

# **EXHIBIT 4**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

DONNA GARBACCIO,	)	
	)	
Plaintiff,	)	Civil No. 2:16-cv-02740(JMV)(JBC)
	)	
vs.	)	
	)	
ST. JOSEPH’S HOSPITAL AND	)	
MEDICAL CENTER AND	)	
SUBSIDIARIES, et al.,	)	
	)	
Defendants.	)	
	)	

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**[PROPOSED] ORDER AND FINAL JUDGMENT**

This consolidated litigation<sup>1</sup> involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, et seq. (“ERISA”), with respect to the St. Joseph’s Healthcare System Pension Plan.<sup>2</sup>

The Court previously entered an Order Preliminarily Approving the Class Action Settlement Agreement (“Preliminary Approval Order”) dated \_\_\_\_\_,

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<sup>1</sup> The Court consolidated the instant *Garbaccio* action with a related action captioned *Barker v. St. Joseph’s Healthcare System, Inc.*, No. 2:16-cv-02748 (D.N.J.), and subsequently terminated the *Barker* action.

<sup>2</sup> This Judgment incorporates by reference the definitions in the Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”), and all terms used herein shall have the same meanings as set forth in the Settlement Agreement unless set forth differently herein. The terms of the Settlement are fully incorporated in this Judgment as if set forth fully here.

2017, preliminarily approving the Settlement, certifying the putative class in this action for settlement purposes, ordering a Class Notice to be mailed and published on the internet, scheduling a Fairness Hearing for \_\_\_\_\_, 2017, at \_\_\_\_\_ .m., and providing those persons with an opportunity to object to the proposed settlement. This Court held a Fairness Hearing on \_\_\_\_\_, 2017, at \_\_\_\_\_ .m., to determine whether to give final approval to the proposed settlement. Due and adequate notice having been given to the Settlement Class as required in the Order, and the Court having considered the Settlement Agreement, all papers filed and proceedings held herein, and good cause appearing therefore,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. The Court has jurisdiction over the subject matter of this action and all Parties to the action, including all members of the Settlement Class.

2. On \_\_\_\_\_, 2017, pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(1) and/or (2), and 23(e), the Court preliminarily certified the following Settlement Class:

All present and former participants (vested or nonvested) or beneficiaries of the St. Joseph's Healthcare System Pension Plan as of the Effective Date of Settlement.

3. The Court finds that the Settlement Class meets all requirements of Federal Rule of Civil Procedure 23(a) for certification of the class claims alleged in

the Complaint, including (a) numerosity; (b) commonality; (c) typicality; and (d) adequacy of the Class Representatives and Class Counsel.

4. Additionally, the prerequisites of Rule 23(b)(1) have been satisfied, since the prosecution of separate actions by individual members of the Settlement Class would create a risk of (a) inconsistent or varying adjudication which would establish incompatible standards of conduct for Defendants; and (b) adjudications with respect to individual Settlement Class members, which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

5. Alternatively, the prerequisites of Rule 23(b)(2) have been satisfied, since Defendants have acted or refused to act on grounds generally applicable to the Settlement Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Settlement Class as a whole.

6. Pursuant to Federal Rule of Civil Procedure 23(a) the Court finds that Named Plaintiffs Donna Garbaccio, Mary Lynne Barker, Anne Marie Dalio, and Dorothy Flar are members of the Settlement Class, their claims are typical of those of the Settlement Class, and they fairly and adequately protected the interests of the Settlement Class throughout the proceedings in this Action. Accordingly, the

Court hereby appoints Donna Garbaccio, Mary Lynne Barker, Anne Marie Dalio, and Dorothy Flar as Class Representatives.

7. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1), the Court finds that Class Counsel has fairly and adequately represented the Settlement Class for purposes of entering into and implementing the Settlement, and thus, hereby appoints Cohen Milstein Sellers & Toll PLLC and Keller Rohrback, L.L.P. as Class Counsel to represent the members of the Settlement Class.

8. The appointment of Class Counsel and the appointment of Named Plaintiffs as Class Representatives are fully and finally confirmed.

9. Class Counsel is hereby awarded attorneys' fees pursuant to Federal Rule of Civil Procedure 23(h), in the amount of \$\_\_\_\_\_ which the Court finds to be fair and reasonable, and \$\_\_\_\_\_ in reimbursement of Class Counsel's reasonable expenses incurred in prosecuting the Action. Defendants shall pay such amount to Class Counsel pursuant to the timing requirements in accordance with the terms of the Settlement Agreement.

10. Class Counsel has moved for \$\_\_\_\_\_ incentive awards for Named Plaintiffs Donna Garbaccio, Mary Lynne Barker, Anne Marie Dalio, and Dorothy Flar (collectively "Named Plaintiffs"). The Court hereby [grants in the amount of \$ \_\_\_\_\_] [denies] Class Counsel's motion for incentive awards. Class Counsel

shall pay such amount to Named Plaintiffs in accordance with the terms of the Settlement Agreement.

11. The Court directed that Class Notice be given pursuant to the notice program proposed by the Parties and approved by the Court. In accordance with the Court's Preliminary Approval Order and the Court-appointed notice program: (a) On or about \_\_\_\_\_, 2017, Class Counsel posted the Settlement Agreement and Class Notice on a the firms' websites; and (b) On or about \_\_\_\_\_, 2017, Class Counsel caused to be mailed approximately \_\_\_\_\_ copies of the Notice of Class Action Settlement to members of the Settlement Class.

12. The Class Notice and Internet/Publication of Class Notice (collectively, the "Class Notice") advised members of the Settlement Class of the: (a) terms of the Settlement; (b) Final Fairness Hearing and the right to appear at such Final Fairness Hearing; (c) inability to opt out of the Settlement Class; (d) right to object to the Settlement, including the right to object to the Settlement or the application for an award of attorneys' fees and reimbursement of expenses, or the incentive awards to Donna Garbaccio, Mary Lynne Barker, Anne Marie Dalio, and Dorothy Flar as Class Representatives; (e) the procedures for exercising the foregoing rights; and (f) the binding effect of this Judgment, whether favorable or unfavorable, to the Settlement Class, including the scope of the Released Claims described in the Settlement Agreement.

13. The Class Notice met all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, the United States Constitution, 28 U.S.C. § 1715, and any other applicable law. The Court further finds that Notice in the form approved by the Court complied fully with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”), and that it constituted the best practicable notice under the circumstances. The Court further finds that Defendants complied fully with the provisions of CAFA. The Court further finds that the form of Class Notice was concise, clear, and in plain, easily understood language, and was reasonably calculated under the circumstances to apprise of: (a) the pendency of the Consolidated Action; (b) the claims, issues and defenses of the Settlement Class; (c) the definition of the certified Settlement Class; (d) the right to object to the proposed Settlement , including the right to object to the Settlement or the application for an award of attorneys’ fees and reimbursement of expenses, or the incentive awards to Donna Garbaccio, Mary Lynne Barker, Anne Marie Dalio, and Dorothy Flar as Class Representatives; (e) the right to appear at the Final Fairness Hearing, through counsel if desired; and (f) the binding effect of a judgment on members of the Settlement Class, including the scope of the Released Claims described in the Settlement Agreement.

14. The Court finds after a hearing and based upon all submissions of the Parties and interested persons that the Parties’ proposed Settlement is fair,

reasonable, and adequate. The Court also finds that the proposed Settlement is consistent with and in compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, and the United States Constitution, and other applicable law. In so finding, the Court has considered and found that:

A. The Settlement provides for significant monetary contributions to the Plan, as well as Plan administrative provisions which will enhance the retirement security of the members of the Settlement Class.

B. The terms and provisions of the Settlement were entered into by experienced counsel and only after extensive, arm's-length negotiations conducted in good faith and with the assistance of an experienced third party mediator, Mr. Robert Meyer, Esq. The Settlement is not the result of collusion.

C. Those negotiations were preceded by an extensive investigation into the factual and legal issues surrounding Plaintiff's claims, as well as informal discovery during the settlement negotiation process. The absence of formal discovery in this case in no way undermines the integrity of the Settlement given the extensive investigation that has occurred in the proceedings thus far.

D. Those proceedings gave Class Counsel the opportunity to adequately assess this case's strengths and weaknesses and thus to structure the

Settlement in a way that adequately accounts for those strengths and weaknesses.

Class Counsel was cognizant that there was no guarantee of success in this case.

E. Approval of the Settlement will result in substantial savings of time, money and effort for the Court and the Parties, and will further the interests of justice. Defendants denied and continue to deny Plaintiff's claims and allegations against them and raised various factual and legal arguments in support of their vigorous defenses in this Action.

15. All members of the Settlement Class are bound by this Judgment and by the terms of the Settlement, including the scope of the Released Claims described in Section 3 of the Settlement Agreement.

16. The Settlement, this Judgment, and/or the fact of the Settlement do not constitute any admission by any of the Parties of any liability, wrongdoing or violation of law, damages or lack thereof, or of the validity or invalidity of any claim or defense asserted in the Action. If the Settlement Agreement is not upheld on appeal, or is otherwise terminated for any reason, the Settlement and all negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission by a Party of any fact, matter, or position of law; all Parties shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

17. The Court hereby dismisses with prejudice the Action, Complaint and all Released Claims identified in Section 3 of the Settlement Agreement against each and all Releasees and without costs to any of the Parties as against the others.

18. "Releasees" shall mean St. Joseph's Healthcare System, all entities that are considered to be part of a single employer controlled group under Internal Revenue Code § 414, their employees, agents and directors, including any individuals and/or Defendants.

19. "Released Claims" shall mean Any and all claims, actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, expenses and costs under federal or state laws arising out of the allegations of the Complaint that were brought or could have been brought as of the date of the Settlement Agreement, including any current or prospective challenge to the "church plan" status of the Plan, whether or not such claims are accrued, whether already acquired or subsequently acquired, whether known or unknown, in law or equity, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim, or otherwise.

20. In connection with the Released Claims, as of the Effective Date of the Settlement Agreement, Named Plaintiffs, on behalf of themselves and on behalf of the Settlement Class, are deemed to have expressly waived and relinquished, to the fullest extent permitted by law and equity, the provisions,

rights and benefits of § 1542 of the California Civil Code, which provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

21. Released claims shall not include the release of any of the following:

- (a) Any rights or duties arising out of the Settlement Agreement, including the express warranties and covenants in the Settlement Agreement;
- (b) Individual state law claims for benefits pursuant to the Plan’s documents;
- (c) Claims related to any other plan that is merged, adopted or consolidated into the Plan after the execution date of the Term Sheet;
- (d) Any claim arising under ERISA with respect to any event occurring after (i) the Internal Revenue Service issues a written ruling that the Plan does not qualify as Church Plan; (ii) the sponsor(s) of the Plan elect to be covered by ERISA; (iii) a court of law issues a final, non-appealable ruling that the Plan is not Church Plan; (iv) the Roman Catholic Church claims no association with the Plan sponsor; (v) or an amendment to ERISA is enacted and becomes effective as a law of the United States eliminating the Church Plan exemption.

22. It is further ordered that, as of the Effective Date of the Settlement Agreement, Named Plaintiffs, on behalf of themselves and on behalf of the Settlement Class, absolutely and unconditionally release and forever discharge the Releasees from any and all Released Claims that Named Plaintiffs or the

Settlement Class have. The Settlement Class covenants and agrees: (a) not to file against any of the Releasees any claim based on, related to, or arising from any Released Claim; and (b) that the forgoing covenants and agreements shall be a complete defense to any such claim against any Releasee.

23. It is further ordered that as of the Effective Date of the Settlement Agreement, Defendants absolutely and unconditionally release and forever discharge the Named Plaintiffs, the Settlement Class and Class Counsel from any and all claims relating to the institution or prosecution of the Action.

24. The Court retains jurisdiction over the implementation, administration and enforcement of this Judgment and the Settlement, and all matters ancillary thereto.

25. The Court finds that no reason exists for delay in ordering final judgment, and the Clerk is hereby directed to enter this Judgment forthwith.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Hon. John Michael Vazquez, U.S.D.J.