hospital shall notify all Class Members whose accounts have been written down as to the amount, if any, that is now owed to the Hospital for the emergency services rendered.

d. No later than 60 days from the Effective Date, the Hospital shall use commercially reasonable efforts to correct any negative credit reporting for any Class Members who were reported to any credit agency. Such efforts shall consist of working with collection agencies and law firms to vacate or modify judgments against Class Members to ensure that the amounts owed do not exceed 37.5% of charges, and modifying associated negative credit reports accordingly.

e. Upon the Effective Date, the Hospital shall adopt a Self-Pay Patient discount policy that is substantially equivalent to the proposed policy set forth as Exhibit D.

f. Upon the Effective Date, the Hospital shall adopt a Financial Agreement that is substantially equivalent to the proposed Financial Agreement set forth as Exhibit E.

### **Release of Claims**

3. The “Releasing Parties” in this Settlement Agreement include the (i) Class Plaintiff and his respective heirs, executors, administrators, trustees, successors, assigns, and representatives, and (ii) all other Class Members and their respective heirs, executors, administrators, trustees, successors, assigns, and representatives. Notwithstanding the foregoing, the parties expressly agree that the Releasing Parties shall not include any Class Member who properly opts-out of this settlement in accordance with the Court’s Final Approval Order.

4. The Releasing Parties hereby, upon the Court’s final approval of this Settlement Agreement, expressly and irrevocably waive and fully, finally, and forever settle, discharge, and release the Hospital from any and all manner of claims, demands, actions, suits, and causes of

action, whether individual, class, representative, or otherwise in nature, whether known or unknown, suspected or unsuspected, regarding the billing and collection practices for emergency screening, stabilization, or treatment services at one of South Nassau Communities Hospital's emergency care facilities in New York State from April 4, 2009 through June 30, 2020.

5. The Releasing Parties hereby covenant and agree that they shall not hereafter seek to establish liability against the Hospital based, in whole or in part, upon any of the Released Claims.

#### **Preliminary Court Approval**

6. Class Plaintiff and the Hospital agree to use reasonable and good faith efforts to effectuate preliminary Court approval of this Settlement Agreement, including filing necessary motion papers and scheduling a date and time for any necessary hearings that are mutually convenient for the Court, Class Plaintiff, and the Hospital.

7. Class Plaintiff and the Hospital agree to effectuate the Court's entry of an order (the "Preliminary Approval Order"), in the form of Exhibit B hereto, to:

- a. Preliminarily approve this Settlement Agreement.
- b. Approve the amendment set forth in this Settlement Agreement to the defined and certified class in this Action.
- d. Determine that the Notice of Class Action and Proposed Settlement (the "Notice") in the form of Exhibit A constitutes the best practicable notice under the circumstances, and is reasonably calculated to reach Class Members and apprise them of

this Action, the terms and conditions of the Settlement Agreement, and their rights under the Settlement Agreement.

e. Approve the procedures described in the Notice for Class Members to object to this Settlement Agreement.

f. Approve the procedures described in the Notice for certain Class Members to opt-out of the Settlement Agreement.

g. Schedule a final approval hearing (the “Final Approval Hearing”), for a time, date, and place mutually convenient for the Court, Class Plaintiff, and the Hospital and at least 95 days after the Court’s entry of the Preliminary Approval Order, at which the Court will conduct an inquiry into the fairness of this Settlement Agreement and determine whether the settlement should be finally approved.

h. Stay all proceedings in the Action as between Class Plaintiff and the Hospital, except those related to effectuating and complying with the Settlement Agreement, pending the Court’s determination of whether the Settlement Agreement should be finally approved.

### **Notice Procedures**

11. Within 30 days of the Court’s Preliminary Approval Order, the Hospital shall cause the Notice to be sent to all Class Members by first class mail. The Hospital shall send the Notice to each Class Member’s last known address as reflected in the Hospital’s records.

12. As explained in the Notice, any Class Member may object to this Settlement Agreement. Any Class Member who wishes to assert such an objection (an “Objector”) must

send to Class Counsel and counsel for the Hospital, by first class mail and postmarked not later than 45 days following the mailing of the Notice, a written statement of objections. That statement must (i) state the full name and address and telephone number of the Objector, (ii) provide information sufficient to establish that the Objector is a member of the Settlement Class, (iii) state the full name and address and telephone number of any counsel representing the Objector in connection with the objections, (iv) describe all objections of the Objector and the specific reasons therefor (including legal support that the Objector wishes to bring to the Court's attention), and (v) attach any affidavits or other evidence relied upon in support of the objection. Prior to the Final Approval Hearing, Class Counsel shall e-file with the Court all written statements of objection received.

13. As explained in the Notice, a Class Member may opt out of the certain provisions of this Settlement Agreement. Any Class Member who wishes to opt out (an "Opt-Out Member") must send to Class Counsel and counsel for the Hospital, by first class mail and postmarked not later than 45 days prior following the mailing of the Notice, an opt-out form. That form (a blank of which is attached to the Notice) must (i) state the full name and address and telephone number of the Opt-Out Member, (ii) provide information sufficient to establish that the Opt-Out Member is a member of the Settlement Class, and (iii) state the full name and address and telephone number of any counsel representing the Opt-Out Member in connection with the opt-out. Prior to the Final Approval Hearing, Class Counsel shall e-file with the Court a list of Opt-Out Members.

14. At or before the time when a motion for final approval is filed, Class Counsel and counsel for the Hospital shall notify the Court in writing that the Notices were mailed in the manner directed by the Court.

**Final Court Approval**

15. Class Counsel and counsel for the Hospital will move for the Court to enter the Final Approval Order in the form of Exhibit Chereto, which will:

a. Determine that the Court has personal jurisdiction over the Hospital and all Class Members, and jurisdiction to finally approve this Settlement Agreement.

b. Finally approve this Settlement Agreement, including its release provisions, and find that the Settlement Agreement was made in good faith, following arm's-length negotiations, and was not collusive, and further find that the Settlement Agreement is fair, reasonable, and adequate for the Class Members.

c. Grant final certification of the Settlement Class.

d. Find that the notice provided to the Class Members satisfied due process and was the best practicable notice under the circumstances, and apprised Class Members of the Action, this Settlement Agreement, their objection rights and opt-out rights, as fully satisfying the requirements of New York CPLR 904, and any other applicable laws or rules of the Court, and due process.

e. Incorporate all terms and conditions of this Settlement Agreement by reference, and state the settlement consideration and full terms of the release.

f. Provide that the Court retains continuing jurisdiction over the Settlement Class and the Hospital to implement, administer, consummate, and enforce this Settlement Agreement, and the Final Approval Order.

**Attorneys' Fees and Expenses**

16. Upon entry of Final Approval of this Settlement Agreement by the Court, Class Counsel may apply to the Court for an initial award of attorneys' fees and expenses to be paid by the Hospital in the amount of \$470,000.00. The Hospital agrees not to oppose such application or to argue that the amount sought is unreasonable. The Hospital shall pay any attorneys' fees and expenses awarded within 14 days of the Effective Date.

17. In addition to this initial attorneys' fees award, 190 days after the Hospital sends out the refund checks to qualifying Class Members as provided for in the Final Approval Order and section 4(a) of this Agreement the Hospital shall pay a supplemental award of attorneys' fees in an amount equal to the refund checks that have been returned to the Hospital as undeliverable or were uncashed.

#### **Incentive Payment to Class Plaintiff**

18. The Hospital agrees to make an incentive payment of \$7,500 to the Class Plaintiff in consideration for his services as Class Plaintiff. Payment shall be made by check payable to Class Counsel as attorney for the Class Plaintiff and shall be delivered to Class Counsel within 10 days of the Effective Date.

#### **Termination**

19. This Settlement Agreement may be terminated only as provided below. Termination shall be effected by written notice to all Parties and the Court within ten business days after the event giving rise to the termination:

- a. Any party may terminate if the Court does not enter any of the following in substantially the form attached, or subsequently seeks to modify significantly any such

documents: (i) the Preliminary Approval Order attached as Exhibit B hereto, and (ii) the Final Approval Order attached as Exhibit C hereto.

b. Any party may terminate this Settlement Agreement if the Court's Preliminary Approval Order, the Court's Judgment, or the Court's Order granting Final Approval are not substantially affirmed or are significantly modified on any appeal.

20. In the event of termination of this Settlement Agreement:

a. This Settlement Agreement shall be null and void, and of no force and effect, except as provided in this paragraph 20.

b. The Class Plaintiffs, and all members of the putative class, will retain all claims as if this Settlement Agreement had not been entered into. The Hospital will retain all defenses it may have to the merits of this Action.

c. Class Plaintiffs and the Hospital shall revert to their positions prior to the execution of the original Settlement Agreement, as if no Settlement Agreement in this Action had been reached or executed.

### **Continuing Jurisdiction**

21. Class Plaintiff, the Class Members, and the Hospital hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the Judgment and the Order Granting Final Approval.

23. In the event that the provisions of this Settlement Agreement or the Judgment and the Order Granting Final Approval are asserted by the Hospital as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any other suit, action, or

proceeding by a Class Plaintiff or Class Member, it is hereby agreed that the Hospital may seek, and that Class Plaintiff will not oppose, a stay of that suit, action, or proceeding until the Court has entered an order or judgment determining any issues relating to the defense or objections based on such provisions.

#### **Additional Terms and Conditions**

24. Class Plaintiff, the Hospital, and their respective counsel shall execute all documents and perform any additional acts reasonably necessary and proper to effectuate the terms of this Settlement Agreement and to obtain the benefit of this Settlement Agreement for Class Plaintiffs, Class Members, and the Hospital.

25. The Hospital specifically denies any and all liability in this Action. It is expressly understood and agreed that the Hospital, by entering into this Settlement Agreement, is not admitting any liability or wrongdoing and is not admitting the truth of any allegations or circumstances, and is not waiving any defense or affirmative defense.

26. This Settlement Agreement, and all negotiations, documents, and discussions associated with it, shall not be construed as, or deemed to be, evidence of any admission of any liability or wrongdoing on the part of the Hospital or any of the Released Parties, or of the truth or merit of any allegations or claims in the Action, or evidence of any admission on the part of Class Plaintiff and the Class Members that their potential claims lack merit, and shall not be offered or accepted as evidence of such in any litigation, arbitration, or other proceeding; provided, however, that nothing contained herein shall preclude use of this Settlement Agreement in any proceeding to enforce this Settlement Agreement.

27. If any notice is required to be given under the terms of this Settlement Agreement, it shall be provided in writing and sent via e-mail and overnight mail to the following:

For Class Plaintiff:

Oren Giskan  
Giskan Solotaroff & Anderson LLP  
90 Broad St, 10<sup>th</sup> floor  
New York, NY 10004  
(212) 847-8315  
[ogiskan@gslawny.com](mailto:ogiskan@gslawny.com)

For the Hospital:

Richard Murphy  
Chief Executive Officer  
One Healthy Way  
Oceanside, New York 11572-9007  
(516) 632-3939  
[richard.murphy@snych.org](mailto:richard.murphy@snych.org)

With a copy to:

Roy W. Breitenbach, Esq.  
Garfunkel Wild, P.C.  
111 Great Neck Road  
Great Neck, NY 11021  
(516) 393-2200  
[rbreitenbach@garfunkelwild.com](mailto:rbreitenbach@garfunkelwild.com)

28. This Settlement Agreement, together with its exhibits, constitutes the entire agreement between the parties with regard to the subject matter hereof. This Settlement Agreement may not be modified or amended except by a writing signed by all signatories hereto or their successors-in-interest.

29. It is understood and agreed that this Settlement Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing the document to be drafted. Each Party is entering into this Settlement Agreement voluntarily,

without duress, with the consultation and advice of its legal counsel, and with full understanding of its terms.

30. This Settlement Agreement shall be interpreted and construed in accordance with the laws of the State of New York, without regard to the conflict of laws jurisprudence of the State of New York that would result in the application of the laws of any other jurisdiction.

31. This Settlement Agreement shall bind and inure to the benefit of the respective

heirs, personal representatives, successors and assigns of the Parties.

32. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Agreement. Executed signature pages for this Settlement Agreement may be delivered by facsimile or email and such facsimiles or emails shall be deemed as if actual signature pages had been delivered.

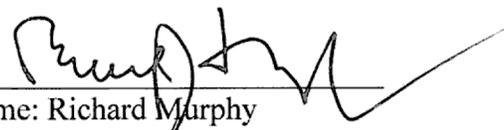
IN WITNESS WHEREOF, the signatories have read and understood this Settlement Agreement, have executed it, represent that the undersigned are authorized to execute this Settlement Agreement on behalf of their respectively represented parties, have agreed to be bound by its terms, and have duly executed this Settlement Agreement.

[Remainder of this page intentionally left blank]

**GISKAN SOLOTAROFF & ANDERSON LLP**  
*Attorneys for Plaintiff Eric Krobath*

By:   
Owen Giskan  
90 Broad St, 10<sup>th</sup> floor  
New York, NY 10004  
(212) 847-8315

**SOUTH NASSAU COMMUNITIES HOSPITAL**

By:   
Name: Richard Murphy  
Title: Chief Executive Officer