IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MARISELA HERRERA and NICOLAS ACOSTA, individually and on behalf of others similarly situated,

Plaintiffs,

v.

CASE NO: 8:14–cv–2327–JSM–TBM

JFK MEDICAL CENTER LIMITED PARTNERSHIP d/b/a JFK MEDICAL CENTER; MEMORIAL HEALTHCARE GROUP INC., d/b/a MEMORIAL HOSPITAL JACKSONVILLE; and HCA MANAGEMENT SERVICES, L.P.,

Defendants.
/

ORDER

Plaintiffs moved for final approval of the parties' proposed settlement, pursuant to Fed. R. Civ. P. 23. (Dkt. 309). Defendants do not oppose the Motion. No objections to the settlement were filed. On December 13, 2018, the Court held a fairness hearing. No one objected to the settlement at the hearing. The Court determined that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23. Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. This Order of Final Approval and Judgment incorporates herein and makes a part hereof, the parties' Settlement Agreement, including all exhibits thereto. (Dkt. 302-1). Unless otherwise provided herein, the terms as defined in the Settlement Agreement shall have the same meanings for purposes of this Final Order and Judgment.

2. The Court has personal jurisdiction over the Class Representatives, Settlement

Class Members, and the Defendants for purposes of this settlement, and has subject matter jurisdiction to approve the Agreement.

3. By Order of August, 29 2018, the Court certified the following Settlement Class:

> Persons (1) who receive medical services in the emergency department of a Florida HCA-Affiliated Hospital, from the Effective Date of the Settlement through the end of the fourth year after the Effective Date of this Settlement, (2) whose Florida PIP Insurance pays for a portion of the medical services rendered by the Florida HCA-Affiliated Hospital, (3) who lack secondary insurance applicable to the medical services received from the Florida HCA-Affiliated Hospital or a personal injury settlement related to the accident that caused the Person to receive the applicable medical services, and (4) who have a remaining balance after their Florida PIP Insurance pays the Florida HCA-Affiliated Hospital.

The Settlement Class does not include the judge to whom this case is assigned, any member of the judge's immediate family, and the judge's staff and their immediate families.

4. The Court hereby confirms its preliminary certification of this Settlement Class for purposes of granting final approval to the parties' Settlement, finding that this class meets each of the factors in Fed. R. Civ. P. 23(a) and (b)(2).

5. The record shows that Class Notice has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order. Because the Class Settlement is being certified under Rule 23(b)(2) (and not Rule 23(b)(3)), the parties are not required to provide the right to "opt out" to Settlement Class Members, nor are the parties required to provide notice to Settlement Class Members. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *see also In re Allstate Ins. Co., 400 F.3d 505* (7th Cir. 2005) ("A Rule 23(b)(2) class action does not require giving class members notice of the suit and a chance to opt out of it and bring their own, individual suits; a Rule 23(b)(3) class action does.") Thus,

the Court finds because this is 23(b)(2) injunctive-relief only settlement that will not release class member damages claims (except for the Class Representatives), there is no requirement for notice. Nevertheless, the Court finds that the Class Notice provided to the Settlement Class (Dkt. 302-1, Exh. D, E) constitute reasonable and the best practicable notice, to all persons entitled to receive notice, and is reasonably calculated, under the circumstances, to adequately and sufficiently apprise Settlement Class Members of the terms of the Agreement, and Settlement Class Members' right to object to the Settlement Class and appear at the Fairness Hearing; and meets the requirements of due process and Rule 23.

6. Furthermore, the Court finds that notice under the Class Action Fairness Act was effectuated within the time required by 28 U.S.C. § 1715, and that ninety (90) days has passed without comment or objection from any governmental entity.

7. The Court preliminarily approved the proposed settlement by Order dated August 29, 2018 (Dkt. 303). After Class Notice, the Court conducted a final Fairness Hearing at which it considered all objections, along with the materials submitted by the parties in support of settlement approval.[1]

8. The Court finds that the designated Class Representatives are appropriate and adequate representatives of the Settlement Class. The Court has also considered all of the factors enumerated in Fed. R. Civ. P. 23(g) and finds that Class Counsel have fairly and adequately represented the interests of the Settlement Class.

9. Pursuant to Fed. R. Civ. P. 23(e) and having considered the factors relevant to settlement approval[2], the Court hereby **APPROVES** the Settlement set forth in the Settlement Agreement and finds that the Settlement and the Settlement Agreement are, in all respects, fair,

[1] No objections to the settlement were filed.
[2] *See, e.g., Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984).

reasonable and adequate, and in the best interest of the Settlement Class.

10. The parties are hereby directed to implement and consummate the Settlement according to the terms and provisions of the Agreement.

11. Upon the Effective Date of the Agreement, the Class Representatives, Class Counsel, the Settlement Class, and each Settlement Class Member, shall release and forever discharge the Released Claims (as defined in the Agreement)[3].

12. Without affecting the finality of this Final Order of Judgment in any way, the Court retains exclusive jurisdiction over: (a) implementation and enforcement of the Settlement Agreement until the final judgment contemplated hereby has become effective and each and every act agreed to be performed by the parties hereto pursuant to the Settlement Agreement have been performed; (b) any other action necessary to conclude the Settlement and to

[3] "Released Claims" means and includes: (A) With respect to the Settlement Class Members and their successors, heirs, assigns, agents, and attorneys, or anyone acting on their behalf, including in a representative or derivative capacity, acting in their capacity as such: Any and all claims or causes or causes of action, including unknown claims, under the laws of any jurisdiction, against Defendants and the Non-Defendant Florida HCA-Affiliated Hospitals – and each of their owners, predecessors, successors, parent companies, subsidiaries, divisions, joint ventures, attorneys, insurers, reinsurers, assigns, officers, directors, managers, employees, shareholders and any affiliates and related or affiliated entities — for injunctive relief and/or declaratory relief concerning the reasonableness of charges for medical services provided by Florida HCA-Affiliated Hospitals, which are or were either alleged in this Litigation or could or might have been alleged in this Litigation or any other proceedings; and (B) With respect to only the Named Plaintiffs, Marisela Herrera, and Nicolas Acosta, and their successors, heirs, assigns, agents, and attorneys, or anyone acting on their behalf, including in a representative or derivative capacity, acting in their capacity as such: Any and all claims, damages, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, costs, expenses, losses, or remedies of whatever kind or nature, known or unknown, whether foreseen or unforeseen, that were or could have been asserted in the Action including, without limitation, claims based on, arising out of, or related directly or indirectly to any of the allegations, transactions, facts, matters, or occurrences referenced in the complaints and amended complaints filed in the Action, including without limitation any and all claims for damages or other relief arising from or related to the reasonableness of the charges for medical services provided by Defendants to Marisela Herrera or Nicolas Acosta. For the avoidance of doubt, this Settlement does not release Defendants or any other party from any claims for damages that have been or may be brought on behalf of individuals other than Marisela Herrera or Nicolas Acosta. However, any such claims must be brought on an individual basis.

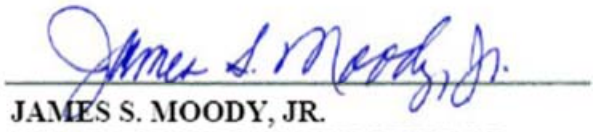
administer, effectuate, interpret and monitor compliance with the provisions of the Settlement Agreement; and (c) all parties to this Action and the Settlement Class Members for the purpose of implementing and enforcing the Settlement Agreement.

13. Nothing in this Order of Final Approval and Judgment, the Settlement, the Agreement, or any documents or statements related thereto, is or shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by any Defendant or any Non-Defendant HCA-Affiliated Florida Hospital.

14. For the reasons stated herein, the Motion for Final Approval of Class Action Settlement (Dkt. 309) is **GRANTED**. The Court directs the Clerk of Court to enter this final judgment incorporating the terms of this Order and dismissing this action with prejudice.

15. The Unopposed Motion for Attorney's Fees, Expenses, and Service Awards to the Class Representatives (Dkt. 310) is also **GRANTED**. At the Court's fairness hearing, Defendants stated that they did not object to the requested fees and expenses.

DONE and **ORDERED** in Tampa, Florida, this 13th day of December, 2018.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE