

**IN THE CIRCUIT COURT OF THE
THIRTEENTH CIRCUIT COURT,
IN AND FOR HILLSBOROUGH
COUNTY, FLORIDA - CIVIL DIVISION**

DOUGLAS BAUER, individually, and
on behalf of all similarly situated,

Plaintiff,

vs.

ST. JOSEPH'S HOSPITAL, INC.,

Defendant.

Class Representation

Case No. 19-CA-10837

Division: L

Business Division

NOTICE OF FILING
CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

COME NOW the Plaintiff, DOUGLAS BAUER, individually, and on behalf of all similarly situated, by and through its undersigned attorney, and hereby files the Class Action Settlement Agreement and Release, with regard to the above referenced case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 19th day of February 2021, pursuant to Florida Rules of Judicial Administration, Rule 2.516, I electronically filed the foregoing with the Clerk of Court by using the Florida Court Eportal System that will send a notice of electronic filing to:

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

DOUGLAS BAUER, individually, and
on behalf of all similarly situated,

Class Representation

Plaintiff,

Case No. 19-CA-010837

v.

Division: L

ST. JOSEPH'S HOSPITAL, INC., *et al.*,

Defendants.

_____ /

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“**Agreement**”) is entered into by Plaintiff Douglas Bauer, individually and on behalf of all Class Members (as defined below), and Defendant St. Joseph’s Hospital, Inc. d/b/a St. Joseph’s Women’s Hospital, St. Joseph’s Children’s Hospital, St. Joseph’s Hospital – North, and St. Joseph’s Hospital – South; Defendant Morton Plant Hospital Association, Inc. d/b/a Morton Plant Hospital, Morton Plant North Bay Hospital, and Bardmoor Emergency Center; Defendant Trustees of Mease Hospital, Inc. d/b/a Mease Countryside Hospital and Mease Dunedin Hospital; Defendant St. Anthony’s Hospital, Inc.; Defendant Winter Haven Hospital, Inc. d/b/a Winter Haven Women’s Hospital; Defendant South Florida Baptist Hospital, Inc.; and Defendant Bartow Regional Medical Center, Inc. (individually, jointly, and collectively, the “**Hospitals**”), contingent upon the approval of the Court.

1. **DEFINITIONS.** As used in this Agreement, the terms set forth below shall have the following meanings:

- a. “Action” means the above-captioned lawsuit.
- b. “Affiliate” of an entity means any person or entity which controls, is controlled by, or is under common control with such entity whether by ownership, contract, or otherwise.

c. “Aggregate Settlement Amount” means the sum of all Settlement Amounts Due, as calculated pursuant to paragraphs 4.d and 4.e.

d. “Aggregate Paper Check Settlement Amount” means the sum of all Settlement Amounts Due to be paid by check by the Settlement Administrator, as described in paragraphs 4.a, 4.f and 4.h.

e. “Aggregate Account Credit Settlement Amount” means the sum of all Settlement Amounts Due to be paid by crediting certain Class Members’ accounts, as described in paragraphs 4.a and 4.f.

f. “Agreement” means this Settlement Agreement and Release.

g. “Class Counsel” means Craig E. Rothburd, P.A., de la Parte & Gilbert, P.A., Jeeves Law Group, P.A., and/or Neff Insurance Law, PLLC.

h. “Class Data” means the data and information produced by the Hospitals in the Action relating to the Class Members.

i. “Class List” means the database or similar format of Class Member names and addresses provided to the Settlement Administrator by the Hospitals no later than 30 business days after entry of the Court’s Preliminary Approval Order, unless otherwise ordered by the Court or agreed to by the Settling Parties.

j. “Class Members” means those persons who are members of the Settlement Class as defined in Section 3 of this Agreement, who have not timely excluded themselves in accordance with Section 7 of this Agreement. The term “putative Class Members” shall refer to the larger group of persons who fall within the definition of the Settlement Class in Section 3 of this Agreement before the Opt-Out Deadline.

k. “Class Notice” means the Notice of Class Action Settlement as approved by the Court in its Preliminary Approval Order to be sent to Class Members by mail. The Settling Parties’ proposed Class Notice is attached hereto as “Exhibit A.”

l. “Class Notice Date” means the date that the Class Notice is mailed to Class Members pursuant to Section 6 of this Agreement (which shall be no later than 20 days after the

Settlement Administrator receives the Class List, unless otherwise ordered by the Court or agreed to by the Settling Parties).

m. “Class Period” means the period of time beginning on October 22, 2014 and ending on December 31, 2020.

n. “Class Release” means the Class Release as defined and described in paragraph 11.a.

o. “Cy Pres Amount” means those amounts in total in the Settlement Fund attributable to Void Checks.

p. “Defendants” means the Hospitals.

q. “Effective Date” means the latest of the following dates: (a) the date of rendition of the Final Approval Order and Judgment by the Court; (b) the expiration date of the time for filing a notice of appeal from the Final Approval Order and Judgment if any timely objections are filed but no appeal is filed; or (c) if a notice of appeal is timely filed, the date on which all appellate remedies are exhausted without a reversal of the Final Approval Order and Judgment.

r. “Final Approval Hearing” means the hearing to be requested by the Settling Parties and conducted by the Court, following appropriate notice to Class Members and an opportunity for the Class Members to exclude themselves from the Settlement Class or to object to the Settlement, at which time the Settling Parties will jointly request the Court to finally certify the Settlement Class for settlement purposes only, to approve the fairness, reasonableness and adequacy of the terms and conditions of this Settlement Agreement and to enter a Final Approval Order and Judgment.

s. “Final Approval Motion” means Plaintiff’s motion seeking final approval of this Settlement Agreement.

t. “Final Approval Order and Judgment” means the final order and judgment to be entered by the Court pursuant to this Agreement and in substantially similar form as “**Exhibit C.**”

u. “Hospitals” means the following entities, individually, jointly, and collectively: (i) Defendant St. Joseph’s Hospital, Inc. d/b/a St. Joseph’s Women’s Hospital, St. Joseph’s Children’s Hospital, St. Joseph’s Hospital – North, and St. Joseph’s Hospital – South; (ii) Defendant Morton Plant Hospital Association, Inc. d/b/a Morton Plant Hospital, Morton Plant North Bay Hospital, and Bardmoor Emergency Center; (iii) Defendant Trustees of Mease Hospital, Inc. d/b/a Mease Countryside Hospital and Mease Dunedin Hospital; (iv) Defendant St. Anthony’s Hospital, Inc.; (v) Defendant Winter Haven Hospital, Inc. d/b/a Winter Haven Women’s Hospital; Defendant South Florida Baptist Hospital, Inc.; and (vi) Defendant Bartow Regional Medical Center, Inc.

v. “Objection Deadline” means the date which is thirty (30) days after the Class Notice Date.

w. “Opt-Out Deadline” means the date which is thirty (30) days after the Class Notice Date.

x. “Plaintiff” means Douglas Bauer.

y. “Preliminary Approval Date” means the date on which the Preliminary Approval Order is filed with the Clerk of the Court.

z. “Preliminary Approval Motion” means Plaintiff’s motion seeking preliminary approval of this Agreement.

aa. “Preliminary Approval Order” means the Court’s order preliminarily approving this Agreement and preliminarily certifying the Settlement Class for settlement purposes only, setting a date for the Final Approval Hearing, and providing for notice of the terms of this Agreement to be sent to Class Members, with such order to be in substantially similar form as the attached “**Exhibit B.**”

bb. “Released Claims” means all claims, actions, causes of action, suits, debts, sums of money, payments, obligations, reckonings, promises, damages, penalties, attorney’s fees and costs, liens, judgments, and demands of any kind whatsoever that each Class Member has had or now has, whether in arbitration, administrative, or judicial proceedings, whether as individual

claims or as claims asserted on a class basis, whether known or unknown, suspected or unsuspected, whether based on federal, state, or local law, statute, ordinance, regulations, contract, common law, or any other source, that were or could have been sought or alleged in the Action that relate, concern, arise from, or pertain in any way to the Released Parties' conduct, policies, or practices concerning any and all medical bills to the Class Member during the Class Period were not adjusted or reduced to reflect the statutory discounts described in Section 627.736(5)(a)1.b and 4, Florida Statutes, including but not limited to conduct, policies or practices concerning the application of those discounts.

cc. "Released Parties" means, in all capacities, the Hospitals and any of their past or present divisions, parents, subsidiaries, predecessors, investors, parent companies, affiliates, and each and all of their respective past or present directors, officers, managers, employees, general partners, limited partners, principals, agents, brokers, distributors, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures, assigns, or related entities, and each and all of their respective executors, successors, assigns, and legal representatives. The "Released Parties" does not include third-party health care providers or entities who provided health services at the Hospitals as independent contractors who separately and independently bill for their services.

dd. "Settlement Administrator" means American Legal Claim Services, LLC.

ee. "Settlement Amount Due" means the total amount payable to each Class Member pursuant to paragraph 4.h.

ff. "Settlement Class" means the group of persons defined by Section 3 of this Agreement.

gg. "Settling Parties" means the Plaintiff, on his own behalf and on behalf of all Class Members, and the Hospitals, collectively.

hh. "Void Checks" means checks that are timely sent to Class Members to pay their Settlement Amount Due but are not negotiated within ninety (90) days after the date of issuance, and are, therefore, cancelled and void under paragraph 4.h.

2. **RECITALS.**

a. Plaintiff filed this Action on October 22, 2019, on behalf of himself and other similarly situated patients who were provided care by the Hospitals, who received emergency medical care covered by their personal injury protection (“PIP”) insurance policy, who entered into the Hospitals’ standard form Patient Agreement and Consent for Facility Services, who incurred medical bills from which the Hospitals received payment from the patient’s PIP insurer of 80% of 75% of the Hospitals’ usual and customary charges, who were subsequently billed by the Hospitals for the unpaid balance of the charges that were covered and paid by the PIP insurer without the statutory discount provided to the patient by Section 627.736(5)(a)1.b and 4, Florida Statutes. Plaintiff’s Amended Complaint asserts claims against the Hospitals for declaratory relief under the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) and the Florida Declaratory Judgment Act (Count I), injunctive relief under FDUTPA and common law (Count II), damages under FDUTPA (Count III) and breach of contract (Count IV).

b. The Settling Parties engaged in pre-class certification discovery and investigations, both formal and informal, as part of settlement negotiations. Through such negotiations, the Hospitals also produced the Class Data to Plaintiffs containing transaction history data for all putative Class Members during the Class Period. The Settling Parties have had the opportunity to consider and analyze the Class Data for themselves prior to entering into this Agreement.

c. Plaintiff and Class Counsel have participated in extensive settlement discussions with counsel for the Hospitals, including mediation on August 27, 2020, overseen by Peter J. Grilli, Esquire, who is a certified mediator in Florida’s state and federal courts.

d. During the mediation conference, the Settling Parties reached an agreement with respect to the material terms that subsequently formed the basis of this Agreement. As a result of the mediation and settlement process, the discovery in this case, the Settling Parties’ review and evaluation of the Class Data, and subsequent negotiations between the Settling Parties with respect to the terms and conditions of this Agreement, the Settling Parties have agreed to settle this Action

according to the terms of this Agreement.

e. At all times, the Settling Parties have negotiated vigorously with each other and at arm's length. The Settling Parties have investigated the facts relating to the claims alleged in the Action, and have made a thorough study of the legal principles applicable to the legal claims that have been asserted. Based upon that investigation, Class Counsel's legal evaluation, and taking into account the contested legal and factual issues involved, including an assessment of the uncertainties of litigation and the relative benefits conferred upon Class Members pursuant to this Agreement, Plaintiff and Class Counsel have concluded that this Agreement and the terms and conditions set forth herein are fair, reasonable and adequate, and in the best interests of Plaintiff and the Class Members.

f. The Settling Parties recognize that notice to Class Members of the material terms of this Agreement, as well as Court approval of the Agreement, are required to effectuate the Agreement, and that this Agreement will not become operative unless and until the Court grants final approval and the Agreement otherwise becomes effective as set forth herein.

g. The Hospitals have asserted, and in the absence of this Agreement would continue to assert, numerous defenses to the claims alleged in the Action, and expressly deny each of the claims asserted against them and any and all liability arising out of the conduct alleged in this Action. The Hospitals assert that their billing practices are lawful and not improper in any manner and deny that either the Plaintiff or the putative Class Members suffered any cognizable injury as a result of their conduct. By entering into this Agreement, the Hospitals do not admit any wrongdoing, and this Agreement does not and shall not constitute an admission of liability by them.

h. This Settlement is based upon the definition of "Settlement Class" and "Class Member" set forth in this Agreement. The Parties agree that the Hospitals shall not be precluded from opposing class certification in further litigated proceedings in this Action if this Settlement is not finally approved, or in any other action on the basis of this Settlement Agreement if the question arises. No agreements made by or entered into by the Hospitals in connection with this Settlement may be used by Plaintiff, any Class Member, Class Counsel, or any other person to

establish any of the elements of class certification in any litigated or contested certification or decertification proceedings, whether in this Action or any other proceeding.

i. It is therefore agreed by and between the undersigned Settling Parties that this Action shall be settled, subject to the approval of the Court, pursuant to the terms and conditions that follow.

3. **SETTLEMENT CLASS DEFINITION, CLASS PERIOD, AND CONDITIONS AND OBLIGATIONS RELATING TO THE EFFECTIVENESS OF THE SETTLEMENT.**

a. Settlement Class Definition. The “Settlement Class” is defined as each person who at any time during the Class Period:

(1) received from the Hospitals emergency medical services and care that were covered by the person's PIP insurance governed by Section 627.736, Florida Statutes;

(2) entered into the Hospitals’ standard form Patient Agreement and Consent for Facility Services;

(3) incurred medical bills from the Hospitals for which the person's PIP insurer reduced the Hospitals’ charges to 80% of 75% of the Hospitals’ usual and customary charges pursuant to Section 627.736(5)(a)l.b, Florida Statutes;

(4) were subsequently billed by the Hospitals for the unpaid balance of the Hospitals’ charges that were covered and paid by PIP insurance;

(5) the Hospitals’ billed charges were without the appropriate adjustment or reduction, to reflect the statutory discount imposed by Section 627.736(5)(a)l.b and 4.

But excluded from the foregoing group are any claims of such persons who, prior to the Opt-Out Deadline: (a) have been fully resolved through litigation, release, or settlement, including but not limited to those persons who negotiated and settled their balance with the Hospitals for less than the balance that would have been owed had the Hospitals applied the statutory PIP discount; and/or (b) are the subject of any pending litigation against any of the Hospitals.

b. Conditions of Settlement. This Agreement is expressly contingent upon the material conditions set forth below in paragraphs 3.c and 3.d, which must be satisfied in full.

c. Condition No. 1: Court Approval. The first condition, is that the Court must approve this Agreement in accordance with the following steps:

i. Preliminary Approval of Proposed Settlement Class: After good faith consultation with the Hospitals' counsel, Class Counsel will present a Preliminary Approval Motion to the Court. The Preliminary Approval Motion shall include a Class Notice, in substantially similar form as "Exhibit A," and a Preliminary Approval Order, in substantially similar form as "Exhibit B." The Hospitals may either join in the Preliminary Approval Motion or not oppose it, and in either event, shall cooperate in good faith with Plaintiff as he takes reasonable steps to secure expeditious entry by the Court of the Preliminary Approval Order and to request that the Court schedule a Final Approval Hearing at the earliest reasonable date following the Preliminary Approval Date.

ii. Settlement Class Certification. In connection with the proceedings on preliminary and final approval of this Agreement and the proposed settlement described herein, the Plaintiff shall seek orders (preliminary and final, respectively) certifying the Settlement Class pursuant to Florida Rule of Civil Procedure 1.220 for purposes of this settlement only. If this Agreement is not finally approved by the Court or if this Agreement is otherwise terminated or rendered null and void, the certification of the above-described Settlement Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class for trial purposes in this Action or any other action can be or have been satisfied; in such circumstances, the Hospitals reserve and shall have all rights to challenge class certification in this Action and any other action on all available grounds as if no Settlement Class had been certified.

iii. Entry of Preliminary Approval Order. The Court shall enter a Preliminary Approval Order in substantially similar form as Exhibit B, which shall, among other things, meet the requirements set forth under Section 8 of this Agreement, and shall not be opposed by the Hospitals.

iv. Issuance of Class Notice. Pursuant to the Preliminary Approval Order to be entered by the Court, the Settlement Administrator shall cause the Class Notice to be issued in accordance with Section 6 of this Agreement in the form as attached to this Agreement as “**Exhibit A.**”

v. Final Approval Hearing. In connection with the Preliminary Approval Motion, the Settling Parties shall request that the Court schedule and conduct a hearing after dissemination of Class Notice, at which time it will consider whether the Agreement and the settlement described herein is fair, reasonable, and adequate pursuant to Florida Rule of Civil Procedure 1.220(e). Specifically, the Plaintiff and Class Counsel, after good faith consultation with and without opposition from counsel for the Hospitals, shall request that, on or after the Final Approval Hearing, the Court: (a) enter the Final Approval Order and Judgment in substantially similar form as “**Exhibit C,**” granting final approval of this Agreement and the settlement described herein, and dismissing with prejudice this Action; (b) determine the attorneys’ fees, costs, and other expenses (including class administration expenses) that should be awarded to Class Counsel as contemplated in this Agreement; and (c) determine the class representative service award or incentive award that should be awarded to the Plaintiff as Class Representative, as contemplated in this Agreement. The Settlement Parties agree to support entry of Final Approval Order and Judgment, and to reasonably cooperate with one another in seeking entry of the Final Approval Order and Judgment.

d. Condition No. 2: Finality of Judgment. The second condition is that the Court shall enter a Final Judgment Granting Final Approval to Class Action Settlement in substantially similar form as **Exhibit C**. The Final Judgment must be Final in accordance with this Settlement Agreement, and shall, among other things, meet the requirements set forth under Section 9 of this Agreement.

4. **PAYMENT AND CORRECTIVE ACTION.**

a. Payment to Class Members. Class Members will receive payment of the Settlement Amount Due in accord with paragraph 4.d. The Hospitals will pay each Class Member all amounts (if any) that were collected by the Hospitals in excess of the amount set forth in paragraph 3.a(5), plus interest at the rates established pursuant to Section 55.03(1), Florida Statutes from the date of the Class Member's respective overpayment through the date of payment. The Hospitals' act of sending funds through the Class Administrator to each of the Class Members as part of this Agreement, shall not be considered to be a violation of any federal or state consumer protection statutes.

b. Write-Off Balance to Class Members. Class Members who were billed, but did not pay, all amounts that the Hospitals billed in excess of the amount set forth in paragraph 3.a(5), together with any alleged co-payment or other such balance that may be claimed due from said Class Member as a result of the motor vehicle accident giving rise to his or her treatment at the Hospitals, shall be waived and written off by the Hospitals, and the Hospitals shall cease and desist from any and all efforts to bill or collect such amounts from such Class Members.

c. Compliance with Maximum Billable Amounts. As of the Effective Date, the Hospitals shall hereinafter comply with the maximum billable and collectible amounts authorized by Section 627.736(5)(a)4, Florida Statutes, when the PIP insurer opts to limit

reimbursement according to Section 627.736(5)(a)1, Florida Statutes, subject to the provisions of paragraph 4.d of this Agreement.

d. Cease Charging or Attempting to Collect in Excess of Maximum Billable Amounts. As of the Effective Date, the Hospitals shall cease and desist from charging, billing or attempting to collect from PIP insureds any amount in excess of the amount covered by their PIP insurance, except for amounts that are not covered by the insured's PIP coverage due to the coinsurance amount or maximum policy limits, and shall otherwise cease and desist from billing or attempting to collect from any patient any amounts that exceed the maximum amount established by Section 627.736(5)(a)4. For purposes of this Agreement, if, in the future, Section 627.736(5)(a)4 is amended or repealed, the Hospitals shall only be obligated to comply with the version of the law that is in effect at the time that the Hospitals render medical services to a patient whose medical expenses are covered by PIP insurance.

e. Independent Audit. The Hospitals will obtain an independent audit by the Settlement Administrator of all invoices to all Class Members and correct all outstanding but unpaid balances which are in excess of the amount set forth in paragraph 3.a(5) to confirm the amounts payable under paragraph 4.a or the write-off under paragraph 4.b.

f. Establishment of Settlement Fund. Within thirty-five (35) days of the Effective Date and provision of complete wire instructions and a W-9 for the Settlement Administrator, the Hospitals shall tender the Aggregate Paper Check Settlement Amount to the Settlement Administrator, which shall be deposited by the Settlement Administrator into an interest-bearing escrow account with a federally-chartered national bank and shall be distributed as set forth in this Agreement. The portion of monetary relief to be paid to Class Members by check and the Cy Pres Amount (*see* paragraph 4.k) shall be paid from this Settlement Fund. In addition

to the Settlement Fund, certain other monetary payments, including Class Counsel's attorneys' fees and costs, Plaintiff's service or incentive award, and the fees and expenses of the Settlement Administrator, will also be paid separately by the Hospitals and are addressed in Section 5 of this Agreement.

g. Payments from Settlement Fund. Within fifteen (15) business days of the date on which the Aggregate Paper Check Settlement Amount is deposited into the Settlement Fund, the Settlement Administrator shall allocate and distribute the Settlement Fund to the Class Members. The payment by check will be in the amount calculated in accordance paragraph 4.h.

h. Settlement Amounts Due. The Settlement Amount Due is determined as follows: (a) for each Class Member all amounts (if any) that were collected by the Hospitals in excess of the amount set forth in paragraph 3.a(5), plus interest at the rates established pursuant to Section 55.03(1), Florida Statutes from the date of the Class Member's respective overpayment through the date of payment; and (b) for each Class Member who was billed, but did not pay, all amounts that the Hospitals billed in excess of the amount set forth in paragraph 3.a(5), together with any alleged co-payment or other such balance that may be claimed due from said Class Member as a result of the motor vehicle accident giving rise to his or her treatment at the Hospitals, shall be waived and written off by the Hospitals, and the Hospitals shall cease and desist from any and all efforts to bill or collect such amounts from such Class Members.

i. Distribution of Settlement Payments. The Class Administrator shall allocate and timely disburse the Class Funds to Class Members by check as set forth above in paragraphs 4.a. and 4.h. For those Class Members who are to receive a write-off, the Hospitals will credit each Class Member's account with a write-off of the Settlement Amount Due as calculated for that Class Member under paragraphs 4.b and 4.h. For those payments that the Settlement

Administrator will make by check, the check (and the accompanying cover letter) shall state that the check will be “VOID AFTER 90 DAYS” in the format specified in paragraph 4.k and sent via regular mail. For purposes of this mailing, the Settlement Administrator shall use the addresses that it used to send the Class Notice, subject to appropriate updating by the Settlement Administrator prior to mailing as described in paragraph 4.j.

j. Re-Mailing of Returned Settlement Payments. Any Settlement Payments that are returned as non-deliverable with a forwarding address shall promptly be re-mailed by the Settlement Administrator to such forwarding address. To the extent that any Settlement Payments are returned as non-deliverable without a forwarding address, the Settlement Administrator will utilize manual address locator services to locate a new address, which cost will be borne by the Hospitals, and the Settlement Administrator will resend a new check to said Class Member. If following the manual address locator services, the Settlement Payment is returned as non-deliverable without a forwarding address, the Settlement Administrator shall not be required to take any additional steps to locate valid address information for the intended recipients of such Settlement Payments. Nothing in this paragraph shall alter, amend, or abridge the ninety (90) day period described in paragraphs 4.i and 4.k.

k. Period to Accept Payment by Check, Handling of Unclaimed Funds & Cy Pres Amount. Class Members shall have ninety (90) days from the date of issuance of their check to cash the check. Checks remitted to Settlement Class Members (and the accompanying cover letter) shall state “VOID AFTER 90 DAYS” which shall be printed in bold and in a font size that is larger than all other font sizes used on the check and cover letter, respectively. To the extent any checks, for any reason, are not negotiated within ninety (90) days after the date of issuance, such checks shall be cancelled and deemed Void Checks. Neither the Settlement Administrator nor the

Hospitals shall have any further obligation to continue efforts to distribute any payment for any Settlement Amounts Due to such Settlement Class Members whose checks become void under this paragraph. The Class Notice shall inform Settlement Class Members that any Settlement Amounts Due paid by check shall be void after ninety (90) days and that the Settlement Class Member will waive any right to payment of the Settlement Amount Due if the check is not negotiated within that ninety (90) day period. The Settlement Administrator shall pay all funds attributable to the Void Checks to Bay Area Legal Services, Inc., which the Parties agree to be a charitable legal organization that is mutually acceptable to the Settlement Parties and will be the exclusive cy pres recipient. The Settlement Administrator shall pay the cy pres recipient the Cy Pres Amount within seven (7) days of the date on which the ninety (90) day period expires. The Settlement Administrator shall only disburse the Cy Pres Amount to the cy pres recipients upon first receiving from Class Counsel a W9 for each cy pres recipient and wiring or other acceptable payment instructions regarding the manner in which payment shall be disbursed to the cy pres recipient.

l. Final Accounting. Within seven (7) days of the first of the calendar month following disbursement of the Cy Pres Amount, the Settlement Administrator shall provide a detailed final accounting to the Settling Parties, and shall file it with the Court. The Settlement Administrator shall also provide a declaration concerning the notice process, and shall respond to requests for information from the Settling Parties at any time.

m. Total Consideration. In consideration for the Class Release set forth under Section 11 of this Agreement, the Hospitals shall have no obligation to provide any benefit or payment other than: (1) payment of the Aggregate Settlement Amount; (2) a payment not to exceed \$275,000.00 for Class Counsel's attorneys' fees and expenses; (3) a payment not to exceed \$10,000.00 to Plaintiff for his service as class representative; and (4) the fees and expenses of the

Settlement Administrator as set forth in paragraph 5.d.

n. No person shall have any claim against the Settling Parties, the Class Members, Class Counsel, or the Settlement Administrator based on payments made in accordance with the procedures set forth in this Agreement.

5. **ADDITIONAL SETTLEMENT PAYMENTS**

a. Additional Payments. As set forth in paragraphs 5.b through 5.d, and subject to the approval of the Court, Defendants shall pay Class Counsel's attorneys' fees and expenses, the agreed upon service or incentive award to the Plaintiff as Class Representative, and the fees and expenses of the Settlement Administrator, which shall be exclusive of and in addition to the payments made to the Class Members under paragraph 4.a and 4.b, and shall not otherwise reduce or diminish the amount of the Settlement Fund.

b. Class Counsel's Attorneys' Fees and Expenses. In conjunction with the settlement of this Action, Class Counsel may apply to and ask the Court for an award of attorneys' fees and costs in an amount not to exceed \$275,000.00 in fees and costs, which award shall not be opposed by the Hospitals. Class Counsel and counsel for the Hospitals separately negotiated this amount as the maximum amount of attorneys' fees and costs that Class Counsel may seek from the Court without objection from the Hospitals. Class Counsel agrees that these amounts will compensate Class Counsel for all work already performed and all of the work remaining to be performed in this Action (including but not limited to securing Court approval of the Settlement, ensuring that the Settlement is fairly administered and implemented, responding to inquiries from Settlement Class Members, obtaining dismissal of the Action, etc.), and all associated costs and expenses. Provided the total fees and costs awarded by the Court do not exceed \$275,000.00 (combined), the Hospitals shall pay the attorneys' fees and costs awarded by the Court in the Final

Order and Judgment in the Action within fifteen (15) days after the Effective Date or the provision of a completed W-9 and wiring instructions acceptable to the Hospitals for the Class Counsel designated to receive the fees and costs, whichever occurs later. The attorneys' fees and costs shall be disbursed to Class Counsel only after the Hospital receives from Plaintiffs' counsel a W9 for the law firm designated to receive the transfer of funds and sufficiently detailed wiring instructions. Class Counsel will designate a single law firm among them who will provide the Hospital with a W9 and wiring instructions. After receiving the disbursed fees and costs, the law firm designated by Class Counsel to receive the fees and costs shall be solely responsible for distributing such funds to Class Counsel. In no event shall the Hospitals be obligated to pay attorneys' fees and costs in an amount greater than \$275,000.00 in connection with this Action or the settlement of these claims. If for any reason the Final Order and Judgment do not become final (*i.e.*, the Effective Date does not occur), the Hospitals shall have no obligation to pay any attorneys' fees or costs to Class Counsel. If for any reason an award of Attorneys' Fees and Expenses exceeds \$275,000.00, Class Counsel hereby agrees to forego the amount of the award in excess of \$275,000.00. In the event the Court awards Class Counsel less than \$275,000.00 in Attorneys' Fees and Expenses, this Agreement shall nevertheless remain in full force and effect. However, notwithstanding the foregoing, such amounts shall not cover any claims for attorneys' fees and costs incurred in any post-judgment appellate proceedings, or proceedings to enforce the Agreement or the Final Order and Judgment, or proceedings in aid of execution, which claims and any defenses thereto are expressly reserved by the Settling Parties.

c. Class Representative Service or Incentive Award to Plaintiff. Subject to the Court's approval, the Hospitals will pay a class representative service or incentive award of \$10,000.00 to Plaintiff for his time, efforts, and expenses as Class Representative on behalf of the

Class Members. This \$10,000.00 award to Plaintiff shall be delivered to Class Counsel within fifteen (15) days after the Effective Date or the provision of a completed W-9 for the Plaintiff, whichever occurs later, who will then be responsible for forwarding the Service Award to him. The Settling Parties agree that such award paid to Plaintiff shall be paid separately and in addition to any other amounts set forth herein, and shall not otherwise reduce or diminish the Settlement Fund, the amount awarded for attorneys' fees and costs, and/or Settlement Administrator's fees and costs.

d. Settlement Administrator's Fees and Costs. The Hospitals shall pay all fees and costs of the Settlement Administrator including, without limitation, all amounts billed in connection with the distribution of the Class Notice, distribution of Settlement Payments, and all other functions agreed upon and requested by the Settling Parties or as set forth in the Settlement Agreement. Prior to performing any work, the Settlement Administrator shall provide the Settling Parties with an estimate of its fees and costs related to the administration of this Settlement, and the amount paid to the Settlement Administrator in connection with this Settlement shall not exceed that amount absent a showing by the Settlement Administrator of good cause.

6. **NOTICE OF SETTLEMENT**

a. Following the Court's Preliminary Approval Order, notice of the material terms of this Agreement and the settlement described herein shall be sent to the Class Members by direct regular mail based on the records available to the Hospitals, and as set forth below.

b. The Settling Parties will request the Court to determine that the proposed procedures for notice set forth below are in compliance with Florida Rule of Civil Procedure 1.220 and the putative Class Members' due process rights.

c. The Settlement Administrator shall be responsible for printing and mailing the Class Notice to all putative Class Members, as directed and approved by the Court in its

Preliminary Approval Order, and in the form attached hereto as **Exhibit A**.

d. Within thirty (30) days after the Court's Preliminary Approval Order, the Hospitals shall transmit to the Settlement Administrator an updated database containing the last known contact information for all putative Class Members, including names and addresses (to the extent reasonably available in database format) (the "Class List"). The Settlement Administrator shall maintain the confidentiality of the Class List, and shall undertake best efforts to verify and update the Class List by cross-referencing the Class List against the United States Post Office National Change of Address Database.

e. Within 15 days after receiving the Class List in accordance with paragraph 6.d, or as soon as reasonably practicable thereafter, the Settlement Administrator shall mail, via regular United States mail, the Class Notice to the putative Class Members. The Class Notice shall provide information regarding the definitions of the Settlement Class and putative Class Members' objection rights and opt-out rights. The Class Notice will further direct putative Class Members to contact Class Counsel or the Settlement Administrator if they have any questions regarding the Settlement.

f. Non-Deliverable Class Notices. If any Class Notices are returned as non-deliverable, and a forwarding address is provided, the Settlement Administrator shall re-mail the Class Notice to the forwarding address within five (5) business days. If any Class Notices are returned as non-deliverable, and no forwarding address is provided, the Settlement Administrator shall have no further obligation to locate a valid address for any affected putative Class Member, and that putative Class Member shall be deemed excluded and opted-out from the Agreement and the Settlement Class.

g. Declaration of Due Diligence in Providing Notice. At least one week prior to the filing of Plaintiffs' Final Approval Motion, or as requested by the Settling Parties, the Settlement Administrator shall provide counsel for the Settling Parties with a declaration setting forth: (a) due diligence and proof of mailing of the Class Notices; (b) the total number of putative Class Members who were sent Class Notices; and (c) the total number of putative Class Members who submitted timely requests for exclusion or objections to this Agreement and/or the settlement described herein, along with the complete copies of all requests for exclusion and objections received, including the postmark dates for each request for exclusion or objection. Class Counsel shall file the declaration with the Court prior to the Final Approval Hearing.

7. **OPT-OUTS AND OBJECTIONS**

a. Requests for Exclusion: The Class Notice shall provide that putative Class Members who wish to exclude themselves from the Settlement Class must submit a written statement requesting exclusion (or "opt-out"), postmarked no later than the Opt-Out Deadline. Such written request for exclusion must state the case name (*Bauer v. St. Joseph's Hospital, et al.*), contain the name and address of the putative Class Member requesting exclusion, and be personally signed by the putative Class Member who seeks to opt out. No opt-out request may be made on behalf of a group of putative Class Members. The opt-out request must be sent by mail to the Settlement Administrator and must be timely postmarked on or before the Opt-Out Deadline. The U.S. Mail postmark date of the mailing envelope shall be the exclusive means used to determine whether an opt-out has been timely submitted. The Settlement Administrator shall provide the Settling Parties with copies of all opt-out requests on a weekly basis. Any putative Class Member who requests exclusion from (*i.e.*, opts out of) the Settlement Class will not be entitled to any Settlement Payment, will not be bound by this Agreement or the settlement, and will not have any

right to object, appeal or comment thereon.

b. Objections: The Class Notice shall provide that any putative Class Member who wishes to object to the Settlement Agreement must file a written statement of objection with the Clerk of Court, and mail such objection (with the requisite postmark) to Class Counsel and the Hospital's counsel no later than the Objection Deadline. The Notice of Objection must include: (a) the case name and number; (b) the factual and legal basis for the objection; (c) the objector's name, address, telephone number, and, if represented, the same contact information of the objector's counsel; (d) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel; and (e) the objector's personal signature. The U.S. Mail postmark date of the mailing envelope shall be the exclusive means used to determine whether an objection has been timely submitted. Class Members who fail to make objections in the time and manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Agreement, the settlement described herein, the Preliminary Approval Order, the Final Order and Judgment, or any other order of the Court relating thereto.

8. **PRELIMINARY APPROVAL**

a. Preliminary Approval Motion. After good faith consultation with counsel for the Hospitals, Class Counsel will present a Preliminary Approval Motion to the Court as soon as practical. The Preliminary Approval Motion shall include the Settling Parties' proposed Class Notice (in substantially similar form as Exhibit A), and Preliminary Approval Order (in substantially similar form as Exhibit B). The Settling Parties shall, in good faith, take reasonable steps to secure expeditious entry by the Court of the Preliminary Approval Order and shall request that the Court schedule a Final Approval Hearing within a reasonable period after the Preliminary

Approval Date.

b. Entry of Preliminary Approval Order. Class Counsel shall request the Court to enter a Preliminary Approval Order in substantially similar form as Exhibit B, which shall, among other things, comply with the requirements set forth in paragraph 3.c.iii, and:

i. Certify for purposes of settlement only the Settlement Class, approving Douglas Bauer as class representative, and appointing Class Counsel as counsel for the Settlement Class pursuant to Florida Rule of Civil Procedure 1.220;

ii. Preliminarily approve the Agreement and settlement as fair, reasonable and adequate such that a presumption of fairness is appropriate;

iii. Order the issuance of Class Notice to the putative Class Members, and determine that Class Notice complies with all legal requirements, including, but not limited to Rule 1.220 and the Due Process Clause of the United States Constitution;

iv. Schedule a date and time for a Final Approval Hearing after the Order preliminarily approving the Settlement Agreement to determine whether the Agreement and settlement should be finally approved by the Court;

v. Require putative Class Members who wish to exclude themselves from the Settlement to submit an appropriate and timely written request for exclusion by the Opt-Out Deadline, as directed in the Settlement Agreement and Class Notice, and advise that putative Class Members who fail to do so shall remain Class Members and be bound by the Agreement, the settlement described herein, the Class Release set forth in paragraph 11.a, and all orders of the Court relating thereto.

vi. Require putative Class Members who wish to object to the Settlement Agreement to submit an appropriate and timely written statement by the Objection

Deadline, as directed in the Agreement and Class Notice, and advise that a failure to do so shall prevent those Class Members from objecting to the Settlement;

vii. Preliminarily bar and enjoin each and every Class Member (excluding those Class Members who submit a timely and valid request to opt-out) from bringing or joining in any action against the Hospitals asserting a Released Claim;

viii. Require attorneys representing any Class Member, at the Class Member's expense, to file a notice of appearance;

ix. Authorize the Settling Parties to take all necessary and appropriate steps to establish the means necessary to implement the Agreement; and

x. Issue related orders to effectuate the preliminary approval of the Agreement and the settlement described herein.

9. **FINAL APPROVAL**

a. **Final Approval Motion.** At least 15 days before the Final Approval Hearing, or on the date set by the Court (if different), Plaintiffs shall file a motion requesting that the Court grant final approval of the Agreement and settlement, with Class Counsel filing a memorandum of law in support of the motion and addressing any Class Member's timely submitted objections to same.

b. **Matters to Be Considered at Final Approval Hearing.** At the Final Approval Hearing, the Court will consider and determine whether the Agreement and settlement is fair, reasonable and adequate, whether the Settlement Class should be finally certified for settlement purposes only, whether the notice provided to Class Members constitutes the best notice practicable and satisfies Rule 1.220 and due process, whether any objections to the Agreement or settlement should be overruled, whether the claims for Class Counsel's attorneys' fees and expenses,

Settlement Administrator's fees and expenses, and the Plaintiff's service or incentive award should be approved, and whether a final judgment approving the Agreement and Settlement should be entered.

c. Entry of Final Approval Order and Judgment. This Agreement is subject to and expressly conditioned upon the issuance by the Court of a Final Approval Order and Judgment, in substantially similar form as "**Exhibit C,**" which shall, among other things, comply with the requirements of paragraph 3.d, and:

i. Find that (a) the Court has personal jurisdiction over all Class Members; (b) the Court has subject matter jurisdiction over the claims asserted in this Action; and (c) venue is proper;

ii. Finally approve the Agreement and settlement, pursuant to Rule 1.220(e) as fair, reasonable, and adequate, and that each Class Member (excluding putative Class Members who submitted a timely and valid exclusion request) shall be bound by this Agreement;

iii. Finally certify the Settlement Class for settlement purposes only;

iv. Find that the form and means of disseminating notice of the Settlement to Class Members satisfied the requirements of due process and Rule 1.220;

v. Enter final judgment with respect to the claims of all Class Members, without prejudice to any and all putative Class Members who submitted a timely and valid exclusion request;

vi. Makes the Class Release in Section 11 of this Agreement effective as of the date of the Final Approval Order and Judgment;

vii. Permanently bar and enjoin Plaintiff and each and every Class Member (excluding those putative Class Members who submitted a timely and valid exclusion

request) from bringing or joining in (as class members or otherwise) any action asserting the Released Claims;

viii. Find that, by operation of the entry of the Final Approval Order and Judgment, Plaintiff and all Class Members shall be deemed to have forever released, relinquished, and discharged the Released Persons from any and all Released Claims, including all claims arising out of, relating to, or in connection with the initiation, settlement, prosecution, or dismissal of the Action;

ix. Authorize the Settling Parties to implement the terms of the Agreement;

x. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Approval Order and Judgment, and for any other necessary purpose; and

xi. Issue related orders to effectuate and implement the final approval of the Agreement.

10. **TERMINATION OF AGREEMENT.** The Hospitals shall have the right to unilaterally terminate this Agreement by providing written notice of their election to do so to Class Counsel within ten (10) days of: (a) the Court's final refusal to grant preliminary approval of this Agreement; (b) the Court's final refusal to grant final approval of this Agreement; (c) the date upon which the Final Approval Order is modified or reversed in any material respect by the Court or any court of appellate jurisdiction; or (d) the date upon which the Court enters any order, including, but not limited to, a preliminary approval order or final approval order, that differs in any material respect from the terms or conditions contemplated in this Settlement Agreement.

11. **RELEASE OF CLAIMS**

a. Class Release. Subject to the approval of the Court and in consideration of the benefits inuring to the Plaintiff and the Class Members hereto, upon the Effective Date, the Plaintiff and each Class Member and his or her assigns, heirs, successors and personal representatives shall be deemed to have fully, conclusively, irrevocably, forever, and finally released, resolved, relinquished, and discharged each and all of the Released Parties from each of the Released Claims that exist in their favor. The Plaintiff and Class Members further agree that they will not institute any action or cause of action (in law, in equity, or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have in state or federal court, or with any state, federal or local government agency or with any administrative or advisory body, asserting the Released Claims. These Released Claims shall include but not be limited to, all claims of any kind which Plaintiff or the Class Members have had or now have, which were or could have been raised in the Action related to any of the Released Parties' conduct, policies, or practices concerning medical billing by the Hospitals for unpaid balances of the portion of the Hospitals' charges that were covered and paid by PIP insurance in excess of the amounts identified in Section 627.736(5)(a)1.b and 4., Florida Statutes including but not limited to, conduct, policies, or practices concerning the billing or collection of the same.

b. Without in any way limiting its scope, the Class Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, or any other fees, costs, or disbursements incurred by Class Counsel, the Plaintiff, or any Class Members in connection with or related in any manner to this Action, the settlement of this Action, the administration of the settlement, or the Released Claims, except to the extent otherwise specified in the Agreement.

c. The Plaintiff recognizes, and each Class Member will be deemed to recognize, that, even if they may later discover facts in addition to or different from those which they now know or believe to be true, they nevertheless agree that, upon entry of the Final Approval Order and Judgment, they fully, finally, and forever settle and release any and all claims covered by this Class Release. The Settling Parties acknowledge that the foregoing Class Release was bargained for and is a material element of the Agreement.

12. **MISCELLANEOUS**

a. **No Admission of Liability.** By entering into this Agreement, the Hospitals do not make and shall not be deemed to have made any admission of liability or wrongdoing.

b. **Acknowledgment.** Each of the Settling Parties acknowledges and represents that they: (i) fully and carefully read this Agreement prior to execution; (ii) were fully apprised by counsel of the legal effect and meaning of the terms of this Agreement; (iii) had the opportunity to undertake whatever investigation or inquiry is necessary or appropriate in connection with this Agreement; (iv) were afforded the opportunity to negotiate any and all terms of this Agreement; and (v) are executing this Agreement voluntarily and free from any undue influence, coercion, or duress of any kind.

c. **Agreement to Cooperate.** The Settling Parties and their respective counsel will cooperate with each other and use their best efforts to affect the implementation of the Agreement.

d. **Authority.** Each person executing this Agreement on behalf of any of the Settling Parties represents that such person has the authority to execute this Agreement.

e. **Binding Upon Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.

f. Construction. The Settling Parties believe that the terms of this Agreement are a fair, adequate and reasonable settlement of this Action, and have arrived at this Agreement through arms-length and extensive negotiations and with the assistance of a neutral and licensed mediator, taking into account all relevant factors, present and potential. This Agreement has been drafted jointly by counsel for the Settling Parties. Hence, in any construction or interpretation of this Agreement, the same shall not be construed against any of the Settling Parties.

g. Counterparts. This Agreement may be executed in one or more counterparts. All executed copies of this Agreement and photocopies thereof (including facsimile, electronic signatures, and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

h. Entire Agreement. This Agreement constitutes the entire fully-integrated agreement among the Parties relating to the Settlement. All prior or contemporaneous agreements, understandings and statements, whether oral or written, and whether by a party or its counsel, are merged herein. No oral or written representations, warranties or inducements of any kind have been made to any Party concerning this Agreement, other than as set forth herein.

i. Governing Law. This Agreement shall be governed by the laws of the State of Florida. All time periods and deadlines established by this Agreement shall be calculated in compliance with the version of Florida Rule of Judicial Administration 2.514 in effect on the date that this Agreement is fully signed by all Settling Parties.

j. Headings and Captions. The headings and captions in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any term of this Agreement. Each term of this Agreement is contractual and is not merely a recital.

k. No Oral Modifications. This Agreement may be amended or modified only by a written instrument signed by counsel for both Parties or their successors-in-interest. No rights hereunder may be waived except in writing. No oral amendment or modification shall be permitted or effective.

l. Notices. Unless otherwise agreed in writing, all notices to the Settling Parties or counsel required by the Agreement shall be made in writing and communicated by first class mail and email to the following:

If to the Named Plaintiffs or Class Counsel:

JEEVES LAW GROUP, P.A.

Scott R. Jeeves, Esquire
954 1st Avenue North
St. Petersburg, FL 33705
Telephone: (727) 894-2929
Fax: (727) 822-1499
Primary: sjeeves@jeeveslawgroup.com
Secondary: khill@jeeveslawgroup.com

and

CRAIG E. ROTHBURD, P.A.

Craig E. Rothburd, Esq.
320 W. Kennedy Blvd., Suite 700
Tampa, FL 33606-1459
Telephone: (813) 251-8800
Fax: (813) 251-5042
Primary: craig@rothburdpa.com
Secondary: maria@rothburdpa.com

If to the Hospitals or the Hospitals' Counsel:

MACFARLANE FERGUSON & MCMULLEN, P.A.

Brian J. Aungst, Esquire
Primary: bj@macfar.com
Secondary: vas2@macfar.com
Scott W. Vieth, Esquire
Primary: swv@macar.com
Secondary: vas2@macfar.com
625 Court Street

Suite 200
Clearwater, FL 33756
Telephone: (727) 441-8966
Fax: (727) 442-8470

m. Retention of Jurisdiction. The Court will retain jurisdiction to interpret, implement, and enforce this Agreement and all orders contemplated herein. The Parties consent to the Court's jurisdiction for this purpose.

n. Attorneys' Fees and Costs. If any of the Settling Parties or Class Member files an appellate proceeding, or seeks enforcement of this Agreement or execution of the Final Approval Order and Judgment, or pursues a claim for breach of this Agreement, or initiates any other post-judgment litigation concerning this Agreement or the Final Approval Order and Judgment, the prevailing party shall be entitled to recover from the nonprevailing party an award of reasonable attorneys' fees and costs, which award shall include attorneys' fees and costs incurred in any disputes concerning the determination of entitlement to and/or the amount of such attorneys' fees and costs, and the non-moving party reserves any and all defenses to such claims.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

The Hospitals

By: Lynda Gorkem
Title VP, PFS

Date: 2/16/21


The Plaintiff

DocuSigned by:

Douglas Bauer

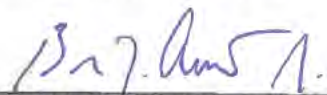
APPROVED AS TO FORM AND CONTENT:

FOR PLAINTIFFS



CRAIG E. ROTHBURD, P.A.
Craig E. Rothburd, Esq.

FOR THE HOSPITALS



**MACFARLANE FERGUSON
& MCMULLEN, P.A.**
Brian J. Aungst, Esquire