CAUSE NO. 2020-CI-18623

KENNETH KESLAR, II, individually and on behalf of all others similarly situated,	§	IN THE DISTRICT COURT
Plaintiff,	§	
vs.	§	
	§	BEXAR COUNTY, TEXAS
EMERUS / BHS SA THOUSAND OAKS, LLC d/b/a BAPTIST EMERGENCY HOSPITAL - SHAVANO PARK, EMERUS HOSPITAL PARTNERS, LLC, and EMERUS HOLDINGS, INC.,	§	
	§	73rd JUDICIAL DISTRICT
Defendants.	§	

PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF REQUESTS FOR ATTORNEYS' FEES, EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARD

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Kenneth Keslar II ("Plaintiff"), individually and on behalf of all others similarly situated (Plaintiff and the putative Class members are collectively referred to as the "Class"),[1] files this Motion for Final Approval of Class Action Settlement and Approval of Requests for Attorneys' Fees, Expenses and Class Representative Service Award ("Motion") pursuant to Rule 42 of the Texas Rules of Civil Procedure ("TRCP"). Emerus / BHS SA Thousand Oaks, LLC d/b/a Baptist Emergency Hospital - Shavano Park, Emerus Hospital Partners, LLC, and Emerus Holdings, Inc., ("Defendants"), do not oppose this motion or the relief requested.

I. INTRODUCTION

1. Plaintiff brought this Action on behalf of patients who went to a Baptist Neighborhood Hospital ("BNH") (formerly known as Baptist Emergency Hospital) between September 25, 2016 and January 27, 2023, and for whom certain laboratory panels were ordered and performed, and then received a bill for these panels *(i.e.*, the Class). Plaintiff alleges that Defendants provided insufficient disclosures regarding the cost of two in-house laboratory panels, namely, the BMP (includes CK) and LFT (includes Amylase) ("Current Panels") and the manner in which they were billed for these panels, which led to Plaintiff and other patients paying more than what was standard for similar laboratory panels. Defendants have denied all allegations of wrongdoing, negligence, fault, or liability.

2. After a substantial review of relevant documents, the taking of depositions, and numerous discussions between counsel, with substantial involvement of the Plaintiff and

[1] All capitalized terms not otherwise defined herein have the same meanings as in the Stipulation of Settlement dated January 27, 2023 ("Settlement Agreement") attached as Exh. A to the Raghavan Declaration filed with Plaintiff's Unopposed Motion For Preliminary Approval of Proposed Class Action Settlement and Approval of Notice to Class Members ("Preliminary Approval Motion").

Defendants (collectively, the "Parties"), the Parties reached a settlement to end this Action ("Settlement").

3. The Settlement is an extraordinary result for the Class in that it offers complete or near-complete monetary relief to every interested Class Member who submits a valid claim,[2] as well as nonmonetary benefits to the public at large so that no one else is affected by Defendants' complained-of practices. On February 17, 2023, the Court preliminarily approved the Settlement and the dissemination of Notice to Class Members informing them about this Settlement and their right to Opt Out or object to the Settlement, if they wanted to. Accordingly, Summary Notices were mailed out to each Class Member, and a website was set up to provide additional details about the Settlement and to host the long-form Notice.

4. Plaintiff now respectfully requests the Court to finally approve the Settlement pursuant to Rule 42(e) of the TRCP, approve Plaintiff's Counsel's request for fees, reimbursement of expenses, and a Class Representative Service Award.

II. FACTS

A. BACKGROUND

5. On December 31, 2018, Plaintiff visited the emergency department at Baptist Emergency Hospital – Shavano Park ("BEHSP") at which a doctor there ordered blood tests comprising of two laboratory panels: the "BMP (includes CK)" – a metabolic panel and the "LFT (includes amylase)" – a liver function panel. [3]

[2] Class Members eligible for a write-off of an outstanding balance pursuant to the Settlement do not even have to submit a claim form.

[3] First Amended Petition, ¶¶ 1-3.

6. Plaintiff had a health benefit plan through Blue Cross Blue Shield ("BCBS") and BEHSP was a participating provider in Plaintiff's health benefit plan's provider network (i.e., "in-network"). Plaintiff ensured he went to an in-network emergency department in order to contain costs.[4]

7. Nine months later, Plaintiff received a bill from BEHSP for his treatment. Over one half of the charges billed before insurance adjustments were for laboratory charges. The bill did not break down what portion was attributable to the laboratory panels.[5]

8. Plaintiff was shocked and promptly sought an explanation of the charges both from his insurer and BEHSP. He also tried to resolve the issue by, *inter alia*, requesting a coding review, submitting a written dispute to BEHSP after it denied his request for a coding review, and following up more than four times about his dispute.[6] After repeated inquiries, BEHSP finally responded through a letter on February 19, 2020 stating that the component tests in the ordered panel were billed individually, and not collectively as a panel.[7] Plaintiff also discovered that about 85% of the total laboratory charges before insurance adjustments was derived from the Current Panels that were ordered and performed.[8]

[4] First Amended Petition, ¶ 1.

[5] First Amended Petition, ¶¶ 2, 33.

[6] First Amended Petition, ¶¶ 35-39.

[7] *See* Declaration of Radha Nagamani Raghavan in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement and approval of Notice to Class Members filed concurrently with that motion (the "Raghavan Decl.") dated January 30, 2023, ¶ 2.

[8] First Amended Petition, ¶ 3.

9. Plaintiff and his wife then spent several hours on the phone with the hospital and their insurance company trying to understand further why the listed charges were so high for the two panels. They learned that the Current Panels were not billed using a single billing code (also called a Current Procedure Terminology ("CPT") code), like a panel is usually billed. Instead, each component test in the panels were unbundled and individually billed.[9] Plaintiff and his wife also spent several hours reviewing their bills and referring to the "Pricing Transparency Document" publicly posted on the Baptist Emergency Hospital website before concluding that Defendants' practice of billing increased costs to patients was misleading and deceptive.

BNH's Current Panels and their associated CPT Code Panels

10. A basic metabolic panel ("BMP") and a liver function test ("LFT"), are commonly ordered laboratory panels *viz.* a group of tests ordered and performed using a single blood specimen.[10] The standard versions of both these panels have billing codes or CPT codes that can be used to bill the panel as a whole (*i.e.,* a single code for the group of tests).[11] This is important because running tests and billing as "a panel" is typically less expensive as compared to each test in the panel being performed or billed individually. The reimbursement to a provider for a panel is typically lower than the total reimbursement for every test within the panel billed individually.[12]

11. The Current Panels performed in BNH's in-house laboratories use rapid test machines, manufactured by Abaxis Inc. ("Abaxis"), that use pre-configured cartridges (also

[9] The practice of "unbundling" of panels was identified as a type of health care fraud by the Office of the Attorney General for Texas. *See* First Amended Petition, ¶¶ 4-6.

[10] First Amended Petition, ¶¶ 7- 25.

[11] First Amended Petition, ¶¶ 25-29.

[12] First Amended Petition, ¶¶ 7.

manufactured by Abaxis) to run tests on a blood sample. Test results are available in a short amount of time, since the tests are performed on-site. These tests however do not have a single CPT code by which they could be billed, because they comprise of a group of tests that are slightly different from the group of tests included in a standard BMP or LFT panel that has an associated CPT code.[13] For example, the standard BMP Panel, billed collectively under CPT 80048, comprises of the following group of tests: (1) carbon dioxide (bicarbonate); (2) chloride; (3) creatinine; (4) glucose; (5) potassium; (6) sodium; (7) urea nitrogen (BUN); and (8) calcium, ionized. However, BNH's BMP (includes CK) panel comprises only of the first *seven* tests in the CPT 80048 BMP Panel, but has an additional test, creatine kinase (CK), which is not present in the CPT 80048 BMP Panel. Because of this slight difference in the components of the panel, the BMP (includes CK), even though performed as a "panel," cannot be billed as a panel because there is no CPT code for this exact configuration of component tests.

12. Defendants billed the Plaintiff each individual component test in the two Current Panels.[14] However, at no point in time during Plaintiff's visit to BEHSP did Defendants inform Plaintiff or his wife (who accompanied Plaintiff), either orally or through any intake paperwork, that the Current Panels would not be billed as panels, and would therefore end up costing more than a standard BMP or LFT panel with a CPT code that were each capable of being billed as a panel. Notably, even the "Pricing Transparency" document posted to BEHSP's website failed to disclose the chargemaster rates of the Current Panels, or that BEHSP would bill each component test in the panel separately.[15]

[13] *See* Raghavan Decl., ¶ 2.

[14] *Id.*

13. The BMP (includes CK) panel is the only type of basic metabolic panel that BNH offers in-house. Similarly, the LFT (includes Amylase) panel is the only type of liver function test that is offered in-house. In the event physicians deemed that the tests in a standard CPT Code Panel were more beneficial to the patient than the Current Panels and wanted to order those, Defendants' physicians would have had to send the tests to a laboratory outside of the hospital which would take much more time.[16]

14. Plaintiff has alleged that Defendants' choice of in-house panels and billing practice were misleading, deceptive and designed to increase payment. Defendants strongly deny this allegation, and contend that the choice of panels to run onsite at its facilities was based solely on medical considerations.[17]

B. FACTUAL AND PROCEDURAL HISTORY

15. On or about September 25, 2020, Plaintiff brought this litigation (the "Action") against Defendants in this Court.[18]

16. On November 11, 2020, Plaintiff sent written notice to the Defendants regarding the alleged violations of the Texas Deceptive Trade Practices Act ("DTPA") as contemplated under the statute's notice provision, § 17.505(a).[19]

[15] First Amended Petition, ¶¶ 48, 72-75.

[16] *See* Raghavan Decl., ¶ 19.

[17] First Amended Petition, ¶ 5.

[18] Raghavan Decl., ¶ 3.

[19] First Amended Petition, ¶ 84.

17. On December 30, 2020, Plaintiff filed the First Amended Class Action Petition (the "Petition"), alleging that amounts billed to him for the Current Panels and BNH's disclosures concerning the cost of the Current Panels violated common law and statutory duties under Texas law.[20]

18. On February 17, 2021, Plaintiff served his first set of document requests on all the Defendants.[21]

19. On March 1, 2021, Emerus/BHS SA Thousand Oaks LLC served its first set of interrogatories and first set of document requests on the Plaintiff.[22]

20. On July 16, 2021, Plaintiff served his first set of interrogatories and his second set of document requests on the Defendants.[23]

21. On November 12, 2021, Plaintiff served his first set of requests for admission, his second set of interrogatories, and third set of document requests on the Defendants.[24]

22. On January 7, 2022, Plaintiff served his fourth set of document requests and third set of interrogatories on the Defendants.[25]

[20] Raghavan Decl., ¶ 5.

[21] Raghavan Decl., ¶ 6.

[22] Raghavan Decl., ¶ 7.

[23] Raghavan Decl., ¶ 8.

[24] Raghavan Decl., ¶ 9.

[25] Raghavan Decl., ¶ 10.

23. On January 17, 2022, Plaintiff served his fifth and final set of document requests and fourth and final set of interrogatories on the Defendants.[26]

24. Throughout, the Parties met and conferred, by phone and in writing, about the adequacy of responses by each Party. In response to Plaintiff's document requests, Defendants produced more than 29,000 pages of documents. And in response to Defendants' document requests, Plaintiff produced more than 1,100 pages of documents.[27]

25. Further Plaintiff also served two third-party subpoenas on Blue Cross Blue Shield of Texas and Abaxis. Blue Cross Blue Shield of Texas responded to the subpoena, met and conferred with the Plaintiff to narrow document requests and provided information specific to Plaintiff's claims.[28]

26. In January 2022, Plaintiff took the depositions of Dr. Dan Middlebrook, owner and Chief Medical Officer of Emerus Holdings Inc., and Victor Schmerbeck, CEO of Emerus. Plaintiff had also scheduled three depositions and was in the process of scheduling six more depositions of Defendants' witnesses, including the Founding Partner and President, the Vice President of Revenue Cycle Operations, and the Chief Medical Information Officer of Emerus Holdings Inc. [29]

27. In February 2022, Defendants took the deposition of the Plaintiff and had scheduled the deposition of Plaintiff's wife.[30]

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[26] Raghavan Decl., ¶ 11.

[27] Raghavan Decl., ¶ 12.

[28] Raghavan Decl., ¶ 13.

[29] Raghavan Decl., ¶ 14.

[30] Raghavan Decl., ¶ 15.

28. In March 2022, the Parties decided to explore the possibility of a settlement, due to which all depositions scheduled by both Parties, but not yet taken, were put on hold.[31]

29. From March to September 2022, the Parties negotiated the substantive settlement terms and drew up a settlement term sheet, which would form the basis of the Settlement Agreement. After the term sheet was finalized, the Parties began negotiating Plaintiff's attorneys' fee and expenses. During this negotiation, Plaintiff's counsel provided Defendants with detailed lodestar information to support the fee request. The Parties' negotiations ultimately resulted in Defendants agreeing to pay, subject to this Court's approval, a total sum of $800,000 for both attorneys' fees and reimbursement of expenses. The Defendants also agreed to pay, if approved by the Court, a Class Representative Service Award up to $5,000. Once the fee and service awards were negotiated, the Parties began drafting the Settlement Agreement and its accompanying exhibits. All in all, it took approximately 10 months of intensive arm's-length negotiations to reach all of the terms of the Settlement.[32]

30. On January 27, 2023, the Parties signed the Settlement Agreement.[33]

31. On January 30, 2023, Plaintiff filed his Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement and Approval of Notice to Class Members

[31] Raghavan Decl., ¶ 16.

[32] Raghavan Decl., ¶ 17.

[33] Raghavan Decl., ¶ 18.

("Preliminary Approval Motion") and the Court entered its Preliminary Approval Order on February 17, 2023.[34]

III. SUMMARY OF THE SETTLEMENT TERMS

A. CLASS DEFINITION

32. If finally approved, the Settlement would apply to the following Class, certified by the Court for the purposes of Settlement:

> All patients treated at a facility operated by Baptist Neighborhood Hospital (formerly Baptist Emergency Hospital) between September 25, 2016 and January 27, 2023 for whom one or more of the Current Panels was ordered and performed, and the patient was billed some Patient Responsibility for, at least one of the Current Panels (the "Class").[35]

Excluded from the Class are Defendants and their respective parents, subsidiaries, representatives, officers, directors, partners, and co-ventures and on and after the exercise of opt out rights pursuant to Paragraph 8 of the Settlement Agreement, anyone who timely requested to be excluded from the Settlement.[36]

33. The Baptist Neighborhood Hospital facilities ("BNH Facilities") covered under the Settlement would include:

(i) Baptist Neighborhood Hospital Hausman, 8230 N 1604 W., San Antonio, TX 78249;

(ii) Baptist Neighborhood Hospital Kelly, 806 Cupples Rd, San Antonio, TX 78237;

(iii) Baptist Neighborhood Hospital Overlook, 25615 US-281, San Antonio, TX 78258;

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[34] *See* Declaration of Chet B. Waldman in Support of Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Requests for Attorneys' Fees, Expenses and Class Representative Service Award filed concurrently with this Motion (the "Waldman Decl."), ¶ 3.

[35] *See* Preliminary Approval Order, ¶ 1.

[36] *See* Preliminary Approval Order, ¶ 1.

(iv) Baptist Neighborhood Hospital Schertz, 16977 I-35 N., Schertz, TX 78154;

(v) Baptist Neighborhood Hospital Shavano Park, 4103 North Loop 1604 W., San Antonio, TX 78249;

(vi) Baptist Neighborhood Hospital Thousand Oaks, 16088 San Pedro Ave., San Antonio, TX 78232;

(vii) Baptist Neighborhood Hospital Westover Hills, 10811 Town Center Dr., San Antonio, TX 78251; and

(viii) Baptist Neighborhood Hospital Zarzamora, 7719 IH 35 S., San Antonio, TX 78224.[37]

B. MONETARY RELIEF TO THE CLASS

34. Eligible Class Members may obtain monetary benefits in two forms – refunds of payments made by the Class Member to Defendants or to a third party, such as a collection agency; or write-offs of any outstanding balance with Defendants or a collection agency. The amount of Refund or write-off (or forgiveness) is calculated based on the Panel Cost Difference, which is the difference between (i) the portion of the Patient Responsibility amount that is attributable to the cost of the respective Current Panels and (ii) the portion of Patient Responsibility amount that would have been attributable to the cost of the standard CPT Code Panels.[38]

35. The following example illustrates how the Panel Cost Difference could be calculated with respect to a BMP (includes CK) panel that was performed and billed to a patient covered by insurance:[39]

[37] Settlement Agreement, Appendix 1.

[38] Settlement Agreement, ¶ 2(b)(1).

[39] Settlement Agreement, ¶¶ 2(b)(2)-2(b)(3).

Panel Reimbursement Difference Calculation	**Amount**	**Notes**
(1) Approved Panel Reimbursement for BMP (includes CK)	$50	Hypothetical Figure
(2) Reimbursement for CPT no. 80048 Panel	$10	Hypothetical Figure
(3) Difference	$40	Equals (1) minus (2)
Patient Responsibility Percentage Calculation		
(4) Total Insurance Approved Charges	$100	Hypothetical Figure
(5) Total Charges Billed to Patient	$70	Hypothetical Figure
(6) Patient Responsibility Percentage	70%	Equals (5) divided by (4)
Panel Cost Difference	**$28**	Equals (3) times (6)

36. The following Class Members, although a part of the Class, will not be eligible for a Refund:[40]

- Class Members for whom reimbursement payable to BNH was determined pursuant to the terms of an agreement with or coverage provided by a Third-Party Payor specifying that BNH would be reimbursed for the Class Members' treatment at a case rate or per diem rate, without any separate or additional reimbursement for clinical laboratory testing;
- Cash-paying Class Members who opted to pay for their visit under Defendants' "prompt pay" option, which specifies a case rate for treatment that does not vary based on the number or types of clinical laboratory tests that are performed;
- Class Members whose treatment was covered by fee-for-service Medicare and Medicaid under fixed copay plans;[41] and
- Class Members whose Panel Cost Difference is less than $5.00.

[40] Settlement Agreement, ¶¶ 2(a) and 2(b)(4).

[41] This does not include Class Members covered by any *managed* Medicare or Medicaid plans that separately reimburse clinical laboratory testing performed by BNH and do not have fixed copays. Such Class Members remain eligible for Refunds. Settlement Agreement, ¶ 2(a).

37. Further, in order to be eligible for a Refund, Class Members have to timely remit a valid Claim Form to the Settlement Administrator.[42] For forgiveness of any outstanding amount (*i.e.*, a write-off), Class Members are not required to submit any Claim Form.[43]

38. Defendants will make Refunds within ninety (90) days from the Claim Submission Deadline (*viz.* September 18, 2023).[44] Defendants will forgive any eligible outstanding balance within thirty (30) days from the Effective Date of the Settlement.[45]

C. NONMONETARY RELIEF

39. The Settlement, if finally approved, will also provide the following important nonmonetary benefits:

Including CPT Code Panels as a Lab Test Option

40. No later than sixty (60) days after the Effective Date of the Settlement, Defendants will be required to include the CPT Code Panels as laboratory testing options in all of BNH Facilities' onsite point-of-care laboratories.[46]

Disclosure of Panel Test Options

41. Defendants will be required to include the following disclosure in all BNH Facilities' admission consent forms, within sixty (60) days from the Effective Date of the proposed Settlement:

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[42] Settlement Agreement, ¶ 2(e).

[43] Settlement Agreement, ¶ 3(d).

[44] Settlement Agreement, ¶¶ 7(d), 15, 16.

[45] Settlement Agreement, ¶ 3(b).

[46] Settlement Agreement, ¶ 4(a)

"Depending on your ER physician's medical judgment, he or she may order you a liver/pancreatic function panel or metabolic panel that can be run for a quick turnaround in our in-house laboratories. Based on the tests included in the panels, certain of those in-house panels could potentially be more expensive to you than other in-house alternatives. Please speak with your physician to determine what option is best for you.

For your information, the available in-house panel options are as follows:

In-House Panel Types	Potentially Less Expensive Options	Potentially More Expensive Options
Metabolic Function Panels	Basic Metabolic Panel (CPT code 80048)	BMP (includes CK)
Liver/Pancreatic Function Panels	Hepatic Function Panel (CPT code 80076)	LFT (includes Amylase)
Combined Panel	Comprehensive Metabolic Panel (CPT code 80053) (combines portions of the Basic Metabolic Panel and Hepatic Function Panel)	None

If any of these tests are required, your doctor will choose a panel for you based on his or her judgment as to what test is medically necessary. For many insured patients the doctor's choice of one panel over the other will result in no cost difference to you. For other patients there may be a difference in cost. If you have insurance coverage, we encourage you to contact your insurance provider to discuss patient payment obligations as defined under your insurance plan."[47]

Changes to pricing transparency file:

42. Defendants will be required to disclose the price of the Current Panels as the sum of its individual component tests in the Pricing Transparency document, available on its website, for all BNH Facilities, within sixty (60) days of the Effective Date of the Settlement.[48]

[47] Settlement Agreement, ¶ 4(b).

[48] Settlement Agreement, ¶ 4(c).

D. RELEASE OF CLAIMS

43. In exchange for the monetary and nonmonetary relief being provided by Defendants as discussed above, Class Members will release the right to bring their own, individual lawsuit against Defendants challenging (i) the billing of the Current Panels during the period between September 25, 2016 and January 27, 2023 that is the basis of this Action; and (ii) the pricing transparency and disclosure/non-disclosure concerning billing for the Current Panels.[49] Any claims related to Class Members' actual medical treatment will *not* be released.

IV. REQUEST FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARD

44. In litigating this Action, Plaintiff's Counsel invested significant time and effort over approximately three years. Plaintiff's Counsel requests an award of $800,000 in attorneys' fees and reimbursement of expenses; and an award of $5,000 to the Plaintiff as a Class Representative Service Award. Subject to this Court's approval, Defendants have agreed to pay Plaintiff's Counsel up to $800,000 in attorneys' fees and litigation expenses,[50] and up to $5,000 as a Class Representative Service Award, for Plaintiff's extensive time and effort invested in litigating this Action.[51] And to be clear, the payment of these amounts by Defendants to Plaintiff and Plaintiff's Counsel will not result in any diminution in value, whatsoever, to the monetary (or non-monetary) benefits being provided to Class Members.

45. Plaintiff's Counsel's ability to request these amounts of attorneys' fees, expenses, and service award was disclosed in the long-form Notice (available on the Settlement Website).[52]

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[49] Settlement Agreement, ¶ 23.

[50] Settlement Agreement, ¶ 12.

[51] Settlement Agreement, ¶ 13(a).

[52] *See also* Exh. A to Waldman Decl.

The Summary Notice that was sent to all Class Members directed them to the Settlement Website for more information regarding attorneys' fees, expenses and the service award. Class Members will also have the opportunity to review this Motion on the Settlement Website prior to the opt-out/objections deadline.

V. COST OF SETTLEMENT ADMINISTRATION

46. In addition to the relief obtained in the Settlement discussed above, Defendants have agreed to pay all Settlement Administration Costs including those associated with (i) the delivery of the Notice to the Class; (ii) the processing of Claim Forms submitted by Class Members; (iii) the calculation and payment of Settlement Distributions to Class Members; (iv) establishment, maintenance, and administration of any accounts established for purposes of receiving and making payments specified in this Settlement Agreement; (v) reasonable costs, fees, and expenses of the Settlement Administrator; (vi) sending out letters to Class Members who have timely submitted a Claim Submission Form but did so improperly allowing them a chance to fix the deficiency; (vii) establishing and maintaining a Settlement Website; and (viii) any other duties described under the Settlement Agreement or required by the Court.[53]

47. The payment of Settlement Administration Costs by Defendants will not result in any diminution in value, whatsoever, to the monetary (or non-monetary) benefits being provided to Class Members.

VI. IMPLEMENTATION OF THE NOTICE PLAN

[53] Settlement Agreement, ¶ 19.

48. On February 17, 2023, the Court preliminary approved the Settlement, approved the retention of RG/2 Administration LLC ("RG/2") as the Settlement Administrator and approved the content and form of the Summary and long-form Notices.[54]

49. On March 17, 2023, RG/2 mailed out postcard Summary Notices to Class Members advising them of the proposed Settlement, the last date to submit Claim Forms, the last date by which any objections to the Settlement or requests for Opt-Outs must be received and directing them to the Settlement Website for more information.[55] As of April 14, 2023, RG/2 has mailed out 64,088 copies of the Summary Notice.[56] On March 17, 2023, RG/2 also established the Settlement Website, www.baptistemergencyhospitalsettlement.com, which contains copies of the long-form Notice; the Claim Form; the First Amended Petition; the Settlement Agreement; the deadlines for Class Members to submit objections and requests to Opt Out from the Settlement; Plaintiff's Preliminary Approval Motion; the Preliminary Approval Order; and the Letter to the Court and Second Amended Notice of Hearing setting the date for final approval of the Settlement.[57] RG/2 also established a telephone number for Class Members to call and ask questions.[58]

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[54] *See* Order Preliminarily Certifying Class for Settlement Purposes, Granting Preliminary Approval, and Approving Class Notice dated February 17, 2023 ("Preliminary Approval Order").

[55] Waldman Decl., ¶ 4.

[56] *See* Exh. B to Waldman Decl (RG/2's Weekly Case Summary Report as of April 14, 2023).

[57] Waldman Decl., ¶ 4; A copy of the long-form Notice, as posted on the Settlement Website is annexed as Exh. A to Waldman Declaration.

[58] Waldman Decl., ¶ 4.

50. According to the notice plan approved by the Court on February 17, 2023, requests to Opt Out of the Settlement or objections to the Settlement must be received by the Settlement Administrator by April 24, 2023. As of April 14, 2023, the Settlement Administrator has received no Opt Outs or objections to the Settlement.[59]

51. Further, according to the Court's Preliminary Approval Order, Plaintiff will file the Settlement Administrator's Declaration by May 5, 2023 (*viz.* ten days prior to the Final Approval Hearing scheduled on May 15, 2023), confirming that Notice has been provided to Class Members and that the provisions of the Preliminary Approval Order have been complied with.[60]

VII. THE SETTLEMENT WARRANTS FINAL APPROVAL

52. TRCP Rule 42(e) requires court approval of a settlement and such an approval is within the sound discretion of the court.[61]

53. In considering whether to approve this Settlement, it is pertinent to recognize that the Texas courts have long established a strong judicial policy favoring settlement.[62] The reasons for this was articulated in *Fla. Trailer & Equip. Co. v. Deal*:[63]

> The probable outcome in the event of litigation, the relative advantages and disadvantages are, of course, relevant factors for evaluation. But the very uncertainties of outcome in litigation, as well as the avoidance of wasteful litigation

[59] Waldman Decl., ¶ 5. *See also*, Exh. B to Waldman Decl (RG/2's Weekly Case Summary Report as of April 14, 2023).

[60] *See* Preliminary Approval Order, ¶ 9(e).

[61] *Crouch v. Tenneco, Inc.*, 853 S.W.2d 643, 646 (Tex. App. – Waco 1993, writ denied).

[62] *Parker v. Anderson*, 667 F.2d 1204, 1209 (Tex. App. 1982); *Hall v. Pedernales Elec. Coop., Inc.*, 278 S.W.3d 536, 549 (Tex. App., 2009-- Austin 2009, no pet.). *See also Hernandez v. Telles*, 663 S.W.2d 91, 93 (Tex. App.--El Paso 1983, no writ) ("The law has always favored the resolution of controversies through compromise and settlement rather than through litigation").

[63] 284 F.2d 567, 571 (5th Cir. 1960).

> and expense, lay behind the Congressional infusion of a power to compromise. This is a recognition of the policy of the law generally to encourage settlements.

This policy has particularly been recognized as appropriate in complex litigation so that the expenses and uncertainties of the outcome of wasteful litigation may be avoided.[64]

54. The final approval or "fairness" hearing, is the point where "the trial court is charged with the responsibility of determining that the settlement is fair, adequate and reasonable…"[65] The fairness determination is guided by consideration of the following six factors: (1) whether the settlement was negotiated at arms' length or was a product of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings, including the status of discovery; (4) the factual and legal obstacles that could prevent the plaintiff from prevailing on the merits; (5) the possible range of recovery and the certainty of damages; (6) the respective opinions of the participants, including class counsel, class representatives, and the absent class members.[66]

A. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE

55. As discussed below, all these six factors favor the final approval of the proposed Settlement.

(i) <u>The Settlement Was Negotiated at Arm's Length</u>

56. First, Plaintiff and Defendants' counsel engaged in extensive arms-length negotiations to reach the proposed Settlement. After substantial discovery, the Parties commenced

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[64] *Cadle Co. v. Castle*, 913 S.W.2d 627, 638 (Tex. App., 1995-- Dallas 1995, writ denied).

[65] *Gen. Motors Corp v. Bloyed*, 916 S.W.2d 949, 955 (Tex. 1996).

[66] *Gen. Motors*, 916 S.W.2d at 955 (Tex. 1996). *See also Hall*, 278 S.W.3d at 548-49 (citing *Bloyed*, 916 S.W.2d at 955) ("The Texas Supreme Court has provided six factors that a trial court must take into account when determining whether a proposed class settlement is fair, adequate, and reasonable.").

negotiation of a settlement term sheet that would contain all the substantive terms of the Settlement approximately ten months ago. Based on this term sheet, the Settlement Agreement was negotiated and drafted. All Parties entered the negotiations, with full knowledge of the strengths and weaknesses of their respective claims and defenses. Prior to reaching the Settlement, Plaintiff, through his counsel, had conducted an extensive investigation, reviewed thousands of documents produced by Defendants, taken two depositions of key defense witnesses and had consulted with emergency medicine and medical billing experts regarding the merits of the case. Moreover, Plaintiff, himself, had been deposed and had produced numerous documents.

57. After negotiating the substantive terms of the Settlement and reaching an in-principle agreement to settle, the Parties negotiated Plaintiff's attorneys' fees and reimbursement of expenses. Plaintiff's counsel shared detailed lodestar information with Defendants' counsel during the process of fee negotiation. Accordingly, the Settlement was negotiated at arm's length and favors final approval.

(ii) The Complexity, Expense, and Likely Duration of the Litigation Favors Final Approval

58. The proposed Settlement reflects the inherent complexity, expense, and delays associated with this complex consumer class action. Given the risks of continued litigation and the time and expense that would be incurred to prosecute the case through trial and appeals, the Settlement is meaningful and, in the Class's best interests.

59. Here, the Defendants have expressly denied and continue to deny all charges of wrongdoing or liability arising out of any of the conduct, acts, or omissions alleged in this Action. Defendants have also denied and continue to deny that Plaintiff or Class Members have suffered damage or were otherwise harmed by the conduct alleged in this Action.

60. Though Plaintiff and Plaintiff's Counsel believe they could have succeeded in establishing their alleged claims, Plaintiff's Counsel are cognizant of the significant challenges inherent in consumer class litigation challenging the medical necessity of laboratory tests and the method of billing them. For example, one of the issues that would have been hotly contested by the Parties is the medical necessity of the Current Panels. According to the Defendants, the decision to offer using Current Panels in their on-site laboratories instead of the associated CPT Code Panels stemmed from a clinical judgment that the configuration of tests in the Current Panels were of greater value to treatment of patients in an emergency setting than the ones in the standard CPT Code Panels. And, if they wanted to, the physicians had the option of ordering the CPT Code Panels from an outside laboratory. On the other hand, Plaintiff's medical experts were of the opinion that the CPT Code Panels were more in-line with current emergency medicine best practices rather than the Current Panels and the option of sending out the CPT Code Panels would not provide best care to patients in an emergency setting because the turnaround time for these test results were much longer than if they were performed in-house.[67]

61. Further, Plaintiff's Counsel are also cognizant of the risks of getting a class certified in a consumer case in Texas state courts, and even if certified, the significant risks of decertification, evident through past precedents. Further even if Plaintiff prevailed at every stage before this Court, there is the very real possibility of multiple lengthy appeals before the Texas appellate courts, which would prolong the time before the Class receives the relief provided by the Settlement.

62. Moreover, it is highly unlikely that Plaintiff would have achieved a better result for the Class had he litigated the case through trial, as the jury could have arrived at a completely

[67] *See* Raghavan Decl., ¶ 24.

different formula resulting in a much lower amount of refunds or write-offs that Class Members would have been eligible for. Of course, if the Plaintiff was unsuccessful, there was always a risk of no recovery.

(iii) The Stage of the Proceedings, Including the Status of Discovery Favors Final Approval of the Settlement

63. As discussed above, at the time the Settlement was reached, Plaintiff's Counsel had already (i) reviewed the approximate 29,000 pages of documents that had been produced by the Defendants; (ii) deposed two of Defendants' key witnesses (the CEO and Chief Medical Officer of Emerus); (iii) defended Plaintiff's deposition; and (iv) consulted extensively with two experts (one in medical billing and the other in emergency medicine) on the merits of the case. The resultant accumulation of information permitted Plaintiff and Plaintiff's Counsel to knowledgeably evaluate the merits of their case, and the Settlement.

(iv) The Factual and Legal Obstacles That Could Prevent the Plaintiff From Prevailing on the Merits Favors Final Approval of the Settlement

64. While Plaintiff and his counsel believe that Plaintiff would have been successful in defeating any summary judgment motion made by Defendants and would be successful at trial, there was a risk that Defendants would be partially or fully successful at summary judgment or at trial in proving that their actions were neither misleading nor deceptive under the Texas DTPA or that they were not unjustly enriched. There was also a preliminary risk that Defendants would have been successful in arguing that the Class was not certifiable on grounds that common issues of law and fact did not exist or did not predominate over individual issues. Further, there was a risk that Defendants would be successful in proving that the Class was not damaged or that damages were significantly less than what was claimed, or that Defendants would appeal any unfavorable decisions.

(v) Attorneys' Fees, Expenses and the Class Representative Service Award Requested are Reasonable

65. Plaintiff's Counsel requests that they be reasonably compensated for their time and efforts in litigating this complex consumer class action and reimbursed reasonable expenses incurred during the course of this litigation. Accordingly, Plaintiff's Counsel request a sum of $800,000 towards attorneys' fees and reimbursement of expenses. Of note, the total fee and expense award requested ($800,000) is only 55% of Plaintiff's Counsel's total accrued lodestar of $1,403,848.50 and litigation expenses of $28,803.77 (representing a 0.55 *negative* multiplier).[68] Further, Plaintiff's Counsel seeks a Class Representative Service Award of $5,000 to be paid to the Plaintiff for his substantial efforts and key role in this litigation.

66. As mentioned earlier, all of these requests are unopposed by Defendants. In fact, the counsel's fee and expense award has been negotiated at arms-length with Defendants' Counsel, after providing Defendants' Counsel with Plaintiff's Counsel's detailed lodestar information. Moreover, as expressly stated in the long-form Notice, the fee and expense award and Class Representative Service Award will not reduce any payments made to Class Members under the Settlement.[69] Eligible Class Members who put in a valid claim for a refund will receive 100% of their damages.

a. Legal Standard for Award of Attorneys' Fees

67. TRCP Rule 42(h) provides that, "In an action certified as a class action, the court may award attorney fees in accordance with" a request that "must be made by motion" and "served on all parties and for motions by class counsel, directed to class members in a reasonable

[68] *See* paragraph 70 below for detailed calculation.

[69] *See* Exh A to Waldman Decl. (long-form Notice), Q. 19 and Q. 20.

manner."[70] Further, TRCP Rule 42(i) provides a specific directive regarding the manner in which the court must calculate an award of attorneys' fees:

> "(1) In awarding attorney fees, the court must first determine a lodestar figure by multiplying the number of hours reasonably worked times a reasonable hourly rate. The attorney fees award must be in the range of 25% to 400% of the lodestar figure. In making these determinations, the court must consider the factors specified in Rule 1.04(b), Tex. Disciplinary R. Prof. Conduct."

In *El Apple I Ltd. v. Olivas*, the Texas Supreme Court, described the lodestar method as follows:

> Under the lodestar method, the determination of what constitutes a reasonable attorney's fee involves two steps. First, the court must determine the reasonable hours spent by counsel in the case and a reasonable hourly rate for such work. The court then multiplies the number of such hours by the applicable rate, the product of which is the base fee or lodestar. The court may then adjust the base lodestar up or down (apply a multiplier), if relevant factors indicate an adjustment is necessary to reach a reasonable fee in the case." (citations omitted).[71]

68. This was affirmed by the Texas Supreme Court in *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, where the Court held that the award of attorney fees generally rests in the sound discretion of the trial court, but the party applying for an award of attorneys' fees under the lodestar method bears the burden to show proof of reasonable hours which would typically include "(1) particular services performed, (2) who performed those services, (3) approximately when the services were performed, (4) the reasonable amount of time required to perform the services, and (5) the reasonable hourly rate for each person performing such services."[72]

69. Further, the *Rohrmoos* Court noted that the eight non-exclusive factors identified in Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct, and also known as the *Arthur*

[70] Texas Rules of Civil Procedure, Rule 42(h).

[71] *El Apple I, Ltd. v. Olivas*, 370 S.W.3d 757, 760 (Tex. 2012).

[72] *Rohrmoos* Venture *v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 498 (Tex. 2019).

Andersen factors,[73] were also to be considered while determining the reasonableness of attorneys' fees:

> "(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
> (2) the likelihood . . . that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered." [74]

b. The Requested Attorneys' Fees are Reasonable

(1) The Requested Attorneys' Fees are Reasonable Under the Lodestar Method

70. Plaintiff's Counsel's lodestar is derived by multiplying the hours spent by each attorney and paralegal staff on this matter by their current hourly rates.[75] The rates used herein are the same rates Plaintiff's Counsel charges to, and gets paid by, paying, non-contingency clients. And, the rates used herein are comparable to the regular rates submitted by comparable firms for

[73] *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997).

[74] *See Rohrmoos*, 578 S.W.3d at 494.

[75] The 2,592-hour lodestar does not take into account the considerable number of future hours over the next several months that will be spent by Plaintiff's Counsel on administration matters, such as overseeing the processing of claims and the dissemination of payments to Class Members, and speaking with Class Members who call asking questions. Also, excluded from the lodestar calculation is time spent by law school interns and attorneys who spent less than 10 hours on this matter.

lodestar cross-checks in other class action fee applications.[76] The total number of hours spent by Plaintiff's Counsel, including the hours spent by each attorney, is 2,592 hours.[77] Applying the above formula, Plaintiff's Counsel's total lodestar amounts to $1,403,848.50. The amount of fee requested in this Motion is $800,000 (inclusive of expenses). Accordingly, the requested fee represents a negative multiplier of 0.55 of the total lodestar (net effective requested fee = $771,196.23 [$800,000 – $28,803.77 (expenses)]; lodestar multiplier = 0.55 [$771,196.23 / $1,403,848.50]), which is at the low end of the range of multipliers regularly awarded in class action cases like this one.[78] In addition, the reasonableness of the requested fee and the lodestar multiplier is further supported by the *Anderson* factors discussed below. Therefore, it is respectfully submitted that the requested fee is reasonable and should be granted.

(2) The Time And Labor Required, The Novelty And Difficulty Of The Questions Involved, And The Skill Required To Perform The Legal Service Properly

71. Through April 17, 2023, Plaintiff's Counsel spent 2,592 hours litigating this class action resulting in a lodestar of $1,403,848.50. These hours demonstrate that Plaintiff's Counsel devoted the necessary time and labor required to aggressively litigate the action for approximately three years by, among other things, (a) investigating potential claims against Defendants before

[76] *See In re Chesapeake Energy Corp.*, No. H-21-1215, 2021, U.S. Dist. LEXIS 158564, at *70 (S.D. Tex. Aug. 23, 2021) (finding counsels' rates ranging from $1,250 for an attorney to $125 for a paralegal to be reasonable in 2021); *Denman v. Jackson Nat'l Life Ins. Co.*, No. 4:16-CV-912-ALM, 2021 U.S. Dist. LEXIS 159103, at *6 (E.D. Tex. June 4, 2021) (finding counsels' average hourly rates between $290.09 and $951.22 to be reasonable in 2021).

[77] Waldman Decl., ¶ 10; Declaration of Philip H. Hilder Esq. in Support of Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Requests for Attorneys' Fees, Expenses and Class Representative Service Award filed concurrently with this Motion (the "Hilder Decl."), ¶ 5.

[78] *See El Apple*, 370 S.W.3d at 761 ("The attorney fees award must be in the range of 25% to 400% of the lodestar figure." *citing* Tex. R. Civ. P. 42(i)(1)).

sending out notices required by the Texas DTPA and filing the Petition and Amended Petition; (b) conducting substantial amount of discovery including (i) reviewing approximately 29,000 pages of documents that had been produced by the Defendants; (ii) reviewing documents received from Plaintiff and preparing them for production in response to Defendants' discovery requests (iii) deposing two key witnesses of Defendants (the CEO and Chief Medical Officer of Emerus); (iv) defending Plaintiff's deposition; (v) serving five sets of document requests, four sets of interrogatories and one set of requests for admission on Defendants; (vi) serving two third party subpoenas (one on Plaintiff's insurance company, Blue Cross Blue Shield and another on Abaxis, the manufacturer of the laboratory testing equipment); (vii) meeting and conferring with Defendants and third parties on the scope of production; (viii) retaining and consulting extensively with two experts (one in medical billing and the other in emergency medicine) on the merits of the case; (c) engaging in extensive settlement negotiations with Defendants that lasted over nine months and preparing the settlement term sheet; (d) negotiating and drafting appropriate documentation of the Settlement, including the Settlement Agreement and notice documents; (e) negotiating Plaintiff's attorneys' fees and expenses with Defendants including providing them with detailed time entries maintained by Plaintiff's Counsel; (f) presenting the Settlement and notice documents to the Court by way of a Preliminary Approval Motion, which the Court approved; and (g) overseeing the Settlement Administrator's execution of the notice plan under the Settlement Agreement.[79] Despite the extensive time dedicated to this litigation, Plaintiff's Counsel staffed the matter efficiently and avoided any unnecessary duplication of effort throughout.[80]

[79] Waldman Decl., ¶ 8.

[80] Waldman Decl., ¶ 12.

72. Further, as discussed in paragraph 60 above, this Action involved novel and complex issues, which were handled by a team of experienced Plaintiff's Counsel who had the skill to handle them appropriately. Class certification in this case was also going to be a risky and complex undertaking, requiring expensive expert analysis and testimony (*see* risks discussed at paragraph 61 supra).

(3) The Likelihood That the Acceptance of the Particular Employment Will Preclude Other Employment by the Lawyer

73. It was clear from the beginning, when the Plaintiff approached Plaintiff's Counsel, that an acceptance of this litigation would require Plaintiff's Counsel to invest a significant amount of time and labor into the matter, precluding them from working on other cases, including cases that would have been billed regularly on an hourly basis. That the opportunity cost of pursuing a class action with significant risks and complexity, against organizations represented by high quality counsel would be substantial, was apparent from the beginning.

(4) The Fee Customarily Charged in the Locality for Similar Legal Services and the Quality of Representation

74. Plaintiff's Counsel's Associate hourly rates range from $450-$575; the one Senior Partner and one Of Counsel who worked on the case have hourly rates of $950. These rates are reasonable for the New York Metropolitan area for this type of complex litigation requiring highly skilled and experienced lawyers to litigate successfully.[81] Moreover, Courts in Texas have recently approved the rates of Plaintiff's Counsel in another class action relating to health care billing.[82]

[81] *Accord In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 568-70 (7th Cir. 1992) (market factors best known by the negotiating parties themselves, should determine the quantum of attorneys' fees.).

[82] *See* Final Approval Order dated November 2, 2021 in *Kaur v. Envision Healthcare Corporation, et al.*, C.A. No. 4:19-cv-02480 (S. D. Tex., 2021) attached as Exh. C. to Waldman Decl., where the court approved Wolf Popper's (Plaintiff's Counsel) request for attorneys' fees in full, noting Wolf Popper's partner hourly rates of $895 and associate hourly rates ranging from $440 - $475 in 2021).

(5) The Amount Involved and the Results Obtained

75. The results achieved for the Settlement Class in this Action includes a full recovery of potential damages and excellent injunctive relief designed to provide as much information as possible to Class Members and the public at large about the Custom Panels. The Settlement is therefore a fantastic result for the Class. Indeed, the Settlement provides every Class Member who is eligible for a Refund and submits a valid claim form, 100% recovery of potential damages incurred and for Class Members who are eligible for a write-off, the Settlement provides 100% recovery of potential damages, *without* the need to submit a claim form even after the requested fee and Class Representative Award are granted in full (assuming they are). Moreover, the nonmonetary relief under the Settlement provides various forms of injunctive relief designed to prevent any damage to individuals who may receive services at the BNH Facilities in the future.

(6) The Time Limitations Imposed by the Client or by the Circumstances

76. Time limitations, always a factor in class action cases, were imposed by circumstances and by the efforts of the parties and the attorneys involved to research this very complex case, draft and file the lawsuit, conduct substantial discovery and then invest extensive efforts to arrive at a settlement of this complex and risky class action.

(7) The Nature and Length of the Professional Relationship with the Client

77. Plaintiff had no relationship with any of Plaintiff's Counsel prior to this Action.[83]

[83] *See* Waldman Dec., ¶ 20.

(8) The Experience, Reputation, and Ability of the Lawyer or Lawyers Performing the Services

78. Plaintiff's Counsel are highly skilled and experienced in litigating consumer class actions and their reputation and exceptional ability have been noted by numerous Courts.[84] Throughout this litigation, they have exerted a diligent and concentrated effort to secure the best recovery for the Class. This brief has already recounted, and will not repeat the various efforts undertaken by Counsel in the Action that have contributed to the excellent Class recovery. Suffice it to say, had Counsel not been highly skilled the Class may not have received such an exceptional outcome, given the complexities, difficulties, and size of individual claims in this case.

(9) Whether the Fee is Fixed or Contingent on Results Obtained or Uncertainty of Collection Before the Legal Services have been Rendered

79. This case was entirely contingent on results obtained from the outset. Plaintiff's Counsel placed their own financial resources at risk with no guarantee of success or compensation and faithfully and diligently represented the Class.[85]

80. Based on the above factors, Plaintiff's Counsel's request for a fee that is 45% less than their lodestar is very reasonable, given the extraordinary results achieved for the Class.

c. The Application for the Reimbursement of Expenses is Reasonable

81. As reflected in the table at paragraph 18 of the Waldman Declaration and paragraph 7 of the Hilder Declaration, Plaintiff's Counsel incurred $28,804 (rounded off) in litigation expenses through April 17, 2023. These expenses were incidental and necessary to the prosecution

[84] *See* Class Counsel's Firm Resume attached as Exh. D to Waldman Decl.

[85] *See* Waldman Dec., ¶ 7.

of this litigation.[86] Plaintiff's Counsel's request for an award of $800,000 includes both attorneys' fees and reimbursement of expenses.

d. The Application for a Class Representative Service Award is Reasonable

82. Plaintiff's Counsel respectfully requests a $5,000 award to Plaintiff for his services, and to compensate him for costs and expenses, including lost wages, incurred directly related to the representation of the Class. As discussed more fully in the Keslar Declaration,[87] Mr. Keslar estimates that he spent over 185 hours working with Plaintiff's Counsel on this matter including (among many other things) (i) investigating the case before contacting attorneys; (ii) communicating with Plaintiff's Counsel on various issues related to litigation and settlement strategy; (iii) reviewing and providing helpful comments and edits on drafts of documents (as well as astute critiques of Defendants' submissions); (iv) providing document discovery; (v) preparing for and sitting for a three-hour deposition; and (vi) reviewing and approving the proposed Settlement.[88] Moreover, before Plaintiff contacted Plaintiff's Counsel, he and his wife, Dr. Daniela Keslar, a medical professional who bills for her own patients, had already spent over 130

[86] *See DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 334 (W.D. Tex, 2007) citing *Miltland Raleigh-Durham v. Myers*, 840 F. Supp. 235, 239 (S.D.N.Y. 1993) (noting "[a]ttorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were incidental and necessary to representation of those clients") and *Texas State Teachers Ass'n v. San Antonio Indep. Sch. Dist.*, 584 F. Supp. 61, 66 (W.D. Tex. 1983) (awarding "all reasonable expenses incurred in case preparation [and] during the course of litigation").

[87] *See* Declaration of Kenneth Keslar II in Support of Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Requests for Attorneys' Fees, Expenses and Class Representative Service Award filed concurrently with this Motion (the "Keslar Decl.").

[88] *See* Keslar Decl., ¶ 15.

hours investigating their bill, including contacting Defendants and their insurance company several times.[89]

B. THE PREREQUISITIES FOR CLASS CERTIFICATION HAVE BEEN MET

83. A party seeking class certification must first demonstrate that a class action meets the following four requirements stated in TRCP Rule 42(a): (1) numerosity—the class is so numerous that joinder of all members is impracticable; (2) commonality—there are questions of law or fact common to the class; (3) typicality—the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) adequacy of representation—the representative parties will fairly and adequately protect the interests of the class.[90]

84. A class action must also satisfy at least one requirement of Rule 42(b). Here, the class action satisfies Rule 42(b)(3), which requires that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members" and that class treatment is "superior to other available methods for the fair and efficient adjudication of the controversy."[91]

85. This Court will likely be able to certify the proposed Class because the four requirements of Rule 42—numerosity, commonality, typicality, and adequacy—are met, as well as the requirements under Rule 42(b). Notably, the Court preliminarily certified the Class for settlement purposes in its Preliminary Approval Order holding that "the prerequisites for

[89] *See* Keslar Decl., ¶ 4.

[90] *Citizens Ins. Co. of America v. Daccach*, 217 S.W.3d 430, 438 (Tex. 2007) (citing Tex. R. Civ. P. 42(a)).

[91] *Daccach*, 217 S.W.3d at 438–39 (citing Tex. R. Civ. P. 42(b)(3)).

maintaining a class action under Rule 42(b)(3) of the [TRCP] have been preliminarily satisfied for the Class."[92]

(i) The Class Members Are Too Numerous To Be Joined

86. For numerosity, "[t]he test is whether joinder of all members is practicable in view of the size of the class and such factors as judicial economy, the nature of the action, geographical location of class members, and the likelihood that class members would be unable to prosecute individual lawsuits."[93] Here, the proposed Class is so numerous that joinder of all members is impracticable. The size of the Class is ascertainable from Defendants' records, which indicate that tens of thousands of patients were billed some patient responsibility amount for treatment that included one or more of the Current Panels at a BNH Facility between September 24, 2015 and February 7, 2022. Indeed, 64,088 copies of the Summary Notice have been directly mailed to prospective Class members by the Settlement Administrator to date.[94] Defendants do not contest numerosity.[95] The numerosity requirement is plainly met.

(ii) Common Questions of Law and Fact Exist

87. Rule 42(a)(2)'s requirement that "there are questions of law or fact common to the class" is also satisfied. The threshold for showing commonality "is not high." It is met when class members "have suffered the same injury" and "all of the class members' claims depend on a

[92] *See* Preliminary Approval Order, ¶ 5.

[93] *Graebel/Houston Movers, Inc. v. Chastain*, 26 S.W.3d 24, 32 (Tex. App.—Houston [1st Dist.] 2000, pet. dism'd w.o.j.).

[94] *See* Exh. B to Waldman Decl (RG/2's Weekly Case Summary Report as of April 14, 2023).

[95] *See* Raghavan Decl., ¶ 20

common issue of law or fact whose resolution will resolve an issue that is central to the validity of each one of the [] claims in one stroke."[96]

88. This Action raises numerous questions of law and fact common to the Class, including (i) whether Defendants' conduct violated the Texas DTPA; (ii) whether Defendants failed to uniformly disclose material information that would have allowed a reasonable consumer/patient to determine whether the Current Panels would cost more than alternate CPT Code Panels; and (iii) whether Defendants have been unjustly enriched due to their conduct. Additionally, determining the proper measure of damages for any harm caused to the Class and the amount of such damages are also common questions for all Class Members. The burden of demonstrating commonality is thus met.

(iii) Plaintiff's Claims Are Typical of the Class

89. Rule 42(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." "A claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory."[97] Courts do not require that the injuries of the plaintiff be identical to the injuries of the class. As long as the presented claims are based on the same legal theories and originate from the same course of conduct or event, typicality is met.[98]

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[96] *See Wolf v. Wells Fargo Bank, N.A.*, Cause No. 2011-36476, 2013 Tex. Dist. LEXIS 18993, at *8 (Tex. 2013).

[97] *Southwestern Bell Tel. Co. v. Mktg. on Hold Inc.*, 308 S.W.3d 909, 920 (Tex. 2010), quoting *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007).

[98] *Weatherly v. Deloitte & Touche*, 905 S.W.2d 642, 653 (Tex. App.—Houston [14th Dist.] 1995, writ dism'd w.o.j.).

90. Here, Plaintiff's claims are typical of the claims of the Class. Like the other Class Members, Plaintiff alleges that he was deprived of full information about the manner in which the Current Panels were billed, which led to him being billed more than what was standard (*i.e.*, had he been billed for the CPT Code Panels rather than individually for each component of the Current Panels). The challenged conduct is not unique to the named Plaintiff; his claims and the claims of the Class Members arise out of the same common course of conduct by Defendants, *i.e.*, the alleged failure to provide sufficient information about the pricing and billing of the Current Panels. The typicality requirement is satisfied.

(iv) **Plaintiff and Plaintiff's Counsel Will Fairly and Adequately Protect the Interests of the Class**

91. Rule 42(a)(4) requires that class representatives fairly and adequately protect the interests of all class members. In evaluating adequacy of representation, two factors are considered: (a) an absence of antagonism between the class representatives and the class members, and (b) an assurance that the representative parties will vigorously prosecute the class claims and defenses.[99]

92. Here, there is no conflict between Plaintiff and the Class Members. All Class Members, including Plaintiff, went to a BNH Facility and subsequently received bills from BNH for the Current Panels that were provided to them.

93. This Action has been vigorously prosecuted, reaching a resolution that is in the best interests of the Class Members. The Settlement negotiations alone took nearly a year and the outcome of these negotiations are exceptional demonstrating the adequacy of Plaintiff and Plaintiff's Counsel.

[99] *E & V Slack, Inc. v. Shell Oil Co.*, 969 S.W.2d 565, 568 (Tex. App.—Austin 1998, no pet.).

(v) Common Issues of Law and Fact Predominate for Settlement Purposes

94. When questions of law and fact common to the Class predominate over individual members and a class action is the superior means to fairly and efficiently adjudicate the controversy, certification under Rule 42(b)(3) is appropriate.

95. Predominance is satisfied in this case because key questions as to liability and damages are common to the Class and capable of class-wide resolution. For example, a central issue in this case is whether the provider is entitled to perform and bill for laboratory "panels" without disclosing to patients that the "panels" would not be billed using a single billing code (*i.e.*, the multiple individual tests performed from a single blood sample would be billed separately), making it potentially more expensive to the patient than a similar panel that would be bundled and billed using a single CPT code. As alleged in the Petition, non-disclosure was Defendants' regular practice. Further, another predominating common issue in this case is whether Defendants' practice of non-disclosure of its unbundling a "panel" for billing purposes, which Plaintiff alleges was systematic, would be important to reasonable consumers *(i.e.*, whether it would be "material" information.).

96. Furthermore, the calculation of damages involves application of a uniform formula to all Class Members (*i.e.*, the difference between what each Class Member was charged for the Current Panel and what that Class Member would have been charged for the corresponding CPT Code Panel), and hence is capable of class-wide resolution. The fact that each Class Member may be entitled to different amounts of damages after applying the uniform formula, does not necessarily defeat predominance.[100]

[100] *Southwestern Bell Tel.*, 308 S.W.3d at 923. *See also Life Partners, Inc. v. McDermott*, No. 05-12-01623-CV, 2014 Tex. App. LEXIS 6756, at *28 (Tex. App.—Dallas June 23, 2014, no pet.) (affirming class certification where "[t]he trial judge found the primary liability question is the

97. Thus, Defendants' alleged liability arises from an alleged common course of conduct; consequently, the central issues in this case are common to the Class and predominate over any individual issue that might arise.

(vi) A Class Action is Superior to Other Available Means of Adjudication

98. The class action mechanism is superior to any alternatives that might exist for the fair and efficient adjudication of these claims. Rule 42(b)(3) sets forth four different considerations to assist the court in making a superiority decision: (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (d) the difficulties likely to be encountered in the management of a class action.[101]

99. Indeed, this case is an example of why we have class actions. The cost of the contested panels comprised only a portion of the $1,971.49 that Defendants billed the Plaintiff. It would not make economic sense for Plaintiff to bring an individual action as litigation costs, including attorneys' fees, would dwarf any potential recovery. This class action allows for the vindication of important consumer rights that would otherwise go unasserted.[102]

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same for all class members, and individual damage calculations can be performed easily with basic math.").

[101] *See Daccah,* 217 S.W.3d at 439 (citing Tex. R. Civ. P. 42(b)(3)).

[102] *See Bozarth v. Envision Healthcare Corp.*, Case No. 5:17-cv-01935-FMO-SHK, Order re: Motion for Preliminary Approval of Class Action Settlement (C.D. Cal., Dec. 30, 2019) (ECF No. 90) at 14 (annexed as Exh. B to Raghavan Decl.) (superiority met where "plaintiffs do not assert any claims for emotional distress, nor is there any indication that the amount of damages any individual class member could recover is significant or substantially greater than the potential recovery of any other class member," and "[t]he alternative method of resolution—pursuing

100. Further, there can be no question that litigating this matter as a class action is a more efficient use of judicial resources than litigating hundreds or thousands of smaller claims, especially considering the uniform nature of the conduct at issue, notwithstanding that, to date, no individual Class member has brought an individual action to redress the claims at issue.[103] Therefore, superiority is met.

101. Accordingly, the Plaintiff respectfully requests that the Court permanently certifies the proposed Class for the purposes of Settlement.

VIII. NO OBJECTIONS OR OPT-OUTS HAVE BEEN RECEIVED TO DATE

102. As of April 14, 2023 (the latest case update from RG/2), there have been no requests for Opt Outs or objections received by the Settlement Administrator, although the deadline for opting out and objecting (*viz.* April 24, 2023) has not yet passed. As of April 18, 2023 (the date of filing this Motion), Plaintiff's Counsel have not received any Opt Outs or objections to the Settlement.[104]

IX. DEFENDANTS DO NOT OPPOSE THE RELIEF REQUESTED IN THIS MOTION

103. Defendants do not oppose the final approval of this Settlement. Nor do Defendants oppose Plaintiff's Counsel's request for attorneys' fees and expenses or the Class Representative Service Award.[105]

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individual claims for a relatively modest amount of damages—would likely never be brought, as 'litigation costs would dwarf potential recovery.'" (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1023 (9th Cir. 1998)).

[103] *See Great S. Life Ins. Co. v. Thibodeau*, No. 05-98-00796-CV, 1999 Tex. App. LEXIS 3295, at *18 (Tex. App. – Dallas Apr. 30, 1999, no pet.).

[104] *See* Waldman Decl., ¶ 6.

[105] *See* Waldman Decl., ¶ 19.

X. CONCLUSION AND PRAYER

104. For the foregoing reasons, the Plaintiff respectfully requests that the Court grant the Motion, as reflected in the proposed Final Judgment attached hereto.

Dated: April 18, 2023

Respectfully submitted,

HILDER & ASSOCIATES, P.C
By: /s/ *Q. Tate Williams*
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Counsel for Plaintiff and the Proposed Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on April 18, 2023, true and correct copies of this document is being served via e-service upon all counsel of record.

/s/ *Q. Tate Williams*
Q. Tate Williams

CAUSE NO. 2020-CI-18623

KENNETH KESLAR, II, individually and on behalf of all others similarly situated,	§	IN THE DISTRICT COURT
Plaintiff,	§	
vs.	§	
	§	BEXAR COUNTY, TEXAS
EMERUS / BHS SA THOUSAND OAKS, LLC d/b/a BAPTIST EMERGENCY HOSPITAL - SHAVANO PARK, EMERUS HOSPITAL PARTNERS, LLC, and EMERUS HOLDINGS, INC.,	§	
	§	73rd JUDICIAL DISTRICT
Defendants.	§	

DECLARATION OF CHET B. WALDMAN ESQ. IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF REQUESTS FOR ATTORNEYS' FEES, EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARD

I, Chet B. Waldman, hereby declare as follows:

1. I am a senior partner of the law firm of Wolf Popper LLP ("Wolf Popper"), Class Counsel in this Action.[1] I am a member in good standing of the New York Bar and admitted to practice in the United States Court of Appeals for the First Circuit, the Second Circuit and the Sixth Circuit, as well as the United States District Courts for the Southern and Eastern Districts of

[1] All capitalized terms not otherwise defined herein have the same meanings as in the Stipulation of Settlement dated January 27, 2023 ("Settlement Agreement") attached as Exhibit A to the Raghavan Declaration filed with Plaintiff's Unopposed Motion For Preliminary Approval of Proposed Class Action Settlement and Approval of Notice to Class Members ("Preliminary Approval Motion").

New York. I submit this Declaration in support of Plaintiff's Motion for Final Approval of the Class Action Settlement and Approval of Requests for Attorneys' Fees, Expenses and Class Representative Service Award ("Motion").

2. I have personal knowledge of the matters set forth herein based on my active participation in, and supervision of, the Action, and if called upon as a witness, I could and would testify competently thereto. Also, for the avoidance of doubt, I fully agree with all the factual statements contained in the Motion filed herewith, and if called upon as a witness, I could and would testify competently to those facts as well.

3. On January 30, 2023, Plaintiff filed his Preliminary Approval Motion and the Court entered its Preliminary Approval Order on February 17, 2023, *inter alia*, preliminarily approving the Settlement, preliminarily certifying the Class for settlement purposes, approving the retention of RG/2 Administration LLC ("RG/2") as the Settlement Administrator and approving the content, form and manner of disseminating the Summary and long-form Notices.[2]

4. In accordance with the Court's Preliminary Approval Order, on March 17, 2023, RG/2 mailed out postcard Summary Notices to Class Members advising them of the proposed Settlement, the last date to submit Claim Forms, the last date by which any objections to the Settlement or requests for Opt Outs must be received and directing them to the Settlement Website for more information. On the same day, RG/2 also established the Settlement Website, www.baptistemergencyhospitalsettlement.com, which contains copies of the long-form Notice;[3]

[2] *See* Order Preliminarily Certifying Class for Settlement Purposes, Granting Preliminary Approval of Settlement, and Approving Class Notice ("Preliminary Approval Order") signed by the Court on February 17, 2023.

[3] A copy of the long-form Notice, as posted on the Settlement Website is annexed as Exh. A to this Declaration.

the Claim Form; the First Amended Petition; the Settlement Agreement; the deadlines for Class Members to submit objections and requests to Opt Out from the Settlement; Plaintiff's Preliminary Approval Motion; the Preliminary Approval Order; and the Letter to the Court and Second Amended Notice of Hearing setting the date for final approval of the Settlement. RG/2 also established a telephone number for Class Members to call and ask questions.

5. Subsequently, RG/2 has provided Plaintiff and Defendants' Counsel weekly case updates regarding the status of dissemination of Notices, receipt of Opt Outs/objections, if any, and the number of claims received. According to RG/2's latest weekly update on April 14, 2023, RG/2 had mailed out a total of 64,088 copies of the Summary Notice, of which 4,843 were returned, 3,762 were remailed and 1,081 were dead addresses. Further, as of April 14, 2023, RG/2 had received 115 claims for a Refund, 217 Claims for forgiveness (*i.e.*, claims for write-offs), no Opt Opts and no objections.[4]

6. As of April 18, 2023, Class Counsel has also not received any Opt Outs or objections to the Settlement, although the Opt Outs/Objections deadline has not passed.[5]

7. My firm, Wolf Popper LLP, undertook this litigation, including the prosecution of this Action, with no guarantee of success or compensation, and faithfully and diligently represented the Class on an entirely contingent basis.

8. The services undertaken by my firm in connection with the litigation can be summarized as, among other things: (a) investigating potential claims against Defendants before

[4] RG/2's Weekly Case Summary Report as of April 14, 2023 is attached as Exh. B to this Declaration. Plaintiff will file the Settlement Administrator's Declaration by May 5, 2023 as directed by the Court in its Preliminary Approval Order.

[5] According to the notice plan approved by the Court on February 17, 2023, Opt Outs or objections to the Settlement must be received by the Settlement Administrator by April 24, 2023.

sending out notices required by the Texas DTPA and filing the Petition and Amended Petition; (b) conducting a substantial amount of discovery including (i) reviewing approximately 29,000 pages of documents that had been produced by the Defendants; (ii) reviewing documents received from Plaintiff and preparing them for production in response to Defendants' discovery requests; (iii) deposing two key witnesses of Defendants (the CEO and Chief Medical Officer of Emerus); (iv) defending Plaintiff's deposition; (v) serving five sets of document requests, four sets of interrogatories and one set of requests for admission on Defendants; (vi) serving two third party subpoenas (one on Plaintiff's insurance company, Blue Cross Blue Shield and another on Abaxis, the manufacturer of Defendants' laboratory testing equipment); (vii) meeting and conferring with Defendants and third parties on the scope of production; (viii) retaining and consulting extensively with two experts (one in medical billing and the other in emergency medicine) on the merits of the case; (c) engaging in extensive settlement negotiations with Defendants that lasted over nine months and preparing the settlement term sheet; (d) negotiating and drafting appropriate documentation of the Settlement, including the Settlement Agreement and notice documents; (e) negotiating Plaintiff's attorneys' fees and expenses with Defendants including providing them with lodestar information maintained by Plaintiff's Counsel; (f) presenting the Settlement and notice documents to the Court by way of a Preliminary Approval Motion, which the Court approved; (g) overseeing the Settlement Administrator's execution of the notice plan under the Settlement Agreement; and (h) preparing and filing papers in support of final approval of the Settlement (including this Declaration).[6]

[6] Part of this task includes responding to calls from Class Members regarding the Settlement, which Wolf Popper has been doing.

9. I believe that the Settlement achieved in this Action reflects an excellent outcome, given the complexities and risks of the litigation. The fact that every eligible Class Member is able to receive 100% recovery of potential damages incurred, either in the form of a refund (if they put in a valid claim form) or a write-off (without a claim form) under the Settlement is itself an exceptional result. The Settlement goes one step further to provide individuals who may receive services at the BNH Facilities in the future, injunctive relief that is designed to prevent any damage caused by Defendants' performance and billing of the Custom Panels.

10. Based on the accounting records of Class Counsel, attorneys and staff at Wolf Popper worked approximately 2,565 hours on this litigation from inception through April 17, 2023, for a lodestar of $1,383,508.50. A breakdown of the hours is reflected below: [7]

NAME	POSITION/TITLE	HOURS	HOURLY RATE	LODESTAR
Chet B. Waldman	Senior Partner	241.60	$950	$229,520.00
David Nicholas	Of Counsel	138.20	$950	$131,290.00
Radha Raghavan	Associate	948.30	$575	$545,272.50
Elissa M. Hachmeister	Associate	384.30	$450	$172,935.00
Sandra Vidal-Pellon	Of Counsel	33.10	$435	$14,398.50
Hallie Cohen	Staff Attorney	40.50	$425	$17,212.50
Melissa Gianfagna	Senior Paralegal	10.00	$380	$3,800.00
Noah Madoff	Paralegal	768.80	$350	$269,080.00
TOTAL LODESTAR		**2,564.80**		**$1,383,508.50**

[7] If requested by the Court, Class Counsel will provide detailed time entries in support of its lodestar chart.

11. The nearly 2,565 hours my firm expended on this case were reasonably spent, especially given the complexity and high-risk nature of this litigation and the difficulty of ascertaining just what Defendants had actually done.

12. Work was carefully allocated across my firm to maximize efficiency. Wolf Popper also distributed work to minimize the fees in this case; thus, senior attorneys did not do the work that could be accomplished by more junior attorneys, and attorneys did not do the work that could be completed by paralegals. Class Counsel assigned tasks depending on a number of considerations, with the goal of avoiding duplication of effort. Only a core of three attorneys and one paralegal billed the overwhelming majority of the hours on this matter (with one associate replacing another after the first was no longer employed at the Firm).

13. The information set forth in this Declaration concerning Wolf Popper's time, including in the schedule above, was prepared from daily time records regularly prepared and maintained by Wolf Popper in the ordinary course of business. I am the partner who oversaw Wolf Popper's activities in the litigation, and I have reviewed my firm's daily time records to confirm their accuracy. The purpose of this review was to confirm both the accuracy of the entries on the reports as well as the necessity for, and reasonableness of, the time and expenses committed to the Action.

14. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment. For example, I removed from the lodestar calculation any time expended by law school interns and summer associates for legal research (notwithstanding that the work performed contributed to the successful prosecution of this Action) and removed time spent by attorneys who worked less than ten hours on the matter. The lodestar figure also does not take into account the considerable number of hours that will be spent by Class Counsel on further

briefing and arguments related to this Motion, and on administration matters such as speaking with Class Members who call asking questions, overseeing the processing of claims and disseminating payment to Class Members, which, given the September 18, 2023 claim submission deadline, will continue well after the Settlement is approved.

15. The hourly rates shown are the current rates set by Wolf Popper for each individual. For personnel who are no longer employed by Wolf Popper, the lodestar calculation is based on the hourly rates of such person in their final year of employment at Wolf Popper.

16. My firm's current hourly rates, are comparable to those of other class action attorneys, and are also the same rates my firm charges to, and gets paid by, non-contingency clients. It is my understanding that Wolf Popper's hourly rates are comparable to the regular rates submitted by comparable firms for lodestar cross-checks in other consumer class action fee applications. Moreover, the Southern District Court of Texas recently approved the rates of Wolf Popper in another class action relating to health care billing.[8]

17. Wolf Popper is highly experienced in the area of consumer class actions, especially health care billing matters, and has successfully prosecuted numerous such litigations on behalf of consumers, as detailed in the attached resume.[9]

18. Wolf Popper also incurred expenses of $28,463.77 in connection with the prosecution of this Action as reflected in the books and records of my firm.[10] These books and

[8] *See* Final Approval Order dated November 2, 2021 in *Kaur v. Envision Healthcare Corporation, et al.*, C.A. No. 4:19-cv-02480 (S. D. Tex., 2021) attached as Exh. C. to this Declaration, where the court approved Wolf Popper's request for attorneys' fees in full, noting Wolf Popper's partner hourly rates of $895 and associate hourly rates ranging from $440 - $475 in 2021).

[9] *See* Wolf Popper's Firm Resume attached as Exh. D to this Declaration.

[10] The Notice advised the Class that Plaintiff's Counsel (*viz.* Class Counsel and Liaison Counsel) would seek no more than $800,000 in attorneys' fees and expenses.

records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. The firm's unreimbursed expenses are as follows:

EXPENSES	**CHARGE**
CERTIFIED MAIL - USPS	$16.80
PHOTOCOPYING/SCANNING/PRINTING	$423.90
PRO HAC FEES	$515.88
E-DISCOVERY DATABASE	$2,111.33
ONLINE RESEARCH - LEXIS/WEST GROUP	$7,339.04
EXPERT FEES - B. RILEY ADVISORY	$8,143.50
VERITEXT - DEPOSITIONS	$8,190.00
TRAVEL - HOTEL, TRANSPORT, MEALS	$1,723.32
TOTAL	**$28,463.77**

19. Plaintiff's Counsel's combined request for attorneys' fees and reimbursement of expenses is $800,000. The fee was negotiated at arms-length with Defendants' counsel after all the substantive terms of the Settlement were finalized and reflected in a written term sheet. The fee negotiations included Plaintiff's Counsel substantiating their fee request by providing Defendants with detailed lodestar information. Defendants have agreed not to oppose Plaintiff's Counsel's request for attorneys' fees and expenses of $800,000. Plaintiff's Counsel's fee request amounts to a negative lodestar multiplier of 0.55. Moreover, as expressly stated in the long-form Notice, the fee and expense award will not reduce any payments made to Class Members under the Settlement. [11]

20. Lastly, I fully support the request for a Class Representative Service Award to Mr. Keslar. Mr. Keslar and his wife expended considerable amount of time and effort on behalf of the Class, and without him, there would be no case, and no Class recovery. And for the avoidance of doubt, Plaintiff had no relationship with any of Plaintiff's Counsel prior to this litigation.

[11] *See* long-form Notice, Q. 19.

I declare under penalty of perjury under the laws of Texas that the foregoing is true and correct. Executed on the 18th day of April, 2023.

Chet B. Waldman
Wolf Popper LLP
845 Third Avenue, 12th Floor
New York, NY 10022

EXHIBIT A

CASE NO. 2020-CI-18623

KENNETH KESLAR II, individually and on behalf of all others similarly situated, Plaintiff, v. EMERUS / BHS SA THOUSAND OAKS, LLC d/b/a BAPTIST EMERGENCY HOSPITAL - SHAVANO PARK, EMERUS HOSPITAL PARTNERS, LLC, and EMERUS HOLDINGS INC., Defendants.	IN THE DISTRICT COURT 73rd JUDICIAL DISTRICT BEXAR COUNTY, TEXAS

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT[1]

(This is a court-ordered notice. You are <u>not</u> being sued. This is not a soliciation from a lawyer.)

YOU MAY BE ELIGIBLE TO HAVE YOUR LABORATORY PANEL BILL REDUCED, REFUNDED, OR BALANCE FORGIVEN IN A CLASS ACTION SETTLEMENT.

This Notice tells you about a proposed "Settlement" in a case against Baptist Neighborhood Hospital ("BNH") (previously known as Baptist Emergency Hospital) and the related Emerus entities listed below.

The Settlement has not yet been approved by the Court. If it is approved, you may qualify:

- to have money refunded to you, or
- the amount you owe BNH forgiven or written off, in whole or in part.

To get a refund, you must send in a Claim Form by September 18, 2023. You do <u>not</u> have to submit a claim form or do anything else to get a debt relating to the laboratory panels forgiven.

Please read further for more information on the Settlement and how to get benefits under the Settlement:

Your legal rights will be affected by the Settlement whether you file a claim or do nothing. Please read this Notice carefully for more information about your options and rights.

[1] This Notice incorporates, by reference, the definitions in the Stipulation of Settlement dated January 27, 2023 (the "Settlement Agreement"), available on this Website: www.BaptistEmergencyHospitalSettlement.com. All capitalized terms used, but not defined herein, shall have the same meaning as in the Settlement Agreement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
YOU MAY		**DUE DATE**
SUBMIT A CLAIM FORM	You must submit a Claim Form, either by mail or online, pursuant to the instructions below, to be considered for a refund under the Settlement. If you submit a Claim Form, the Settlement Administrator – RG/2 Claims Administration LLC - will determine if you are entitled to a Refund under the Settlement.	**BY: September 18, 2023**
OBJECT TO THE SETTLEMENT	If you do not like the proposed Settlement or anything related to it discussed below, you may write to the Court and explain why. Even if you object to the Settlement, you can still submit a Claim Form as long as you do not opt out.	**BY: April 24, 2023**
OPT OUT OF THE SETTLEMENT	If you exclude yourself (*i.e.* "opt out") from this Settlement, you will not get any of the benefits of the Settlement (*i.e.*, no refund or forgiveness of your balance). But you will retain the right to sue Defendants on your own, at your own expense, relating to their billing practices during the Class Period.	**BY: April 24, 2023**
DO NOTHING	If you do nothing, you will not get any refund from the Settlement, BUT you will be considered for forgiveness of your balance, if eligible. Should you do nothing, you will also give up all your rights to sue Defendants on your own about the legal issues in this case.	**N/A**

If you have any questions about this Notice or the Settlement, you may:

- Call RG/2 Claims Administration at 1-866-742-4955 or call the lawyers who brought this lawsuit on behalf of you and others like you (called "Class Counsel") at 212-759-4600 or
- Email the RG/2 Claims Administration at BaptistEmergencyHospitalSettlement@rg2claims.com or the Class Counsel at outreach@wolfpopper.com.

1. What are laboratory panels?

A laboratory panel is a group of blood tests that are requested with a single testing order and completed with a single patient specimen, for example, a basic metabolic panel or a liver function panel. In other words, it is a test wherein a medical professional takes blood from you and that

blood is analyzed using different tests for different things like blood sugar, potassium, sodium and chloride levels, among others. Often, laboratory panels can be billed using a single code, known as the Current Procedure Terminology ("CPT") code. When billed using a single CPT code, a laboratory panel may be less expensive than if each test in the panel were billed separately.

2. What are the BMP (includes CK) and LFT (includes Amylase) laboratory panels?

The BMP (includes CK) panel is a basic metabolic panel that comprises 8 separate tests on a single blood specimen offered at the BNH facilities that does not have a single billing code, meaning that each of the 8 tests are billed separately. It is slightly different from, and can be more expensive than, a basic metabolic panel that has a single billing code for the entire group of tests.[2]

The LFT (includes Amylase) panel is a liver function panel offered at the BNH facilities that is comprised of 8 separate tests on a single blood specimen, each of which is billed separately. It is slightly different from, and can be more expensive than, a liver function panel that has a single billing code for the entire group of tests.[3]

3. What is this lawsuit about?

This class action lawsuit alleges that Defendants deceptively unbundled laboratory panels by charging for them as separate tests rather than as a single panel of tests.

This lawsuit was brought by Kenneth Keslar II (the "**Plaintiff**") against Emerus / BHS SA Thousand Oaks LLC d/b/a Baptist Emergency Hospital – Shavano Park, Emerus Hospital Partners LLC, and Emerus Holdings, Inc. (the "**Defendants**") for alleged violations of the Texas Deceptive Trade Practices Act ("DTPA") (§§17.46(b)(24) and 17.50(a)(3)), and the common law. Plaintiff alleges that Defendants provided insufficient disclosures regarding the cost of two in-house laboratory panels, namely, the BMP (includes CK) and LFT (includes Amylase) ("**Current Panels**") and the manner in which they billed for these panels, which led to Plaintiff and other patients paying more for laboratory panels than was standard.

Plaintiff alleges that Defendants failed to disclose to patients that they were using a type of metabolic or liver function panel that could not be billed as a 'panel' using a single billing code, making it more expensive than a similar panel that could be billed using a single CPT code.

Plaintiff filed his class action petition ("**Petition**") on September 25, 2020 and subsequently filed an amended petition ("**Amended Petition**") on December 30, 2020.

The name of the case is *Keslar v. Emerus/BHS SA Thousand Oaks, LLC*, Cause No. 2020-CI-18623 (the "**Action**") and the court in charge of the case is the Texas State Court, Bexar County, 73rd Judicial District. The Action is overseen by Honorable Judge David A. Canales.

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[2] The BMP (includes CK) panel comprises the following group of tests: (1) carbon dioxide (bicarbonate); (2) chloride; (3) creatinine; (4) glucose; (5) potassium; (6) sodium; (7) urea nitrogen (BUN); and (8) creatine kinase (ck). The standard basic metabolic panel that is billed at a single CPT code has 7 out of 8 of the same tests as the BMP (includes CK) panel, but as for the 8th test it does not contain the creatine kinase test, but rather includes a calcium test.

[3] The LFT (includes Amylase) panel comprises the following group of tests: (1) albumin; (2) bilirubin, total; (3) phosphatase, alkaline; (4) protein, total; (5) transferase, alanine amino (ALT) (SGPT); (6) transferase, aspartate amino (AST) (SGOT); (7) glutamyltransferase, gamma (GGT); and (8) amylase. The standard liver function panel with a single CPT code contains the same group of tests, with the exception that it does not include the GGT and Amylase tests, but includes a bilirubin (direct) test.

Defendants have expressly denied and continue to deny all allegations of wrongdoing, negligence, fault, or liability, and assert that their actions have been lawful and proper in all respects and in compliance with all applicable legal duties.

4. Why is there a Settlement?

The Court has not decided in favor of either Plaintiff or Defendants. Both sides believe they would win if there were a trial in this case, but it might take a long time to resolve the case. In order to avoid the risks and cost of lengthy and uncertain litigation, trial, and appeals, the parties for both sides have negotiated a Settlement that they believe is in their best interests. Accordingly, on January 27, 2023, the Plaintiff and Defendants entered into a Stipulation of Settlement ("**Settlement Agreement**"), which sets forth the terms and conditions of the Settlement. The Settlement Agreement can be viewed, and a copy may be downloaded, on the Settlement Website: www.BaptistEmergencyHospitalSettlement.com.

5. How do I know if I am a Class Member and part of the Settlement?

You are a Class Member and part of the Settlement if:

(i) you were treated at any Baptist Neighborhood Hospital (formerly Baptist Emergency Hospital) facility between September 25, 2016 and January 27, 2023 (see Q. 6 for the entire list of BNH facilities), **and**

(ii) one or more of the Current Panels was ordered and performed for you, **and**

(iii) you were subsequently billed for, at least, one of the Current Panels **and**

(iv) you do not fall within the categories listed at Q. 8.

You would have received a Summary Notice in the mail if Defendants' records indicate that you are a member of the Class.

If you are still not sure whether you are a part of the Settlement, you can ask for free help. You may contact the Settlement Administrator or Class Counsel at the information provided on p. 2.

6. Which are the BNH facilities covered under this lawsuit?

All BNH facilities in Texas are covered under this lawsuit. For the sake of clarity, they are listed below:

(1) Baptist Neighborhood Hospital Hausman, 8230 N 1604 W., San Antonio, TX 78249;

(2) Baptist Neighborhood Hospital Kelly, 806 Cupples Rd, San Antonio, TX 78237;

(3) Baptist Neighborhood Hospital Overlook, 25615 US-281, San Antonio, TX 78258;

(4) Baptist Neighborhood Hospital Schertz, 16977 I-35 N., Schertz, TX 78154;

(5) Baptist Neighborhood Hospital Shavano Park, 4103 North Loop 1604 W., San Antonio, TX 78249;

(6) Baptist Neighborhood Hospital Thousand Oaks, 16088 San Pedro Ave., San Antonio, TX 78232;

(7) Baptist Neighborhood Hospital Westover Hills, 10811 Town Center Dr., San Antonio, TX 78251; and

(8) Baptist Neighborhood Hospital Zarzamora, 7719 IH 35 S., San Antonio, TX 78224.

Note: Baptist Neighborhood Hospital was previously known as Baptist Emergency Hospital. So, if you went to a Baptist Emergency Hospital in any of the above locations, and you satisfy the other conditions at Q.5, you are a Class Member.

7. I believe I am part of the Class, but have not received a Summary Notice. What should I do?

The Summary Notice is only mailed to those who are members of the Class, per Defendants' records. If you have not received a Summary Notice, that means either it has been lost in the mail (you can contact your Post Office) or that you are not part of the Class per Defendants' records and are therefore, not part of this Settlement. However, if you believe you are a Class Member based on Q. 3 of this Notice, you may contact the Settlement Administrator or Class Counsel at the information provided on page 2 of this Notice to inquire further.

8. Are there any exceptions to being included as a Class Member?

Yes. Defendants' parents, subsidiaries, representatives, officers, directors, partners, and co-ventures are **not** Class Members and hence **not part** of the Settlement. Also, anyone who requests to be excluded (*i.e.,* "opts out") from the Class in accordance with the instructions provided in this Notice and set forth by the Court (*see* Q. 16 below), will **not** be a Class Member and hence **not part** of the Settlement.

9. What does the Settlement provide?

Refunds: For any Current Panel ordered and performed at a BNH Facility, if you paid more than the reimbursement amount that your insurance payor would have approved (or, for cash-paying patients, the amount BNH would have billed) for the associated CPT Code Panel, Defendants will refund that portion of the payment that exceeded the approved reimbursement (or billed amount), including any payments you made to a third party, such as a collection agency.

Write-Offs or Forgiveness: For any Current Panel ordered and performed at a BNH Facility, if you were billed more than the reimbursement amount that your insurance payor would have approved (or, for cash-paying patients, the amount BNH would have billed) for the associated CPT Code Panel and you have not paid any portion of that, Defendants will forgive the portion of payment you owed that exceeded the approved reimbursement (or billed amount).

Changing the practice going forward:

(i) Including CPT Code Panels as a laboratory test option: Defendants have agreed to start offering the associated CPT Code Panels, *i.e.*, CPT 80047, CPT 80048 and CPT 80076 Panels, as laboratory testing options in-house at all their facilities' onsite point-of-care laboratories. The CPT Code Panels will be included as an option in all of BNH Facilities' in-house laboratory test menus so that they are available to the clinicians to order.

(ii) Disclosures in intake forms: Defendants have agreed to include a disclosure in their admission consent forms, which will inform patients that they have three in-house options for metabolic or liver/pancreatic panels – (1) the Current Panel that may potentially be more expensive; (2) the associated CPT Code Panel, which, though slightly different, may be less expensive or (3) a combined metabolic and liver panel.

The disclosure encourages patients to discuss these options with their clinicians to determine which option is best for them and check with their insurance provider to discuss patient payment obligations for each of these laboratory panels.

(iii) Disclosures in pricing transparency file on website: Defendants have agreed to disclose the chargemaster price of the Current Panels, in each of the BNH Facilities, down to the exact dollar figure, in the "Standard Charge Description File" available for download in the Pricing Transparency section of BNH's website at https://www.baptistneighborhoodhospital.com/pricing-transparency/.

10. I am an insured patient. How will my refund, if any, be calculated?

Refunds for insured patients are calculated based on "**Panel Cost Difference,**" which is the difference between (i) the portion of the Patient Responsibility amount that is attributable to the cost of the respective Current Panels (the "**Current Panel Cost**"); and (ii) the portion of the Patient Responsibility amount that would have been attributable to the cost of the associated CPT Code Panel (CPT No. 80048 or CPT No. 80076) (the "**But-For Panel Cost**").[4]

If the Panel Cost Difference for a Class Member is less than or equal to the amount owed, the Class Member will not be eligible for a Refund, but will be eligible to get the portion of the Panel Cost

[4] More specifically, refunds for insured patients are calculated by following the four steps below:

(A) The applicable Third Party Payor's contract rates and fee schedules in effect as on the Class Member's Date of Service is used to determine (x) the total reimbursement amount payable to BNH that the payor approved for the Current Panels (the "**Approved Panel Reimbursement**") ordered and performed for the Class Member; and (y) the total reimbursement amount payable to BNH that the payor would have approved for the associated CPT Code Panel (the "**But-For Panel Reimbursement**");

(B) The But-For Panel Reimbursement is subtracted from the Approved Panel Reimbursement to derive the "Panel Reimbursement Difference";

(C) The Patient Responsibility amount that BNH billed to the Class Member is divided by the total reimbursement amount payable to BNH for the Class Member's visit that was approved by the Third Party Payor to derive the "Patient Responsibility Percentage";

(D) The Panel Reimbursement Difference is multiplied by the Patient Responsibility Percentage to determine the Panel Cost Difference.

The table below illustrates how refunds are calculated using the above four steps for a BMP (includes CK) panel performed and billed to an insured patient :

Panel Reimbursement Difference Calculation	**Amount**	**Notes**
(1) Approved Panel Reimbursement for BMP (includes CK)	$50	Hypothetical Figure
(2) But-For Panel Reimbursement for CPT no. 80048 Panel	$10	Hypothetical Figure
(3) Panel Reimbursement Difference	$40	Equals (1) minus (2)
Patient Responsibility Percentage Calculation		
(4) Total Payor Approved Charges	$100	Hypothetical Figure
(5) Total Charges Billed to Patient	$70	Hypothetical Figure
(6) Patient Responsibility Percentage	70%	Equals (5) divided by (4)
Panel Cost Difference	$28	Equals (3) times (6)

Difference forgiven by BNH.

Note: any Class Member (i) whose insurance plan reimburses BNH at a case rate or per diem rate, without any separate additional reimbursement for clinical laboratory testing, or (ii) who has a fee-for-service Medicare or Medicaid insurance plan with fixed copay plans will be ineligible for Refunds, but will still remain a Class Member for all other purposes.

The Summary Notice that you received by mail will tell you whether you are eligible for any refund and if so, how much. You may also contact the Settlement Administrator or Class Counsel at the information provided on page 2 of this Notice to inquire further.

11. I am a cash-paying patient. How will my refund, if any, be calculated?

Refunds for cash paying patients are calculated based on "**Panel Cost Difference,**" which is the difference between (i) the portion of the Patient Responsibility amount that is attributable to the cost of the respective Current Panels (the "**Current Panel Cost**"); and (ii) the portion of the Patient Responsibility amount that would have been attributable to the cost of the associated CPT Code Panel (CPT No. 80048 or CPT No. 80076) (the "**But-For Panel Cost**").[5]

If the Panel Cost Difference for a Class Member is less than or equal to the amount owed to BNH, the Class Member will not be eligible for a refund, but may be eligible to get the portion of the Panel Cost Difference forgiven by BNH.

Note: Any Class Member who opted to pay for their BNH visit in cash under Defendants' "prompt-

[5] More specifically, Refunds for eligible cash-paying patients are calculated by following the four steps below:

(A) The Class Member's billing record and the prices in effect on the Class Member's Date of Service in the BNH Chargemaster is used to determine (x) the amount that BNH billed for the Current Panels (the "**Actual Panel Billed Amount**") ordered and performed for the Class Member (before any adjustments); and (y) the amount that BNH would have billed for the associated CPT Code Panel (the "**But-For Panel Billed Amount**");

(B) The But-For Panel Billed Amount is subtracted from the Actual Panel Billed Amount to derive the panel billed amount difference (the "**Panel Billed Amount Difference**");

(C) The amount that BNH billed to the Class Member is divided by the total amount billed for the Class Member's visit to derive the Patient Responsibility Percentage;

(D) The Panel Billed Amount Difference is multiplied by the Patient Responsibility Percentage to determine the Panel Cost Difference.

The table below illustrates how Refunds are calculated using the above four steps for a BMP (includes CK) panel performed and billed to a cash-paying patient:

Panel Reimbursement Difference Calculation	**Amount**	**Notes**
(1) Actual Panel Billed Amount for BMP (includes CK)	$50	-Hypothetical Figure
(2) But-For Panel Billed Amount for CPT 80048 Panel	$10	-Hypothetical Figure
(3) Panel Billed Amount Difference	$40	Equals (1) minus (2)
Patient Responsibility Percentage Calculation		
(4) Total Billed Amount by BNH	$100	-Hypothetical Figure
(5) Total Patient Responsibility after adjustments, if any, by BNH	$35	-Hypothetical Figure
(6) Patient Responsibility Percentage	35%	Equals (5) divided by (4)
Panel Cost Difference	$14	Equals (3) times (6)

pay" option, which specifies a case rate for treatment that does not vary based on the number or types of clinical laboratory tests that are performed, will be ineligible for refunds, but will still remain a Class Member for all other purposes.

The Summary Notice that you received by mail will tell you whether you are eligible for any refund and if so, how much. You may also contact the Settlement Administrator or Class Counsel at the information provided on page 2 of this Notice to inquire further.

12. What do I need to do to receive a refund?

In order to receive a refund, you must be eligible under the terms of the Settlement, and you must submit a valid and timely **Claim Form** to the Settlement Administrator, RG/2 Claims Administration LLC. You may download the Claim Form from the Settlement Website, www.BaptistEmergencyHospitalSettlement.com, or by contacting the Settlement Administrator at the contact information on page 2 of this Notice. Read the instructions carefully, fill out the Claim Form, sign it, and mail it so it is postmarked no later than September 18 ,2023 or submit it online no later than September 18, 2023. Any Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any refund from Defendants (unless by order of the Court the deadline is extended or such Class Member's Claim Form is accepted), but otherwise may be eligible for forgiveness of any amount per Q. 13 below and shall be bound by all the terms of the Settlement and the Final Judgment, including the Releases therein, and will be permanently barred and enjoined from asserting any of the Settled Class Claims against any of the Released Defendants' Parties.

You cannot submit your Claim Form by telephone, fax, or email. You do not need to submit any medical records or medical information beyond billing-related information related to your blood tests, which is specified in the Claim Form.

13. How will the forgiveness/write-off amounts be calculated?

The forgiveness/write-off amount, if any, is calculated based on the Panel Cost Difference calculated using the formula described at Q. 10 or Q. 11, as the case may be. If the Panel Cost Difference owed to you is less than or equal to the amount you owe BNH, you will be eligible to get that portion of the Panel Cost Difference forgiven by BNH and your outstanding amount will be reduced dollar for dollar by the amount of the Panel Cost Difference.

The Summary Notice that you received by mail will tell you whether you are eligible for any forgiveness/write-off amount and if so, how much. You may also contact the Settlement Administrator or Class Counsel at the information provided on page 2 of this Notice to inquire further.

14. When would I get my payment?

The Court will hold a hearing on May 15, 2023, to decide whether to approve the Settlement. The Court may change the date and time of the Settlement Hearing without notice or hold the Settlement Hearing by telephonic or video conference. Any change to the Settlement Hearing will be posted on the Settlement Website. If the Settlement is approved, the Settlement Administrator will complete the claims review process and then make the refunds. Defendants will also simultaneously adjust patient balances to reflect the forgiveness/write-off amounts. This is necessarily a long process.

15. What am I giving up as a Class Member?

You will be giving up your right to bring your own, individual lawsuit against Defendants challenging (i) the billing of the Current Panels during the period between September 25, 2016 and January 27, 2023 that is the basis of the litigation; and (ii) pricing transparency and disclosure or non-disclosure concerning billing for the Current Panels. These are called the "Settled Class Claims." **Any claims you may have related to your actual medical treatment will not be released.**

If you want to preserve your right to bring an individual lawsuit against Defendants relating to the Settled Class Claims, you must "opt out" of the Settlement.

16. What if I do not want to be part of the Settlement?

If you do not want to be part of the Settlement, you can "opt out." If you opt out, you will not get a write-off or refund, but you will preserve your right to sue Defendants on your own. If a substantial number of Class Members opt out, the Defendants have the right to terminate the Settlement.

To opt out, you must mail your request for exclusion to the Settlement Administrator so that it is received no later than April 24, 2023 at the following address:

RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479.

You bear the risk of delivery of the request. Your request must clearly state the full name, address, and telephone number of the Class Member seeking exclusion, that the Class Member requests to be excluded from the Class, and must be signed by the Class Member. All persons requesting exclusion must also state: the name of the BNH Facility they visited, the date of service(s), the date of the bill(s), the bill amount(s), and which Current Panel(s) was/were performed. Requests for exclusion must comply with these requirements in order to be valid and effective. If you opt out, you **cannot** object to the proposed Settlement, because it does not affect you.

Copies of any such requests for exclusions must also be mailed by first-class mail, no later than April 24, 2023, to:

Chet Waldman, Esq., Wolf Popper LLP, 845 Third Avenue, New York, NY 10022 (Class Counsel)

Kevin McGinty, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Financial Center, Boston, MA 02111 (Defendants' Counsel)

17. Do I have other options if I do not like the Settlement?

If you do not like the Settlement or some part of it like the fee application by Plaintiff's attorneys or the Class Representative Service Award, and you do not opt out, you can tell the Court by submitting a written objection. If you want to object to the Settlement, you must mail a letter containing the following information: the name and case number of this lawsuit (*Kenneth Keslar II v. Emerus / BHS Thousand Oaks LLC et. al.*, Case No. 2020-CI-18623); your full name, mailing address, and email address or telephone number; what specifically you do not like about the Settlement or any part of it and your reasons why. You must also provide a copy of your BNH bill for any Current Panel performed on you during the Class Period or any other document(s) that demonstrates you are a member of the Class. Your objection, including the document(s) showing

you are a member of the Class, must be mailed, postmarked no later than April 24, 2023, to the Clerk of the Court, 73rd Civil District Court, Bexar County Courthouse, 100 Dolorosa, 4th Floor, San Antonio, TX 78205.

Copies of any such objections and accompanying documentation must also be mailed by first-class mail, no later than April 24, 2023, to:

Chet Waldman, Esq., Wolf Popper LLP, 845 Third Avenue, New York, NY 10022 (Class Counsel)

Kevin McGinty, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center, Boston, MA 02111 (Defendants' Counsel)

18. What is the difference between opting out of the Settlement and objecting?

Opting out means getting out of the Settlement altogether: you do not receive any benefits, but you are not bound by the terms of the Settlement. Objecting means remaining part of the Settlement, but complaining about some aspect of the Settlement you do not like. You can still receive benefits under the Settlement if you object, but if you want a refund, you must submit a Claim Form. You will also be bound by the Settlement if it is approved by the Court and you will not be able to sue the Defendants relating to any of the Settled Class Claims.

19. Do I have a lawyer in this case?

Yes, Plaintiff's attorneys (*i.e.,* Plaintiff's Counsel) represent the Plaintiff and the entire Class. You do not have to pay for these lawyers. The Court will decide how much Plaintiff's Counsel should be paid by Defendants. Defendants have agreed not to oppose Plaintiff's Counsel's application for attorneys' fees and expenses not to exceed $800,000 to cover their work and expenses incurred in this case, but the Court will determine the amount of reasonable fees and expenses to be awarded. Any award of attorneys' fees and expenses will **not** reduce the amount of refunds or forgiveness amounts available to eligible Class Members. If you would like to be represented by your own lawyer, you may hire one at your own expense.

20. What does the Plaintiff get from the Settlement?

Defendants have agreed not to oppose Plaintiff's request to the Court for a $5,000 Class Representative Service Award to the Plaintiff for his work in prosecuting this lawsuit. Any award to the Plaintiff will **not** reduce the amount of write-offs or refunds available to the Class. Like other members of the Class, the named Plaintiff may receive write-offs and/or refunds if eligible.

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a "Final Approval Hearing" before deciding whether to approve the Settlement. The Final Approval Hearing is scheduled for May 15, 2023, in Courtroom 1.09 of the 73rd Civil District Court, Bexar County Courthouse, 100 Dolorosa, 4th Floor, San Antonio, TX 78205. You do not need to attend the Final Approval hearing, but you are welcome to do so. At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also consider Plaintiff's Counsel's application for attorneys' fees, reimbursement of expenses and class representative service award at the Final Approval Hearing.

22. Where can I get more information?

This Notice contains only a summary of the lawsuit and Settlement. More information is available at www.BaptistEmergencyHospitalSettlement.com. If you have any questions about this Notice or the Settlement, you may also contact the Settlement Administrator or Class Counsel using the contact information identified on p.2. The pleadings and some of the other important court filings in the Action are available on the settlement website as well.

DO NOT TELEPHONE THE COURT, DEFENDANTS, OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE.

Dated: March 17, 2023

BY ORDER OF THE COURT

73RD JUDICIAL DISTRICT
DISTRICT COURT, BEXAR COUNTY,
TEXAS

EXPEDIENTE NO. 2020-CI-18623

KENNETH KESLAR II, por separado y en nombre de todos los demás situados de forma similar, Demandante vs. EMERUS / BHS SA THOUSAND OAKS, LLC d/b/a BAPTIST EMERGENCY HOSPITAL - SHAVANO PARK, EMERUS HOSPITAL PARTNERS, LLC, y EMERUS HOLDINGS INC., DEMANDADO.	EN EL TRIBUNAL DE DISTRITO DEL 73.º DISTRITO JUDICIAL CONDADO DE BEXAR, TEXAS

NOTIFICACIÓN DE ACUERDO PROPUESTO DE DEMANDA COLECTIVA[1]

(Esta es una Notificación judicial. Usted no ha sido demandado. Esta no es una propaganda de un abogado.

A USTED PUEDE CORRESPONDERLE UNA REDUCCIÓN, UN REEMBOLSO O UNA CONDONACIÓN DE LA DEUDA DE LA FACTURA POR PANELES DE LABORATORIO EN UN ACUERDO DE DEMANDA COLECTIVA.

En esta Notificación, se le informa acerca de una propuesta de "conciliación" en un expediente contra Baptist Neighborhood Hospital ("BNH") (anteriormente conocido como Baptist Emergency Hospital) y las entidades relacionadas de Emerus enumeradas a continuación.

El Acuerdo aún no ha sido aprobado por el Tribunal. Si se aprueba, usted puede calificar para:

- que se le reembolse el dinero, o
- que el importe que debe a BNH condonado o anulado, total o parcialmente.

Para obtener un reembolso, debe enviar un Formulario de Reclamación a más tardar el 18 de septiembre de 2023. Usted no tiene que presentar un Formulario de Reclamación ni hacer nada más para obtener la condonación de una deuda relativa a los paneles de laboratorio.

Lea más información sobre el Acuerdo y cómo obtener beneficios en virtud del Acuerdo:

Sus derechos legales se verán afectados por el Acuerdo, tanto si presenta una reclamación como si no hace nada. Lea atentamente esta Notificación para obtener más información sobre sus opciones y derechos.

[1] En la presente Notificación se incorporan, por referencia, las definiciones de la Cláusula de Acuerdo con fecha del 27 de enero de 2023 (el "Acuerdo de Conciliación"), disponibles en este sitio web: www.BaptistEmergencyHospitalSettlement.com. Todos los términos en mayúscula utilizados, pero no definidos en el presente documento, tendrán el mismo significado que en el Acuerdo de Conciliación.

SUS DERECHOS Y OPCIONES LEGALES EN VIRTUD DE ESTE ACUERDO		
PUEDE		**FECHA DE VENCIMIENTO**
PRESENTAR UN FORMULARIO DE RECLAMACIÓN	Debe enviar un Formulario de Reclamación, ya sea por correo o en línea, de conformidad con las instrucciones que figuran a continuación, para que se considere un reembolso en virtud del Acuerdo. Si envía un Formulario de Reclamación, el Administrador del Acuerdo, RG/2 Claims Administration LLC, determinará si tiene derecho a un Reembolso en virtud del Acuerdo.	**A MÁS TARDAR EL: 18 de septiembre de 2023**
OBJETAR EL ACUERDO	Si no le gusta el Acuerdo propuesto o algo relacionado con él que se describe a continuación, puede escribir al Tribunal y explicar por qué. Incluso si se opone al Acuerdo, puede presentar un Formulario de Reclamación, siempre y cuando no se dé de baja de la reclamación.	**A MÁS TARDAR EL: 24 de abril de 2023**
DARSE DE BAJA DEL ACUERDO	Si decide excluirse a sí mismo (*es decir*, "darse de baja") de este Acuerdo, no obtendrá ninguno de los beneficios del Acuerdo (*es decir*, ningún reembolso ni condonación de su deuda). Sin embargo, usted conservará el derecho a demandar a los Demandados por su cuenta y de su bolsillo en relación con sus prácticas de facturación durante el Período del Colectivo.	**A MÁS TARDAR EL: 24 de abril de 2023**
NO HACER NADA	Si no hace nada, no recibirá ningún reembolso del Acuerdo, PERO se considerará la condonación de su deuda, si corresponde. En caso de que no haga nada, también renunciará a todos sus derechos a demandar a los Demandados por su cuenta sobre los asuntos legales de este caso.	**N/A**

Si tiene alguna pregunta sobre esta Notificación o el Acuerdo, puede:

- Llamar a RG/2 Claims Administration al 1-866-742-4955 o llamar a los abogados que presentaron esta demanda en nombre de usted y otras personas como usted (llamados "Abogados del Colectivo") al 212-759-4600 o
- enviar un correo electrónico a RG/2 Claims Administration a BaptistEmergencyHospitalSettlement@rg2claims.com o a los Abogados del Colectivo mediante outreach@wolfpopper.com.

1. ¿Qué son los paneles de laboratorio?

Un panel de laboratorio es un grupo de análisis de sangre que se solicita con una única orden de prueba y se completa con una sola muestra del paciente, por ejemplo, un panel metabólico básico o un panel de función hepática. En otras palabras, es una prueba en la que un profesional médico le extrae sangre para analizarla utilizando diferentes pruebas para diferentes cosas, como azúcar en sangre, niveles de potasio, sodio y cloruros, entre otros. A menudo, los paneles de laboratorio se pueden facturar utilizando un solo código, conocido como código de Terminología de Procedimiento Actual ("CPT", por sus siglas en inglés). Cuando se factura con un único código de CPT, un panel de laboratorio puede ser menos costoso que si cada prueba del panel se facturara por separado.

2. ¿Qué son los paneles de laboratorio BMP (incluye CK) y LFT (incluye amilasa)?

El panel BMP (incluye CK) es un panel metabólico básico que consta de 8 pruebas separadas en una sola muestra de sangre ofrecida en las instalaciones de BNH que no tiene un solo código de facturación, lo que significa que cada una de las 8 pruebas se factura por separado. Es un poco diferente y puede ser más caro que un panel metabólico básico que tiene un único código de facturación para todo el grupo de pruebas.[2]

El panel de LFT (incluye amilasa) es un panel de funciones hepáticas ofrecido en las instalaciones de BNH que consta de 8 pruebas distintas sobre una sola muestra de sangre, cada una de las cuales se factura por separado. Es un poco diferente y puede ser más caro que un panel de función hepática que tiene un único código de facturación para todo el grupo de pruebas.[3]

3. ¿De qué se trata esta demanda?

Esta demanda de acción colectiva alega que los Demandados separaron indebidamente los paneles de laboratorio cobrando por ellos como pruebas separadas en lugar de como un único panel de pruebas.

Esta demanda fue presentada por Kenneth Keslar II (el "**Demandante**") contra Emerus / BHS SA Thousand Oaks LLC d/b/a Baptist Emergency Hospital - Shavano Park, Emerus Hospital Partners LLC y Emerus Holdings, Inc. (los "**Demandados**") por presuntas violaciones de la Ley de Prácticas Comerciales Engañosas de Texas ("DTPA", por sus siglas en inglés) [secciones 17.46(b)(24) y 17.50(a)(3)] y la ley común. El Demandante alega que los Demandados no proporcionaron suficiente información sobre el costo de dos paneles internos de laboratorio, a saber, BMP (incluye CK) y LFT (incluye amilasa) ("**Paneles Actuales**") y la forma en que facturaron por estos paneles, lo que llevó a que el Demandante y otros pacientes pagaran más de lo normal por los paneles de laboratorio.

El Demandante alega que los Demandados no comunicaron a los pacientes que estaban utilizando un tipo de panel metabólico o de funciones hepáticas que no podía facturarse como "panel"

[2] El panel BMP (incluye CK) comprende el siguiente grupo de pruebas: (1) dióxido de carbono (bicarbonato); (2) cloruro; (3) creatinina; (4) glucosa; (5) potasio; (6) sodio; (7) nitrógeno ureico (BUN); y (8) creatina quinasa (CK, por sus siglas en inglés). El panel metabólico básico estándar que se factura con un solo código CPT tiene 7 de las 8 pruebas del panel BMP (incluye CK), pero como en la 8.ª prueba no contiene la prueba de creatina quinasa, sino que incluye una prueba de calcio.

[3] El panel LFT (incluye amilasa) comprende el siguiente grupo de pruebas: (1) albúmina; (2) bilirrubina total; (3) fosfatasa alcalina; (4) proteínas totales; (5) transferasa, alanina amino (ALT) (SGPT); (6) transferasa, aspartato amino (AST) (SGOT); (7) glutamiltransferasa, gamma (GGT); y (8) amilasa. El panel de funciones hepáticas estándar con un solo código CPT contiene el mismo grupo de pruebas, con la salvedad de que no incluye las pruebas de GGT y amilasa, pero sí una prueba de bilirrubina (directa).

utilizando un solo código de facturación, lo que lo hacía más caro que un panel similar que podía facturarse utilizando un solo código CPT.

El Demandante presentó su solicitud de demanda colectiva ("**Petición**") el 25 de septiembre de 2020 y posteriormente presentó una petición modificada ("**Petición Modificada**") el 30 de diciembre de 2020.

El nombre del expediente es: *Keslar v. Emerus/BHS SA Thousand Oaks, LLC*, Expediente N.º 2020-CI-18623 (la "**Acción**") y el tribunal a cargo del expediente es el Tribunal del Estado de Texas, condado de Bexar, distrito judicial 73. La Acción es supervisada por el Honorable Juez David A. Canales.

Los Demandados han negado y siguen negando expresamente todas las alegaciones de irregularidad, negligencia, culpa o responsabilidad, y afirman que sus acciones han sido legales y apropiadas en todos los aspectos y en cumplimiento de todas las obligaciones legales aplicables.

4. ¿Por qué hay un Acuerdo?

El Tribunal no ha fallado a favor de los Demandantes ni de los Demandados. Ambas partes creen que ganarían si hubiera un juicio en este caso, pero se podría tardar mucho tiempo en resolver el caso. Con el fin de evitar los riesgos y el costo de largos e inciertos litigios, juicios y recursos, ambas partes han negociado un Acuerdo que creen que salvaguarda sus intereses. Por consiguiente, el 27 de enero de 2023, el Demandante y los Demandados formalizaron una Cláusula de Acuerdo ("**Acuerdo de Conciliación**") que establece los términos y las condiciones del Acuerdo. Puede consultar el Acuerdo de Conciliación y descargar una copia en el Sitio Web del Acuerdo: www.BaptistEmergencyHospitalSettlement.com.

5. ¿Cómo puedo saber si soy un Miembro del Colectivo parte del Acuerdo?

Usted es Miembro del Colectivo y parte del Acuerdo si:

(i) usted fue tratado en cualquier instalación de Baptist Neighborhood Hospital (anteriormente Baptist Emergency Hospital) entre el 25 de septiembre de 2016 y el 27 de enero de 2023 (consulte la Pregunta 6 para conocer toda la lista de instalaciones de BNH), **y**

(ii) uno o más de los Paneles Actuales se ordenó y llevó a cabo para usted, **y**

(iii) posteriormente se le facturó por, al menos, uno de los Paneles Actuales **a**

(iv) no pertenece a las categorías enumeradas en la Pregunta 8.

Si los registros de los Demandados indican que usted es Miembro del Colectivo, usted habría recibido una Notificación de Sumario por correo.

Si aún no está seguro de si forma parte del Acuerdo, puede solicitar ayuda gratuita. Puede comunicarse con el Administrador del Acuerdo o los Abogados del Colectivo mediante la información que se proporciona en la página 2.

6. ¿Cuáles son las instalaciones de BNH que abarca esta demanda?

Esta demanda abarca todas las instalaciones de BNH en Texas. En aras de la claridad, se enumeran a continuación:

(1) Baptist Neighborhood Hospital Hausman, 8230 N 1604 W., San Antonio, TX 78249;

(2) Baptist Neighborhood Hospital Kelly, 806 Cupples Rd, San Antonio, TX 78237;

(3) Baptist Neighborhood Hospital Overlook, 25615 US-281, San Antonio, TX 78258;

(4) Baptist Neighborhood Hospital Schertz, 16977 I-35 N., Schertz, TX 78154;

(5) Baptist Neighborhood Hospital Shavano Park, 4103 North Loop 1604 W., San Antonio, TX 78249;

(6) Baptist Neighborhood Hospital Thousand Oaks, 16088 San Pedro Ave., San Antonio, TX 78232;

(7) Baptist Neighborhood Hospital Westover Hills, 10811 Town Center Dr., San Antonio, TX 78251; y

(8) Baptist Neighborhood Hospital Zarzamora, 7719 IH 35 S., San Antonio, TX 78224.

Nota: Baptist Neighborhood Hospital era conocido anteriormente como Baptist Emergency Hospital. Por lo tanto, si usted acudió a Baptist Emergency Hospital en cualquiera de los lugares anteriores, y usted cumple las otras condiciones de la Pregunta 5, usted es Miembro del Colectivo.

7. Creo que formo parte del Colectivo, pero no he recibido una Notificación de Sumario. ¿Qué debo

La Notificación de Sumario solo se envía por correo a los Miembros del Colectivo, según los registros de los Demandados. Si no ha recibido una Notificación de Sumario, esto significa que se ha perdido en el correo (puede comunicarse con su Oficina de Correos) o que usted no forma parte del Colectivo según los registros de los Demandados y, por lo tanto, no forma parte de este Acuerdo. Sin embargo, si cree que es Miembro del Colectivo según la Pregunta 3 de esta Notificación, puede comunicarse con el Administrador del Acuerdo o los Abogados del Colectivo mediante la información que se proporciona en la página 2 de esta Notificación para obtener más información.

8. ¿Existe alguna excepción a la inclusión como Miembro del Colectivo?

Sí. Las casas matrices, las filiales, los representantes, los directivos, los directores, los socios y las empresas conjuntas de los Demandados **no** son Miembros del Colectivo y, por lo tanto, **no son parte** del Acuerdo. Asimismo, cualquier persona que solicite ser excluida (*es decir*, "que se excluya voluntariamente") del Colectivo de conformidad con las instrucciones proporcionadas en esta Notificación y establecidas por el Tribunal (*consulte* la Pregunta 16 a continuación) **no** será Miembro del Colectivo y, por lo tanto, **no será parte** del Acuerdo.

9. ¿Qué establece el Acuerdo?

Reembolsos: Para cualquier Panel Actual solicitado y realizado en una instalación de BNH, si usted pagó más que la cantidad de reembolso que el pagador de su seguro hubiera aprobado (o, para los pacientes que pagan en efectivo, la cantidad que BNH hubiera facturado) para el Panel de Código CPT asociado, los Demandados reembolsarán la parte del pago que superó el reembolso aprobado (o el monto facturado), incluidos los pagos efectuados a un tercero, como una agencia de cobros.

Anulaciones o Condonaciones: Para cualquier Panel Actual solicitado y realizado en una instalación de BNH, si a usted se le facturó más que la cantidad de reembolso que el pagador de su seguro hubiera aprobado (o, para los pacientes que pagan en efectivo, la cantidad que BNH hubiera facturado) para el Panel de Código CPT asociado y usted no ha pagado una parte de ello, los Demandados condonarán la parte del pago que usted debía que superaba el reembolso aprobado (o el monto facturado).

Cambiar la práctica de cara al futuro:

(i) Incluir los Paneles de Código CPT como opción de prueba de laboratorio: Los demandados han aceptado empezar a ofrecer los Paneles de Código CPT asociados, *es decir*, los Paneles CPT 80047, CPT 80048 y CPT 80076, como opciones de pruebas de laboratorio internas en todos los laboratorios de atención in situ de sus instalaciones. Los Paneles de Código CPT se incluirán como una opción en todos los menús de pruebas de laboratorio internas de las instalaciones de BNH para que los médicos puedan solicitarlos.

(ii) Divulgaciones en los formularios de admisión: Los demandados han aceptado incluir una divulgación en sus formularios de consentimiento de admisión, en la que se informará a los pacientes que tienen tres opciones internas para los paneles metabólicos o hepáticos/pancreáticos: (1) el Panel Actual, que puede ser más caro; (2) el Panel de Códigos CPT asociado, que, aunque es ligeramente diferente, puede ser menos costoso, o (3) una combinación de panel metabólico y hepático.

La divulgación alienta a los pacientes a discutir estas opciones con sus médicos para determinar qué opción es mejor para ellos y consultar a su empresa de seguros para discutir las obligaciones de pago de los pacientes para cada uno de estos paneles de laboratorio.

(iii) Divulgaciones en el archivo de transparencia de precios en el sitio web: Los demandados han aceptado divulgar el precio de la lista de precios médicos de los Paneles Actuales, en cada una de las instalaciones de BNH, hasta la cifra exacta en dólares, en el "Archivo de descripción de cargos estándar" disponible para su descarga en la sección de Transparencia de Precios del sitio web de BNH en https://www.baptistneighborhoodhospital.com/pricing-transparency/.

10. Soy un paciente asegurado. ¿Cómo se calculará mi reembolso, si lo hubiere?

Los reembolsos para pacientes asegurados se calculan con base en la "**Diferencia de Costo del Panel**", que es la diferencia entre (i) la parte de la Responsabilidad del Paciente que es atribuible al costo de los respectivos Paneles Actuales (el "**Costo del Panel Actual**"); y (ii) la parte de la Responsabilidad del Paciente que habría sido atribuible al costo del Panel de Código CPT asociado (CPT No. 80048 o CPT No. 80076) (el "**Costo del Panel no Compensado**").[4]

[4] Más concretamente, los reembolsos para los pacientes asegurados se calculan siguiendo estos cuatro pasos:

(A) Se utilizarán las tarifas contractuales y los calendarios de tarifas aplicables del Tercero Pagador vigentes en la Fecha de Servicio del Miembro del Colectivo para determinar (x) el monto total de reembolso pagadero a BNH que el pagador aprobó para los Paneles Actuales (en adelante, el "**Reembolso por Panel Aprobado**") solicitados y realizados para el Miembro del Colectivo; y (y) el monto total de reembolso pagadero a BNH que el pagador habría aprobado para el Panel de Código CPT asociado (el "**Reembolso por Panel no Compensado**");

(B) El Reembolso por Panel no Compensado se resta del Reembolso por Panel Aprobado para obtener la "Diferencia de Reembolso por Panel";

(C) El monto de Responsabilidad del Paciente que BNH facturó al Miembro del Colectivo se divide entre el monto total de reembolso pagadero a BNH por la visita del Miembro del Colectivo que fue aprobada por el Tercero Pagador para derivar el "Porcentaje de Responsabilidad del Paciente";

(D) La Diferencia de Reembolso por Panel se multiplica por el Porcentaje de Responsabilidad del Paciente para determinar la Diferencia de Costo del Panel.

Si la Diferencia de Costo del Panel para un Miembro del Colectivo es menor o igual que la cantidad adeudada, el Miembro del Colectivo no será elegible para un Reembolso, pero será elegible para obtener la parte de la Diferencia de Costo del Panel condonada por BNH.

Nota: cualquier Miembro del Colectivo (i) cuyo plan de seguro reembolse a BNH a una tasa por caso o diaria, sin ningún reembolso adicional aparte por pruebas de laboratorio clínicas, o (ii) que tenga un plan de seguro de Medicare o Medicaid de pago por servicio con planes de copago fijos no será elegible para Reembolsos, pero seguirá siendo Miembro del Colectivo para todos los demás fines.

La Notificación de Sumario que recibió por correo le dirá si es elegible para cualquier reembolso y, en caso afirmativo, qué monto. También puede comunicarse con el Administrador del Acuerdo o los Abogados del Colectivo mediante la información que se proporciona en la página 2 de esta Notificación para obtener más detalles.

11. Soy un paciente que pagó con dinero en efectivo. ¿Cómo se calculará mi reembolso, si lo hubiere?

Los reembolsos para pacientes que pagan en efectivo se calculan con base en la "**Diferencia de Costo del Panel**", que es la diferencia entre (i) la parte de la Responsabilidad del Paciente que es atribuible al costo de los respectivos Paneles Actuales (el "**Costo del Panel Actual**"); y (ii) la parte de la Responsabilidad del Paciente que habría sido atribuible al costo del Panel de Código CPT asociado (CPT No. 80048 o CPT No. 80076) (el "**Costo del Panel no Compensado**").[5]

En la siguiente tabla, se ilustra cómo se calculan los reembolsos utilizando los cuatro pasos anteriores para un panel BMP (incluye CK) realizado y facturado a un paciente asegurado:

Cálculo de la Diferencia de Reembolso por Panel	**Cantidad**	**Notas**
(1) Reembolso por Panel Aprobado para BMP (incluye CK)	$50	Cifra hipotética
(2) Reembolso por Panel no Compensado para el Panel CPT N.º 80048	$10	Cifra hipotética
(3) Diferencia de Reembolso por Panel	$40	Igual a (1) menos (2)
Cálculo del porcentaje de Responsabilidad del Paciente		
(4) Cargos totales aprobados por el pagador	$100	Cifra hipotética
(5) Cargos totales facturados al paciente	$70	Cifra hipotética
(6) Porcentaje de Responsabilidad del Paciente	70%	Igual a (5) dividido entre (4)
Diferencia de Costo del panel	$28	Igual a (3) por (6)

[5] Más concretamente, los reembolsos para los pacientes elegibles que pagan en efectivo se calculan siguiendo estos cuatro pasos:

(A) El registro de facturación del Miembro del Colectivo y los precios vigentes en la Fecha de Servicio del Miembro del Colectivo en la lista de precios médicos de BNH se utiliza para determinar (x) el monto que BNH facturó por los Paneles Actuales (el "**Monto Real Facturado por Panel**") solicitados y realizadas para el Miembro del Colectivo (antes de cualquier ajuste); y (y) el monto que BNH habría facturado por el Panel de Código CPT asociado (el "**Monto Facturado por Panel no Compensado**");

(B) El Monto Facturado por Panel no Compensado se resta del Monto Real Facturado por Panel para obtener la diferencia de monto facturado por panel (la "**Diferencia de Monto Facturado por Panel**");

(C) El monto que BNH facturó al Miembro del Colectivo se divide entre el monto total facturado por la visita del Miembro del Colectivo para obtener el Porcentaje de Responsabilidad del Paciente;

(D) La Diferencia de Monto Facturado por Panel se multiplica por el Porcentaje de Responsabilidad del Paciente para determinar la Diferencia de Costo del Panel.

Si la Diferencia de Costo del Panel para un Miembro del Colectivo es menor o igual que la cantidad adeudada a BNH, el Miembro del Colectivo no será elegible para un reembolso, pero puede ser elegible para obtener la parte de la Diferencia de Costo del Panel condonada por BNH.

Nota: Los Miembros del Colectivo que optaron por pagar su visita de BNH en efectivo con la opción de "pago rápido" de los Demandados, que especifica una tarifa por caso para el tratamiento que no varía en función del número o los tipos de pruebas clínicas de laboratorio que se realicen, no serán elegibles para los reembolsos, pero seguirán siendo Miembros del Colectivo para todos los demás fines.

La Notificación de Sumario que recibió por correo le dirá si es elegible para cualquier reembolso y, en caso afirmativo, qué monto. También puede comunicarse con el Administrador del Acuerdo o los Abogados del Colectivo mediante la información que se proporciona en la página 2 de esta Notificación para obtener más detalles.

12. ¿Qué necesito hacer para recibir un reembolso?

Para recibir un reembolso, debe ser elegible conforme a los términos del Acuerdo y debe presentar un **Formulario de Reclamación** válido y oportuno al Administrador del Acuerdo, RG/2 Claims Administration LLC. Puede descargar el Formulario de Reclamación desde el Sitio Web del Acuerdo, www.BaptistEmergencyHospitalSettlement.com, o comunicándose con el Administrador del Acuerdo mediante la información de contacto de la página 2 de la presente Notificación. Lea atentamente las instrucciones, rellene el Formulario de Reclamación, fírmelo y envíelo por correo con matasellos a más tardar el 18 de septiembre de 2023 o envíelo en línea a más tardar el 18 de septiembre de 2023. Todo Miembro del Colectivo que no presente un Formulario de Reclamación antes de dicha fecha quedará excluido para siempre de recibir cualquier reembolso de parte de los Demandados (a menos que se amplíe el plazo por orden del Tribunal o se acepte el Formulario de Reclamación de dicho Miembro del Colectivo), pero puede ser elegible para la condonación de cualquier monto según la Pregunta 13 a continuación y quedará vinculado por todos los términos del Acuerdo y la Sentencia Final, incluidas las Emisiones de los mismos, y se le prohibirá para siempre hacer valer cualquiera de las Reclamaciones del Colectivo del Acuerdo contra cualquiera de las Partes Demandadas Emitidas.

No puede enviar su Formulario de Reclamación por teléfono, fax o correo electrónico. No

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En la siguiente tabla, se ilustra cómo se calculan los Reembolsos utilizando los cuatro pasos anteriores para un panel BMP (incluye CK) realizado y facturado a un paciente que paga en efectivo:

Cálculo de la Diferencia de Reembolso por Panel	**Cantidad**	**Notas**
(1) Monto facturado real por panel para BMP (incluye CK)	$50	-Cifra hipotética
(2) Monto Facturado por Panel no Compensado para el Panel CPT 80048	$10	-Cifra hipotética
(3) Diferencia de Monto Facturado por Panel	$40	Igual a (1) menos (2)
Cálculo del porcentaje de Responsabilidad del Paciente		
(4) Importe total facturado por BNH	$100	-Cifra hipotética
(5) Responsabilidad total del paciente después de los ajustes, si los hubiere, de BNH	$35	-Cifra hipotética
(6) Porcentaje de Responsabilidad del Paciente	35%	Igual a (5) dividido entre (4)
Diferencia de Costo del panel	$14	Igual a (3) por (6)

necesita enviar ninguna historia clínica o información médica más allá de la información de facturación relacionada con sus análisis de sangre, que se especifica en el Formulario de Reclamación.

13. ¿Cómo se calcularán los montos de condonación y cancelación?

El monto de condonación o cancelación, si lo hubiere, se calcula con base en la Diferencia de Costo del Panel calculada utilizando la fórmula descrita en las Preguntas 10 y 11, según el caso. Si la Diferencia de Costo del Panel que se le adeuda a usted es inferior o igual al monto que usted adeuda a BNH, usted será elegible para la condonación de esa parte de la Diferencia de Costo del Panel por parte de BNH y a su monto en mora se le restará dólar por dólar el monto de la Diferencia de Costo del Panel.

La Notificación de Sumario que recibió por correo le dirá si es elegible para cualquier condonación o cancelación y, en caso afirmativo, qué monto. También puede comunicarse con el Administrador del Acuerdo o los Abogados del Colectivo mediante la información que se proporciona en la página 2 de esta Notificación para obtener más detalles.

14. ¿Cuándo recibiré mi pago?

El Tribunal realizará una audiencia el 15 de mayo de 2023 para decidir si aprueba el Acuerdo. El Tribunal puede modificar la fecha y hora de la Audiencia del Acuerdo sin previo aviso o celebrar la Audiencia del Acuerdo por teléfono o videoconferencia. Cualquier cambio en la Audiencia del Acuerdo se publicará en el Sitio Web del Acuerdo. Si se aprueba el Acuerdo, el Administrador del Acuerdo completará el proceso de revisión de reclamaciones y, luego, efectuará los reembolsos. Los Demandados también ajustarán simultáneamente las deudas de los pacientes para reflejar los importes de la condonación o anulación. Este es necesariamente un proceso largo.

15. ¿A qué voy a renunciar como Miembro del Colectivo?

Usted renunciará a su derecho a presentar su propia demanda individual contra los Demandados que trate sobre (i) la facturación de los Paneles Actuales durante el período comprendido entre el 25 de septiembre de 2016 y el 27 de enero de 2023 que es la base del litigio; y (ii) la transparencia y la divulgación o falta de divulgación de los precios en relación con la facturación de los Paneles Actuales. Estas son las "Reclamaciones del Colectivo del Acuerdo". **Cualquier reclamación que pueda tener relacionada con su tratamiento médico real no será emitida.**

Si desea preservar su derecho a presentar una demanda individual contra los Demandados en relación con los Reclamos del Colectivo del Acuerdo, debe "darse de baja" del Acuerdo.

16. ¿Qué sucede si no quiero formar parte del Acuerdo?

Si no desea formar parte del Acuerdo, puede "darse de baja". Si se da de baja, no recibirá una condonación o reembolso, pero preservará su derecho a demandar a los Demandados por su cuenta. Si un número considerable de Miembros del Colectivo se dan de baja, los Demandados tendrán derecho a rescindir el Acuerdo.

Para darse de baja, debe enviar su solicitud de exclusión al Administrador del Acuerdo para que este la reciba a más tardar el 24 de abril de 2023 a la siguiente dirección:

RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479.

Usted asume el riesgo de entregar la solicitud. Su solicitud debe indicar claramente el nombre completo, la dirección y el número de teléfono del Miembro del Colectivo que solicita la exclusión;

que el Miembro del Colectivo solicita ser excluido del Colectivo, y la firma del Miembro del Colectivo. Todas las personas que soliciten la exclusión deberán indicar también: el nombre de la instalación de BNH que visitaron, las fechas de los servicios, las fechas de las facturas, los montos de las facturas y qué Paneles Actuales se realizaron. Las solicitudes de exclusión deben cumplir estos requisitos para ser válidas y entrar en vigor. Si se da de baja, **no puede** oponerse al Acuerdo propuesto, porque no lo afecta a usted.

Las copias de dichas solicitudes de exclusiones deberán enviarse también por correo de primera clase, a más tardar el 24 de abril de 2023, a:

Chet Waldman, Esq., Wolf Popper LLP, 845 Third Avenue, New York, NY 10022 (Abogados del Colectivo)

Kevin McGinty, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Financial Center, Boston, MA 02111 (Abogados de los Demandados)

17. ¿Tengo otras opciones si no me gusta el Acuerdo?

Si no le gusta el Acuerdo o una parte del mismo, como la solicitud de honorarios por parte de los abogados del Demandante o la Adjudicación por Servicio del Representante del Colectivo, y usted no se da de baja, puede decírselo al Tribunal presentando una objeción por escrito. Si desea oponerse al Acuerdo, debe enviar por correo una carta con la siguiente información: el nombre y el número de expediente de esta demanda (*Kenneth Keslar II v. Emerus / BHS Thousand Oaks LLC et. al.*, Expediente N.º 2020-CI-18623); su nombre completo, dirección postal y dirección de correo electrónico o número de teléfono; qué es específicamente lo que no le gusta del Acuerdo o de cualquier parte de él y sus razones. También debe proporcionar una copia de su factura de BNH para cualquier Panel Actual que se le realizó durante el Período del Colectivo o cualquier otro documento que demuestre que usted es Miembro del Colectivo. Su objeción, incluidos los documentos que demuestran que usted es Miembro del Colectivo, debe enviarse por correo con matasellos a más tardar el 24 de abril de 2023, a Clerk of the Court, 73rd Civil District Court, Bexar County Courthouse, 100 Dolorosa, 4th Floor, San Antonio, TX 78205.

Las copias de dichas objeciones y la documentación adjunta deberán enviarse también por correo de primera clase, a más tardar el 24 de abril de 2023, a:

Chet Waldman, Esq., Wolf Popper LLP, 845 Third Avenue, New York, NY 10022 (Abogados del Colectivo)

Kevin McGinty, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center, Boston, MA 02111 (Abogados de los Demandados)

18. ¿Cuál es la diferencia entre darse de baja del Acuerdo y objetar?

Darse de baja significa salir del Acuerdo en su totalidad: usted no recibe ningún beneficio, pero no está vinculado a los términos del Acuerdo. La objeción significa que sigue formando parte del Acuerdo, pero tiene quejas sobre algún aspecto del Acuerdo que no le gusta. Puede seguir recibiendo beneficios en virtud del Acuerdo si tiene objeciones, pero si desea un reembolso, debe presentar un Formulario de Reclamación. Usted también estará vinculado al Acuerdo si este es aprobado por el Tribunal y no podrá demandar a los Demandados en relación con ninguno de los Reclamos del Colectivo del Acuerdo.

19. ¿Tengo un abogado para este caso?

Sí, los expertos en leyes del Demandante (*es decir,* los Abogados del Demandante) representan al Demandante y a todo el Colectivo. No tiene que pagar por estos abogados. El Tribunal decidirá cuánto deben pagar los Demandados a los Abogados del Demandante. Los demandados han acordado no oponerse a la solicitud de los Abogados del Demandante de honorarios y gastos de los abogados que no superen los $800,000 para cubrir su trabajo y gastos incurridos en este caso, pero el Tribunal determinará el monto de los honorarios y gastos razonables que se adjudicarán. Cualquier adjudicación de honorarios y gastos de abogados **no** reducirá el monto de los reembolsos o las condonaciones disponibles para los Miembros del Colectivo elegibles. Si quiere que lo represente su propio abogado, podrá contratarlo a su propio costo.

20. ¿Qué obtiene el Demandante del acuerdo?

Los Demandados han acordado no oponerse a la solicitud del Demandante ante el Tribunal de una Adjudicación por Servicio de Representante del Colectivo de $5,000 al Demandante por su trabajo en la presentación de esta demanda. Cualquier adjudicación al Demandante **no** reducirá el monto de las cancelaciones o reembolsos disponibles para el Colectivo. Al igual que otros miembros del Colectivo, el Demandante designado puede recibir condonaciones o reembolsos si es elegible.

21. ¿Cuándo y dónde decidirá el Tribunal si aprueba el Acuerdo?

El Tribunal celebrará una "Audiencia de Aprobación Final" antes de decidir si se aprueba el Acuerdo. La Audiencia de Aprobación Final está programada para el 15 de mayo de 2023, en la Sala de Audiencias 1.09, Tribunal de Distrito Civil 73, Tribunal del Condado de Bexar, Dolorosa al 100, 4.º piso, San Antonio, TX 78205. Usted no necesita asistir a la Audiencia de Aprobación Final, pero es bienvenido a hacerlo. En la Audiencia de Aprobación Final, el Tribunal considerará si el Acuerdo es justo, razonable y adecuado. En caso de que existan objeciones, el Tribunal las analizará. El Tribunal también considerará la solicitud de los Abogados del Demandante de honorarios de abogados, reembolso de gastos y adjudicación de servicio de representante del colectivo en la Audiencia de Aprobación Final.

22. ¿Dónde puedo obtener más información?

Esta Notificación contiene solo un resumen de la demanda y del Acuerdo. Puede obtener más información en www.BaptistEmergencyHospitalSettlement.com. Si tiene alguna pregunta sobre esta Notificación o el Acuerdo, también puede comunicarse con el Administrador del Acuerdo o los Abogados del Colectivo utilizando la información de contacto identificada en la página 2. Los escritos procesales y algunos de los demás documentos judiciales importantes de la Acción también están disponibles en el sitio web del acuerdo.

NO LLAME POR TELÉFONO AL TRIBUNAL, A LOS DEMANDADOS O AL ABOGADO DE LOS DEMANDADOS EN RELACIÓN CON ESTA NOTIFICACIÓN.

Fecha: 17 de marzo de 2023

POR ORDEN DEL TRIBUNAL

73.º DISTRITO JUDICIAL
TRIBUNAL DE DISTRITO,
CONDADO DE BEXAR, TEXAS

EXHIBIT B

Weekly Case Summary Report as of: 14-Apr-23

In the Matter of: Keslar v. Emerus BHS /SA Thousand Oaks, LLC

Case Milestones

Prelim Approval	2/17/2023
Class Begins	9/25/2016
Exclusion/Objection Deadline	4/24/2023
Claim Form Deadline	9/18/2023

Mailing Details

Total Mailed	Total Returned	Total Remailed	Dead Addresses
64,088	4,843	3,762	1081

Claims Summary

Refund Claims Filed:	115
Forgiveness Claims Filed:	217
Exclusions Filed:	0
Objections Filed:	0

RG2 Claims Administration LLC

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SANDEEP KAUR and CINDY DORIN, individually and on behalf of all others similarly situated, Plaintiffs, vs. ENVISION HEALTHCARE CORPORATION, EMCARE, INC., EMCARE IAH EMERGENCY PHYSICIANS PLLC, and OLD SETTLERS EMERGENCY PHYSICIANS, PLLC, Defendants.	Case No. 4:19-cv-02480 **[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS TO REPRESENTATIVE PLAINTIFFS**

WHEREAS, Plaintiffs Sandeep Kaur and Cindy Dorin have moved for an order awarding Class Counsel's attorneys' fees, inclusive of costs and expenses, in the amount of $450,000; and (2) awarding each of the Representative Plaintiffs service awards in the amounts of $2,500[1] (the "Motion"); and

WHEREAS, the Court has reviewed and considered the Motion and accompanying papers and the Settlement Agreement and exhibits thereto;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Motion is **GRANTED**.

[1] Unless otherwise specified, the defined terms in this Order Granting Plaintiffs' Unopposed Motion for Award of Attorneys' Fees and Reimbursement of Expenses, and Service Awards to Representative Plaintiffs (the "Order") have the same meaning and definitions as the terms in the Settlement Agreement filed with the Court on February 1, 2021. ECF No. 45-1.

2. On November 19, 2021, at 11:00 a.m., this Court held a Final Approval Hearing to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate and whether Plaintiffs' request for attorneys' fees and expenses should be granted. All papers supporting Plaintiffs' request for attorneys' fees and costs were timely filed before the deadline for Class Members to object.

3. Notice of Plaintiffs' motion for award of attorneys' fees and reimbursement of expenses, and service awards to Representative Plaintiffs was given to all Class Members who or which could be identified with reasonable effort. The form and method of notifying the Class of the motion for an award of attorneys' fees and reimbursement of expenses, and service awards to Representative Plaintiffs satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all Class Members.

4. The Court approves Plaintiffs' request for an award of Class Counsel's attorneys' fees, inclusive of costs and expenses, in the amount of $450,000, as fair and reasonable, as the prerequisites for approval under Federal Rule of Civil Procedure 23(h) are all satisfied.

5. The Court approves Plaintiffs' request for a service award in the amount of $2,500 to Plaintiff Sandeep Kaur and a service award in the amount of $2,500 to Plaintiff Cindy Dorin.

IT IS SO **ORDERED**.

November 2, 2021

George C. Hanks, Jr.
United States District Judge

EXHIBIT D

WOLF POPPER

845 Third Avenue
New York, NY 10022
212-759-4600
wolfpopper.com

BIOGRAPHICAL SKETCH OF WOLF POPPER LLP

Wolf Popper LLP ("Wolf Popper" or "the Firm") is a nationally recognized law firm with decades of experience in the fields of securities, consumer, and ERISA class actions and securities derivative actions. Since the Firm was founded in 1945, Wolf Popper has been a leader in efforts to protect the interests of defrauded investors, consumers, and employees, prosecuting hundreds of actions under federal and state laws throughout the United States, and recovering billions for aggrieved parties.

The Firm also has a substantial practice in corporate and commercial law. Wolf Popper's commercial litigation practice encompasses the representation of defendants as well as plaintiffs. The Firm's corporate practice includes business transactions, employer/employee relations, and the law of foreign missions. Among the Firm's clients are domestic and international individuals and businesses, and foreign missions to the United Nations.

The Firm's members are active members in a variety of professional legal associations, including serving on or chairing a number of committees of such associations and they have written extensively on a variety of subjects for numerous professional associations and legal periodicals, including internationally. Many of the Firm's current and former members have held responsible positions in government both at the federal and the state level. For example, Benedict Wolf (now deceased) was the First Secretary and Chief Trial Examiner of the National Labor Relations Board, and Martin Popper (now deceased) was a consultant to the U.S. Delegation to the Founding Conference of the United Nations and an observer at the Nuremberg war crimes trials.

Wolf Popper has an exemplary record in its representation of plaintiffs, and the skill and experience of the attorneys at the Firm have been repeatedly recognized by Courts throughout the country. In recognition of its high standing at the bar, Courts have frequently appointed Wolf Popper to serve as lead or co-lead counsel in complex, multi-party actions, including securities, consumer, and ERISA actions. Many of the Wolf Popper attorneys are regularly selected as New York "Super Lawyers"®. This selection represents the top 5% of attorneys practicing in New York City.

Wolf Popper has achieved notable and significant successes over the years. Some of the outstanding recoveries achieved and decisions obtained by the Firm are described below.

***Securities Actions**:*

- Kirkland v. WideOpenWest, Inc., No. 653248/2018 (Sup. Ct. N.Y. Cnty.) was a securities class action in New York State Supreme Court alleging violations of Sections 11, 12, and 15 of the Securities Act of 1933 against Defendants WideOpenWest, Inc. ("WOW"), certain of its officers and directors, and the underwriters for WOW's May 2017 initial public offering ("IPO"). The Complaint alleged that Registration Statement and Prospectus for WOW's IPO contained materially misleading statements and omissions concerning (i) WOW's "technologically advanced platform," and in particular, its much touted "Ultra DVR" product offering; (ii) WOW's maintenance of its customer quality by using internal customer information, identification verification tools, and credit bureau data; (iii) the status of WOW's build-out of its fiber network in Chicago; and (iv) WOW's overstatement of its goodwill and franchise operating rights.

Wolf Popper's client, the Employees Retirement System of the Puerto Rico Electric Power Authority ("ERS-PREPA"), was a co-Lead Plaintiff in the litigation, and Wolf Popper was Co-Lead Counsel to the Class

of WOW investors. On May 18, 2020, the Court denied, in substantial part, the Defendants motion to dismiss. While Defendants' appeal of the Court's motion to dismiss order was pending and discovery was ongoing, the parties engaged in mediation and were able to agree to settle the litigation. On January 20, 2022, the Court held a hearing in which it gave final approval of the $7,025,000 settlement.

• In Martinek v. AmTrust Financial Services, Inc., Case No. 19-cv-8030 (KPF) (S.D.N.Y.), on August 14, 2020, Judge Katherine Polk Failla denied the defendants' motion to dismiss a securities fraud action prosecuted by Wolf Popper LLP on behalf of preferred stockholders of AmTrust Financial Services, Inc., a large insurance company. The complaint filed by Wolf Popper described how AmTrust and three of its directors falsely assured the investing public that, unlike AmTrust's common shares, which would be delisted as part of a merger in which these three directors would be taking the company private, AmTrust preferred stock would continue to be listed on the New York Stock Exchange. In rejecting the defendants' arguments, Judge Failla concluded that "[t]he fact of the matter is that, prior to the Merger, Defendants repeatedly assured investors that the preferred stock would remain listed, and then, less than two months after the transaction closed, decided to delist the preferred stock." The Court found that the "professed reasons for delisting the stock…were known to the Individual Defendants before the Merger," a fact "only strengthen[ing] Plaintiff's argument this was a classic bait and switch." A $13 million settlement has been reached and was approved by the Court on November 16, 2022, with the Court stating that Wolf Popper "conducted the Litigation and achieved the Settlement with skill, perseverance and diligent advocacy; [and] Lead Counsel are highly experienced in class action litigation and securities class action litigation…."

• In Jackson v. Microchip Technology Inc., No. CV-18-02914-PHX-JJT (D. Ariz.), on March 11, 2020, Judge John J. Tuchi issued an order denying, in substantial part, defendants' motion to dismiss. The Court concluded, *inter alia*, that the complaint properly alleges that the defendants' statements concerning the historical performance of a competitor acquired by Microchip were misleading given Microchip's use of differing accounting practices. The Court further concluded that the complaint properly alleges the defendants' intent to defraud investors. On February 22, 2021, the Court granted Lead Plaintiff's motion for Class Certification, appointed the Lead Plaintiff as the Class Representative, and appointed Wolf Popper as Lead Class Counsel. A settlement in the amount of $9 million has been approved by the Court.

• In Public Employees' Retirement System of Mississippi v. TreeHouse Foods, Inc., Case No. 16-cv-10632 (N.D. Ill.), the Court, on November 16, 2021, approved a $27 million settlement in an action challenging statements in which TreeHouse Foods overstated its success after buying a Conagra unit for $2.7 billion, wrongly inflating TreeHouse's stock price.

• In Bach v. Amedisys, Inc., 10-CV-00395 (C.D. La.), Wolf Popper represents one of the Co-Lead Plaintiffs, the Puerto Rico Teachers Retirement System. Plaintiffs allege that Amedisys, a home health care company, engaged in Medicare fraud, misrepresenting its financial statements and history of compliance with Medicare rules and regulations, and improperly securing revenue from Medicare billings. In essence Amedisys hid a Medicare fraud scheme by which Amedisys improperly inflated Medicare reimbursements by pressuring and intimidating nurses and therapists to provide unnecessary treatment to trigger higher fees. The District Court granted Defendants' motions to dismiss the Complaint. However, Co-Lead Plaintiffs successfully appealed that dismissal to the Fifth Circuit, which reversed the dismissal and remanded the case to the District Court for further proceedings. Following substantial discovery, the parties reached a settlement in the amount of $43.75 million. The Court granted final approval to the settlement on December 13, 2017.

• In Flynn v. Sientra, Inc., Case No. 2:15-cv-07548-SJO-RAO (C.D. Cal.), Wolf Popper served as co-lead counsel for the class in an action asserting claims under both the Securities Act of 1933 (in connection with a secondary public offering ["SPO"]) and the Securities Exchange Act of 1934, on behalf of purchasers of Sientra, Inc. ("Sientra") common stock. Sientra sold breast implants made by a Brazilian manufacturer in a single facility in Rio de Janeiro, Silimed Indústria de Implantes Ltda. ("Silimed"), with whom Sientra had extensive relationships. Plaintiffs alleged that, unbeknownst to the investing public, in the spring and summer 2015, European regulators discovered that the implants manufactured in that facility were

contaminated with foreign particulates, and that Silimed had performed its own inspection and reached the same conclusion. Shortly thereafter, Sientra, which needed a cash infusion, announced a $65 million SPO. Plaintiffs alleged that the SPO's offering documents represented that Sientra, not Silimed, was "primarily responsible for the manufacturing and quality assurance of [Sientra's] products," including inspections of all products from Silimed; and that the offering documents discussed the manufacturing of Sientra's products at the Rio facility, including regulatory compliance and current good manufacturing practices ("cGMP"), without disclosing that widespread contamination at that facility had been found by regulators, and confirmed by Silimed, well before the SPO. Plaintiffs alleged that, notwithstanding Defendants' knowledge of the regulatory and internal findings, they recklessly continued with the SPO, raising more than $65 million. Minutes after the SPO closed, the contamination was revealed by the European regulators, causing the price of Sientra's common stock to plummet. On June 9, 2016, Judge S. James Otero denied in substantial part defendants' motions to dismiss the Section 10(b), Section 11 and 12(b)(2) claims. Flynn v. Sientra, Inc., 2016 U.S. Dist. LEXIS 83409 (C.D. Cal. June 9, 2016), motion for reconsideration denied, slip op. (C.D. Cal. Aug 12, 2016). On May 22, 2017, the court approved a settlement of the litigation for $10.9 million in cash.

- In Anwar v. Fairfield Greenwich Ltd., No. 09-cv-0118 (VM) (S.D.N.Y.), Wolf Popper was co-lead counsel for investors in the multi-billion "feeder" funds, managed by affiliates of the Fairfield Greenwich Group (FGG). These funds lost virtually all of their assets in the Ponzi scheme orchestrated by Bernard L. Madoff. The case included claims under both the federal securities laws and New York state common law. Wolf Popper helped recover hundreds of millions of dollars for these Madoff victims.

Based upon the strength of plaintiffs' arguments and briefing, in a groundbreaking decision Judge Marrero broke from substantial existing precedent in the New York courts and the district courts within the Second Circuit in denying defendants' motion to dismiss, concluding that the Martin Act did not preempt any existing claims under New York law. Anwar v. Fairfield Greenwich, Ltd., 728 F. Supp. 2d 354 (S.D.N.Y. 2010). That decision was approved and substantially followed by the New York Court of Appeals in Assured Guar. (UK) Ltd. v J.P. Morgan Inv. Mgt. Inc., 18 N.Y.3d 341, 353 (N.Y. 2011). On March 22, 2013, the court approved a partial settlement in the amount of $80,250,000, including a minimum of $50,250,000 to be distributed to the settlement class upon final approval, and an additional $30,000,000 to be distributed if not used to resolve other claims. An additional $5,000,000 partial settlement with defendant GlobeOp was approved by the Court on November 22, 2013. On November 20, 2015, the Court gave final approval to a $125 million settlement with the Citco Group defendants. In 2016, the Court approved a settlement with PricewaterhouseCoopers in the amount of $55 million. Thus, Wolf Popper's efforts helped recover up to $265 million for these victims of the Madoff Ponzi-scheme scandal.

- In Plumbers' & Pipefitters' Local #562 Supplemental Plan & Trust et al. v. J.P. Morgan Acceptance Corp. I et al., 2:09-cv-01713 (E.D.N.Y.) (PKC) (WDW), Wolf Popper represented the Public Employees' Retirement System of Mississippi ("MissPERS"), as lead plaintiff, in an action against JPMorgan Acquisition Corp. ("JPMAC"), certain individuals employed by JPMAC or its affiliates, and JP Morgan Securities, Inc. The class consisted of investors who purchased certain mortgage pass-through certificates (mortgage-backed securities) across 26 Offerings, with an initial face value of approximately $23 billion. MissPERS's consolidated complaint alleged that the offering documents pursuant to which the JPMAC securities were sold contained misrepresentations and omitted to disclose information concerning the underwriting of the mortgage loans serving as collateral for the securities. The parties engaged in extensive motion practice and discovery. In February 2012, Lead Plaintiff defeated Defendants' motion to dismiss in substantial part.

On July 24, 2014, the Honorable Pamela K. Chen entered an order approving the settlement which resolved the action for a total of $280 million. It is one of the largest settlements in a class action against banks that issued mortgage-backed securities. The Court found that "the representation of both sides was obviously very vigorous. The plaintiffs, I know, expended efforts in terms of pursuing the investigation, the theories, the research and the advocacy." The Action "was a difficult case. Certainly in the beginning, at the

time when some of the principles, the legal principles that are applied in this case, in any cases related to mortgage-backed securities, was not well established. They did yeomen's work, I think, in trying to establish some of those principles… [T]his is a good result in this particular case."

• In the State of New Jersey, Department of Treasury, Division of Investment v. Merrill Lynch & Co., Inc. and Bank of America Corp., Docket No. L-3855-09 (New Jersey Superior Court, Hudson County), Wolf Popper represented the State of New Jersey, Division of Investment ("NJ") in an individual action against Merrill Lynch. On January 16, 2009, Bank of America Corp. ("BAC") announced that Merrill Lynch & Co., Inc. ("Merrill"), BAC's subsidiary, reported a net loss after taxes for the fourth quarter of 2008 of $15.3 billion. In researching potential claims against Merrill, Wolf Popper learned that NJ had invested $300 million in January 2008 in a private placement of Merrill preferred stock and that NJ had converted those preferred shares to common stock pursuant to an exchange agreement in July 2008. Further investigation revealed that a different investor, at that same time, had converted its preferred shares to a new series of preferred on terms that were preferential to the terms Merrill had offered to NJ. Prior to filing the Complaint, Wolf Popper was able to obtain discovery with respect to a class action settlement of claims against Merrill then pending in the Southern District of New York for purposes of advising NJ whether to opt out of the class action and file an individual complaint. NJ, subsequent to that discovery, determined to opt out of the class settlement. Wolf Popper filed an individual complaint on NJ's behalf on July 28, 2009, in state court in New Jersey asserting claims against Merrill Lynch for breach of contract, breach of the covenant of good faith and fair dealing, and negligent misrepresentation. After defendants removed the case to federal court, the U.S. Court of Appeals for the Third Circuit unanimously affirmed the remand of the action back to the New Jersey state court on May 18, 2011. The New Jersey Superior Court thereafter denied defendants' motion to dismiss in its entirety. Following merits and expert discovery, the Court on September 29, 2012, denied in all material respects Merrill's motion for summary judgment. The action settled in April 2013 for $45 million, approximately one month before trial. New Jersey Attorney General Jeffrey S. Chiesa stated, in announcing the settlement, that "this is a fair and equitable outcome, and we are pleased to be recovering a substantial amount of dollars on behalf of New Jersey taxpayers."

• In Tsereteli, et ano., v. Residential Asset Securitization Trust 2006-A8 et al., No. 08 Civ. 10637 (LAK) (S.D.N.Y.) (IndyMac), Wolf Popper is lead counsel, representing a British Virgin Islands corporation, on behalf of investors who purchased mortgage pass-through certificates (RMBS) backed by IndyMac Bank, N.A. ("IndyMac") loans. The court denied the motion to dismiss filed by defendant Credit Suisse Securities (USA) LLC, the underwriter that sold the mortgage-backed securities in the case. The claims alleged untrue statements and omissions related to the origination, by IndyMac, of the home mortgage loans backing the securities sold in the offering. The court upheld plaintiff's allegations that IndyMac had abandoned the loan origination procedures and underwriting standards that were disclosed to investors in the offering. Plaintiff's class certification motion, which addressed several novel issues, including whether a single class could include claims brought on behalf of different certificate purchasers within a complex "waterfall" capital structure, was granted on June 29, 2012.

On January 27, 2014, Judge Kaplan approved the parties' proposed settlement, which provides an $11 million benefit to the class. The settlement is believed to be one of the largest percentage recoveries to date (as a function of statutory damages) in an RMBS Securities Act class action.

• In In re Tycom Ltd. Sec. Litig., No. 03-3540 (GEB) (D.N.J.), Wolf Popper, representing the Lead Plaintiff, served as co-lead counsel for the class, securing a $79 million cash settlement for the class following extensive motion practice and full discovery. At the August 25, 2010 hearing at which the Court approved the settlement, the Honorable Garrett E. Brown, Jr., Chief Judge of the U.S. District Court for the District of New Jersey, praised the Firm for its "very extensive and professional representation of the class."

• In the In re Motorola Sec. Litig., No. 03-C-287 (RRP) (N.D. Ill.), Wolf Popper represented the Lead Plaintiff, the State of New Jersey, Department of Treasury, Division of Investment. On the eve of trial,

the defendants paid $190,000,000 to the class to resolve the federal securities litigation. This recovery was obtained after more than four years of litigation. During the litigation, Wolf Popper, among other things, defeated Motorola's motion to dismiss the complaint (2004 U.S. Dist. LEXIS 18250 (Sept. 9, 2004, N.D. Ill.)) and Motorola's motions for summary judgment (2007 U.S. Dist. LEXIS 9530 (Feb. 8, 2007, N.D. Ill.)).

• In Middlesex Retirement System v. Quest Software, Inc., No. 06-06863-DOC (RNBx) (C.D. Cal.), Wolf Popper was appointed lead counsel in a federal securities class action against Quest Software, Inc. ("Quest"), a company that designs, develops, distributes and supports software products. The case is based on allegations that Quest issued materially false and misleading statements to cover up its failure to account properly for backdated stock options, causing Quest's operating and net income to be overstated and its stock price to be artificially inflated. Following comprehensive briefing opposing defendants' initial motion to dismiss, the Court denied virtually all of defendants' motion. Defendants filed subsequent motions to dismiss challenging the amended complaint which had added additional allegations. The Court denied defendants' motions to dismiss the claims under § 10(b) and § 20(a) of the Securities Exchange Act of 1934. See Middlesex Retirement System v. Quest Software, Inc., 527 F. Supp. 2d 1164 (C.D. Cal. 2007); and Amended Order (C.D. Cal. July 10, 2008). After comprehensive discovery and the grant of plaintiff's motion to compel discovery and plaintiff's motion for class certification, see Middlesex Retirement System v. Quest Software, Inc., Order, CV 06-6863-DOC (RNBx) (C.D. Cal. Jul. 8, 2009), aff'd, Order (C.D. Cal. Sept. 18, 2009) (order granting Plaintiff's motion to compel); and Order, CV 06-6863-DOC (RNBx) (C.D. Cal. Sept. 8, 2009) (Granting Lead Plaintiff's Motion for Class Certification), the parties entered into a proposed settlement of the action for $29.4 million (plus the cost of providing notice of the settlement to the class). The Court preliminarily approved the settlement, stating "[Y]ou really have the court's profound congratulations and compliments," and, on April 26, 2010, gave final approval to the settlement.

• In Huberman v. Tag-It Pacific Inc., No. 2:05-cv-07352-R(Ex) (C.D. Cal.), Wolf Popper successfully appealed the district court's grant of summary judgment to defendants and the denial of class certification. In addition to reversing summary judgment, the Ninth Circuit Court of Appeals also reversed the district court's denial of class certification, and ordered the district court to certify the class. Huberman v. Tag-It Pacific Inc., 2009 U.S. App. LEXIS 2780 (9th Cir. Jan. 16, 2009). The Court approved the subsequent settlement of the litigation for an amount that was almost 50% of the court-appointed independent expert's estimate of maximum potential losses.

• In Thurber v. Mattel, Master File No. CV-99-10368-MRP (CWx) (C.D. Cal.) (§10(b) claims) and Dusek v. Mattel, Master File No. CV-99-10864-MRP (CWx) (C.D. Cal.) (§14(a) claims), Wolf Popper was a member of the Executive Committee of Plaintiffs' counsel, but was also specifically appointed by the Federal Court to have primary responsibility for the prosecution of the Dusek v. Mattel §14(a) claims. After more than three years of extremely hard-fought litigation, including two rounds of motions to dismiss, the production of millions of documents, and the taking or defending of more than 40 depositions, both cases settled for the aggregate sum of $122 million, with $61 million allocated for the Dusek v. Mattel §14(a) claims, believed to be the largest settlement of a § 14(a) case. Upon approving the settlement, the Judge complimented counsel saying that the settlement was an "awfully good result." The Judge also specifically found that "Wolf Popper LLP vigorously prosecuted the Dusek action and zealously represented the interests of the Dusek class members" and that Wolf Popper zealously performed in a "very capable and professional manner."

• Wolf Popper LLP was a co-lead settlement counsel for the plaintiff class in In re Service Corp. Int'l, No. H-99-280 (S.D. Tex.). The action alleged that defendants made material misrepresentations in connection with Service Corp.'s January 1999 stock-for-stock acquisition of Equity Corp. International. Based on the strength of the amended complaint, and presentation at mediation sessions, Wolf Popper recovered $65 million for the plaintiff class, 64.7% of the class' recognized losses. The settlement, approved in 2004, was an extraordinary recovery inasmuch as there were no allegations of insider trading, a SEC investigation, or an accounting restatement, and the District Court had spent over four years deliberating over defendants' motion to dismiss the complaint, lessening plaintiffs' leverage in settlement negotiations.

• In Stanley v. Safeskin, No. 99cv454-BTM (LSP) (S.D. Cal.), Wolf Popper served as Court-appointed Co-lead Counsel for Plaintiffs, in which the Court approved a $55 million settlement in favor of plaintiffs on March 20, 2003. The Honorable Barry T. Moskowitz thereafter complimented Plaintiffs' Co-Lead Counsel, noting his "incredible respect for the work that the lawyers did." Describing Plaintiffs' counsel as "highly skilled in these cases," Judge Moskowitz commented that he was "kind of looking forward to trying this case, because it would have the best lawyers in the country trying this case. . . ." The Court subsequently further complimented Co-Lead Counsel, stating that "competency is too weak of a word -- the extraordinary ability of these firms * * * I really thought that the Plaintiffs' law firms in this case not only had extraordinary ability to deal with the complicated factual issues -- and it certainly was a difficult case, and you should be applauded in that regard." Paying Plaintiffs' Co-Lead Counsel perhaps an ultimate compliment, the Court further said, "From the plaintiffs' perspective -- and I say this for all the firms -- you handled it on a much higher plane, probably on a textbook or ideal plane. If they would teach people how it should be done in law school, this would be the example of, how the lawyers handle this case."

• In Buxbaum v. Deutsche Bank, A.G., No. 98 Civ. 8460 (JGK) (S.D.N.Y.), Wolf Popper recovered $58 million as co-lead counsel in a major securities fraud action against Deutsche Bank, A.G. and its senior officer. The action alleged that Deutsche Bank defrauded Bankers Trust shareholders by misrepresenting the status of takeover negotiations for Deutsche Bank to acquire Bankers Trust. The District Court's opinion denying defendants' motion to dismiss is reported at Fed. Sec. L. Rep. (CCH) ¶90,969 (S.D.N.Y. 2000). The decision denying defendants' motion for summary judgment is reported at 2002 U.S. Dist. LEXIS 1893 (S.D.N.Y., Jan. 30, 2002). The $58 million recovery, obtained on the eve of trial, was equivalent to approximately 48% of the class' maximum possible recovery, and approximately 96% of the class' most likely recovery.

• In In re Sunbeam Sec. Litig., No. 98-8258-Civ.-Middlebrooks (S.D. Fl.), Wolf Popper was appointed co-lead counsel. The case was brought against Sunbeam, its auditors, and former officers and directors of the company, including "Chainsaw" Al Dunlap. Plaintiffs reached a partial settlement with Sunbeam's auditors, Arthur Andersen, for $110 million - one of the largest settlements ever with an accounting firm in a securities class action - and reached a separate settlement with the individual defendants that included more than $18 million in cash plus a separate $13 million recovery from the company's excess insurance policies.

• In In re Providian Financial Sec. Litig., MDL No. 1301 (E.D. Pa.), Wolf Popper was co-lead counsel for the plaintiff class and obtained a $38 million recovery from the defendants. The Court, in approving the settlement, remarked on the "extremely high quality" and "skill and efficiency" of plaintiffs' counsel's work, which the Court stated it had seen throughout the litigation. The Court also noted the "extremely high quality" of Wolf Popper's work is reflected in the result which it obtained and in the fact that it is a nationally prominent firm with extensive experience in the field.

• Wolf Popper was the plaintiffs' co-lead counsel in a litigation that resulted in the then largest recovery in the history of securities class actions. In In re The Standard Oil Company/British Petroleum Litig., Consolidated Case No. 12676, Court of Common Pleas, Cuyahoga County, Ohio, plaintiffs' counsel negotiated and obtained a benefit for the class in excess of $600 million. The Court commented favorably on the quality of co-lead counsel:

> The professional skill required to achieve the resultant benefits to this Class has been evidenced on nearly a daily basis by this Court.
>
> As a result of this professional skill and excellent representation, these benefits to the Class would not have otherwise been achieved.

The Court has fully weighed in its decision the benefits bestowed on the Class. At this juncture the Court finds that the benefit is unprecedented.

• Wolf Popper was co-lead counsel in the case producing the then largest recovery in a securities class action prior to the Standard Oil litigation. In Joseph, et al v. Shell Oil Company, et al., Consolidated Civil Action No. 7450 (Del. Ch., April 19, 1985), the plaintiff stockholders successfully petitioned the Delaware Chancery Court to enjoin the proposed merger of Shell Oil Company and Royal Dutch Petroleum Company, 482 A.2d 335, Del. Ch. 1984). In approving the $205 million recovery in the Shell Oil litigation, Vice Chancellor Maurice Hartnett stated: "The results achieved in this case for the class are outstanding."

• Wolf Popper played a major role in representing the rights of shareholders in the notorious Boesky/Drexel/Milken trading scandal involving Ivan F. Boesky, Dennis B. Levine, Kidder Peabody & Co. Incorporated, Goldman, Sachs & Co., Drexel, Michael R. Milken, and others. These actions arose from the illegal use by various individuals of non-public information about publicly traded corporations, conveyed to them from high level executives at these large investment firms, to reap illicit profits for personal gain. Wolf Popper was co-lead counsel in several of these actions, including the Boesky insider trading class litigation brought in the Southern District of New York, to represent classes of shareholders who suffered losses. In re Ivan F. Boesky Sec. Litig., MDL 732, MDL-21-45-MP (S.D.N.Y.). The Firm was also one of the lead counsel in the Drexel/Milken litigation also brought in the Southern District of New York. In re Drexel Burnham Lambert Group Inc., et al., Debtors, Nos. 90 Civ. 6954 (MP), 90-B-10421 (FGC) (S.D.N.Y.). After intensive litigation, the Firm helped recover in excess of $800 million for investors. In the global settlement of these Milken related litigations, the Court specifically certified a worldwide class of investors after notice was given throughout the world, in addition to publications in newspapers worldwide.

• The Firm was co-lead counsel for plaintiffs in litigation involving the alleged "greenmail" of Walt Disney Company by Saul Steinberg and his Reliance Group, Heckmann v. Ahmanson, C.A. 000851 (Superior Court, Cal.) (Co-lead counsel for derivative actions). There the Los Angeles Superior Court in September 1989 approved a settlement providing for a cash payment of $45 million plus the therapeutic benefit of the termination of certain defendants' claim for rescission which potentially would have cost the company in excess of a billion dollars.

The Firm acted as sole lead or co-lead counsel for plaintiffs in dozens, if not hundreds, of other cases throughout the United States, achieving recoveries which aggregated in the billions of dollars, many of which settlements recovered well over 50% and, in several cases, 90-100% of the damages in such cases.

***Consumer Class Actions**:*

Wolf Popper's strong presence in prosecuting class actions on behalf of defrauded consumers has similarly resulted in the return of millions of dollars to victims of unfair business practices. These litigations in which the Firm served as sole lead or co-lead counsel include, among others:

• Kaur v. Envision Healthcare Corporation, et al., Case No. 4:19-cv-02480 (S.D. Tex.), is a consumer class action on behalf of patients who went to an in-network emergency department in Texas (over 200 hospitals) and were charged inflated rates for out-of-network physician services. The complaint alleged that defendants failed to disclose information that would allow patients to avoid—or even know that they were receiving—out-of-network care at an in-network hospital, and then billed at rates far beyond the fair market value of the services. The court granted preliminary and final approval to a settlement which provided refunds or write-offs of amounts in excess of what class members' insurance companies determined was the "allowable charge" for the services, for class members who file valid proof of claim forms.

• Kline v. Envision Healthcare Corporation, et al., CV 2019-003061 (Superior Court, Maricopa County, AZ), is a consumer class action on behalf of patients who had surgery at an in-network hospital in Arizona where the anesthesia services were performed by an out-of-network provider affiliated with any of the defendants and were charged inflated rates for these services. The complaint alleged that defendants failed to disclose information that would allow patients to avoid—or even know that they were receiving—out-of-network care at an in-network hospital, and then billed at rates far beyond the fair market value of the services. On February 3, 2021, the court granted final approval to a settlement which provided refunds or write-offs of amounts in excess of what class members' insurance companies determined was the "allowable charge" for the services, for class members who file valid proof of claim forms.

• Bozarth v. Envision Healthcare Corporation, et al., Case No. 5:17-cv-01935-FMO-SHK (C.D. Cal.), is a consumer class action filed by the Firm on behalf of patients who went to an in-network emergency department in California (40 hospitals) and were charged inflated rates for out-of-network physician services. The complaint alleged that defendants failed to disclose information that would allow patients to avoid—or even know that they were receiving—out-of-network care at an in-network hospital, and then overcharged patients, billing at rates far beyond the fair market value of the services. On June 30, 2020, the court granted final approval to a settlement which provided refunds or write-offs of amounts in excess of what class members' insurance companies determined was the "allowable charge" for the services, for class members who file valid proof of claim forms.

• In a novel ruling under the Truth in Lending Act ("TILA")/Regulation Z in which the Firm represents the plaintiff, Jamison v. Bank of America, N.A., No. 2:16-cv-00422-KJM-AC, 2016 WL 3653456 (E.D. Ca., July 7, 2016), the Court in the Eastern District of California found the reasoning of the McLaughlin case prosecuted by the Firm and described below "to be persuasive and consistent with TILA's remedial purpose. . . As a result, an 'accurate' payoff statement should have disclosed the [insurance] proceeds."

• McLaughlin v. Wells Fargo Bank, NA., No. C 15-02904 WHA (N.D. Cal.), in a precedent setting Order under the Truth in Lending Act's ("TILA") Regulation Z, the Court in the Northern District of California, in denying the motion to dismiss of Wells Fargo Bank, held that the bank is required under TILA to indicate the amount of property insurance proceeds held by the bank on the plaintiff customer's payoff statement. The Court noted that "[n]o decision from our court of appeals has ever addressed the issue of whether TILA compels lenders to include 'potential' credits in payoff statements." In holding for the plaintiff, the Court found, "[a]s a matter of law, the bank is wrong on this one." McLaughlin v. Wells Fargo Bank, NA., No. C 15-02904 WHA, Order that TILA Required Insurance Proceeds to be Reflected in Payoff Statement (N.D. Cal. Oct. 29, 2015). A settlement providing for recovery of 88% of the maximum statutory damages in a class action under TILA was approved by the Court in 2017.

• Belfiore v. The Procter & Gamble Co., 14-cv-4090 (E.D.N.Y.), a consumer class action litigation, arises from Procter & Gamble's representations that its Charmin Freshmates flushable wipes products are "flushable" and "safe for sewer and septic systems." The plaintiff alleges that, contrary to Procter & Gamble's representations, Freshmates do not break down sufficiently and, as a result, cause serious problems for septic tanks and household plumbing. Judge Weinstein granted class certification for a class of New York consumers after six days of evidentiary hearings with multiple expert witnesses. On July 23, 2020, Judge Chen approved the settlement on behalf of New York consumers, which included significant changes to the product's labels and a monetary component that allows consumers with proof of purchase to receive up to $50.20—an amount that exceeds the actual and statutory damages potentially available at trial.

• Smajlaj v. Campbell Soup Company, No. 10-CV-1332-JBS (D.N.J.), in which four New Jersey consumers sued Campbell Soup in a national class action charging that the labels on Campbell's more expensive low sodium tomato soup products were misleading in that the "low sodium" soups actually contained as much sodium as Campbell's regular tomato soup. They claim they were misled into paying for more expensive soup even though it did not contain less sodium than the less expensive alternative. Defendants

moved to dismiss the complaint and the United States District Judge Jerome B. Simandle denied the motion in a precedent setting opinion decided under the New Jersey Consumer Fraud Statute. In November 2011, the Court approved a settlement creating a $1.05 million cash fund to reimburse class members and providing for certain changes to Campbell's soup labels. The creation of the settlement fund was a substantial recovery for the class, considering that it exceeded the proceeds that defendants received as a result of the premium charged for their "low sodium" soups and provided a cash payment to class members after only a relatively short period of litigation.

- In re Coordinated Title Insurance Cases, No. 009600/03 (Sup. Ct., Nassau County, NY), a New York consumer fraud action brought against various Title Insurance Companies for their failure to charge the discounted rate for title insurance premiums in qualified refinancing transactions and their failure to provide borrowers with notice of the discount. In approving the settlement of over $31 million, one of the largest consumer class actions in the history of that court, at the hearing held on July 29, 2005, the court stated:

> And it's this Court's very strong opinion that what we have had before us on all sides – Plaintiffs' side, which involves two firms, and the Defendants, eight Defendants which involve five firms representing the eight different Defendants – was lawyering of the highest quality. It's always enjoyable for the Court to have high quality lawyering in front of it. It's always my opinion that it raises the level of the Bench when the lawyers before it proceed in a very high fashion, which has happened in this case.

- Sims v. First Consumers National Bank, No. 01/604536 (Sup. Ct., New York Cnty.), this consumer fraud action challenged the misleading disclosure of fees in fine print in connection with the issuance of the bank's credit cards. The lower court's dismissal of the action was unanimously reversed by the appellate court and the action was settled in 2005 with a recovery of 100% of the damages for the class.

- Canning v. Concord EFS, Inc., No. L-6609-02 (Super. Ct., NJ, Law Division, Camden County), a consumer fraud action brought in New Jersey on behalf of recipients of certain public assistance benefits who were being illegally surcharged to access their benefits through ATM machines. The settlement, approved in May 2005, provided for a recovery of 90% of the surcharges and an injunction halting the illegal surcharging.

- Taylor v. American Bankers Insurance Group, Inc., 700 N.Y.S.2d 458 (App. Div., 1st Dept. 1999), in which the Firm successfully defended against an appeal by defendants of the certification of a nationwide class on behalf of consumers who alleged that defendants had violated §§349 and 350 of the General Business Law by misleading consumers about the purchase of insurance and improperly denying insurance claims. The Firm achieved a complete recovery for class members as defendants agreed to pay class members' disputed coverage claims in full, as well as revise their solicitations to prevent a recurrence.

- Princeton Economics Group, Inc. v. American Telephone & Telegraph Co., No. L-91-3221 (N.J. Super. Ct. 1995), the largest class action ever brought in New Jersey State Court. The action, based upon AT&T's marketing and sales of a telephone system that it advertised as well suited to small businesses because of its "conference call" features, revealed that the phone system did not function as advertised. The participants to calls could not hear each other because the conference feature lacked amplification. This litigation resulted in a settlement valued by the Court at $85-90 million. At the conclusion of the case, the Court noted the complexity and difficulty of the issues involved and favorably commented that, "[i]f not for the skill and experience of class counsel, a settlement may not have been reached or, if it had been reached, may have resulted in a significantly diminished recovery for the class."

- Tanzer v. HIP, (1997 WL 773695), the New York Court of Appeals, New York's highest court, unanimously upheld a class action complaint on behalf of insureds who had been denied medical insurance coverage. The Firm subsequently obtained partial summary judgment against HIP for breach of HIP's contract

with its insurance subscribers for failing to reimburse them for anesthesia-related expenses in conjunction with surgical procedures performed in New York State since June 7, 1993. Tanzer v. HIP, No. 114263-95, slip op., January 27, 1999. Ultimately, a settlement was reached which paid members of the class 100% of their damages.

***Transactional Litigation and Corporate Governance**:*

Wolf Popper has represented plaintiffs in Delaware and other states' courts when in class and derivative actions, representing investors in companies where shareholders believe that officers, directors, and others have engaged in self-dealing actions or who, in the context of proposed mergers or tender offers, are offered inadequate compensation for their stock or are provided inadequate information to allow such investors to make informed decisions concerning whether to vote for such transactions. Wolf Popper has achieved significant corporate governance reforms and often recovered funds for shareholders victimized by such conduct. Examples where Wolf Popper acted as lead or co-lead counsel in such circumstances include:

- In In re AmTrust Financial Services, Inc. Stockholder Litigation, No. 2018-0396-AGB (Del. Ch.), Vice Chancellor Lori W. Will approved a $40 million settlement of this breach of fiduciary duty action in which Wolf Popper serves as co-lead counsel. The action arose from a 2018 transaction whereby AmTrust's controlling stockholder family purchased all unaffiliated common stock for $14.75 per share. In a memorandum dated February 26, 2020, the Court of Chancery largely denied the defendants' motions to dismiss, finding, among other things, that the plaintiffs' complaint "raise[s] significant questions" about the fairness of the merger process. While discovery was proceeding the parties reach the settlement, which was approved by the Vice Chancellor on November 22, 2021.

- In re PHC, Inc. Shareholder Litigation, C.A. No. 11-11049-PBS, in which Chief Judge Patti Saris in the U.S. District of Massachusetts certified a class of stockholders who voted against or did not vote in connection with the merger of PHC, Inc. and Acadia Healthcare Corp. After a two-week jury trial, the Court awarded $2,964,396 plus interest to the plaintiff class, which represented the full amount of the damages plaintiff's expert had calculated to have arisen from the controlling stockholder's breach of fiduciary duty in negotiating a multi-million side-payment, almost all for himself, as part of the merger. Judge Saris complimented counsel for their skill and professionalism at the end of the trial. On July 2, 2018, the United States Court of Appeals for the First Circuit affirmed the post-trial order. The First Circuit also complimented counsel for their "unusually good arguments," stating that "It's more of a pleasure to be a judge when we get such good arguments." Chris Villani, *CEO Asks 1st Circ. To Nix $3M 'Little Red Hen' Payout*, https://www.law360.com/articles/1042069/ceo-asks-1st-circ-to-nix-3m-little-red-hen-payout (last visited Mar. 29, 2021). The First Circuit further noted that the issues on appeal were "intricate, entangled, and in some instances novel." MAZ Partners LP v. Shear (In re PHC, Inc. S'holder Litig.), Nos. 17-1821, 17-1904, 2018 U.S. App. LEXIS 18035, *1 (1st Cir. July 2, 2018).

- Frechter v. Zier (Nutrisystem), C.A. No. 12038-VCG (Del. Ch.), Wolf Popper, on behalf of the public shareholders of Nutrisystem Inc., brought a class action lawsuit challenging the company's bylaw that required a two-thirds vote of the shareholders to remove a director. . Wolf Popper argued that the bylaw provision violated Delaware law and that only a simple majority should be required. In an eleven-page decision, 2017 Del. Ch. LEXIS 14 (Del. Ch. Jan. 24, 2017), Delaware Vice Chancellor Sam Glasscock III agreed with Wolf Popper, concluding: "Section 141(k) [of Delaware's General Corporation Law] unambiguously confers on a majority the power to remove directors, and the contrary provision of the Company bylaws is unlawful."

- In re: Cornerstone Therapeutics Inc. Stockholder Litig., Case 8922, (Del. Ch.), in which the Firm served as Co-Lead Counsel, on January 26, 2017, Vice Chancellor Glasscock approved a settlement

that established a gross settlement fund of $17.9 million for the benefit of Cornerstone's minority stockholders. The Court stated that class attorneys achieved "almost nothing short of the best result." The Court pointed out that "[t]here was a great deal of litigation done. Interesting and undetermined areas of law had to be explored by counsel for both sides." Vice Chancellor Glasscock later said at the hearing that it was "vanishingly unlikely" that shareholders left any claims behind in the deal.

- In re Venoco, Inc. Shareholder Litig., C.A. No. 6825-VCG (Del. Ch.), Wolf Popper, as Co-Lead Counsel, challenged the going private transaction led by Venoco's founder and controlling shareholder. After almost five years of litigation, the Firm achieved a fund for the shareholders of $19 million. (Had the company not filed for bankruptcy, the settlement would have also provided 25% of Venoco's founder's ownership interest in Venoco.) The Delaware Chancery Court approved the settlement in October 2016.

- In re: Bluegreen Corporation Shareholder Litig., Case No. 502011CA018111 (Circuit Court, 15th Judicial Circuit, Palm Beach County, Fl.), Wolf Popper, as Co-Lead Counsel, challenged the terms of a merger pursuant to which Bluegreen was acquired by its majority shareholder through an allegedly unfair process and the allegedly unfair price of $10. After four years of intense litigation, the parties reached a settlement of $36.5 million, which increased the payout to the shareholders by 25%. The settlement fund is the largest for a lawsuit challenging a merger in Florida legal history, dwarfing the prior record by more than 400%. According to the Court, "[t]he recovery in the instant case stands in sharp contrast to Florida common fund recoveries and merger suits over the past few years. The success of this resolution is well above the norm."

- In re Yongye International, Inc. Shareholder Litigation, consolidated Case No. A-12-670468-B (Eighth Judicial District Court, Clark County, NV), in which as Co-Lead Counsel for Plaintiffs, Wolf Popper litigated the acquisition of Yongye International, Inc. on behalf of its public shareholders, securing not only an initial increase in the acquisition price, but an additional settlement fund in the amount of $6 million, as well as substantial additional public disclosures in conjunction with the deal. According to Cornerstone Research, fewer than 8% of such cases result in settlement funds. The Court in Nevada approved the proposed settlement at a hearing held on March 3, 2016.

- Semon and Meister v. Swenson, No. 5:10-cv-143 (D. Vt. March 11, 2013) (cash settlement increasing the buyout price paid to minority shareholders of Rock of Ages Corporation ("ROAC") by 14.5%, after having initially increased the offer price after plaintiff filed suit and having made significant additional public disclosures of previously undisclosed information; Court described case as "tenacious" litigation by Wolf Popper LLP, with the Judge stating that she will "pay the compliment of tenaciousness" to Wolf Popper, that the Firm "stuck with the litigation, continued to vigorously pursue it, and convince[d] [her], through that, that they were willing to stick with the class through thick and thin …")

- In re Playboy Enterprises, Inc. Shareholders Litig., C. A. No. 5632-VCN (Del. Ch.)(in class action challenging the buyout of the minority stockholders of Playboy Enterprises, Inc. by the majority stockholder, at a March 19, 2013 hearing, Vice Chancellor John W. Noble approved the $5.25 million post-merger closing settlement, further increasing the price to be paid to shareholders in the buyout by approximately 4% and included other, non-monetary benefits; (Defendants had earlier published the disclosures that plaintiffs had complained were missing, and had previously increased the buyout price after plaintiffs had filed suit). The Vice Chancellor recognized "that a common fund of $5.25 million was created as a direct result of the efforts of plaintiffs' counsel. That is as concrete a metric as one can hope for." He also stated that "[t]he standing and ability of counsel may not be questioned.")

- In re Atheros Communications, Inc. Shareholder Litig., C.A. No. 6124-VCN (Del. Ch. Mar. 4, 2011) ($3.1 billion merger enjoined pending material disclosures ordered by the Court).

- In re FTD.com, Inc. Shareholder Litig., C.A. No. 19458-NC (Del. Ch.), Wolf Popper was co-lead counsel in an action that alleged that members of the board of directors of FTD.com abused their control of the company by taking FTD.com private under terms advantageous to them but not to FTD.com's public shareholders. After mediation, co-lead counsel obtained a recovery which came to more than 99% of the damages claimed by members of the class.

- Ehrenhaus v. Baker (Wachovia Corp.), No: 08-CVS-22632 (N.C. Super. Ct.)

- Rice v. Lafarge North America, Inc., Civ. No. 268974-V (Md. Cir.) ($383 million aggregate benefit)

- In re Aramark Corp. Shareholders Litig., C.A. No. 2117-N (Del. Ch.) ($222 million aggregate benefit)

- Cuti v. Anthony, et al., 24-c-06-008163 (Md. Cir.)

- In re Nortek, Inc. Shareholder Litig., C.A. No. 19538-NC (Del. Ch.) ($63 million aggregate benefit)

- In re New Valley Corp. Shareholder Litig., C.A. No. 1678-N (Del. Ch.) ($28 million aggregate benefit)

- In re The Topps Co. Shareholder Litig., 926 A.2d 58 (Del. Ch. 2007) (enjoining transaction pending release of standstill agreement and disclosures)

- In re Net2Phone, Inc. Shareholders Litig., C.A. No. 1467-N (Del. Ch.)

- In re William Lyon Homes Shareholder Litig., C.A. No. 2015-N (Del. Ch.)

Wolf Popper has served as lead or co-lead counsel in other cases challenging transactions involving, among many others: American Surgical Holdings, Inc., Venoco, Inc., KSW, Inc., OpenTV Corp., EDO Corp., James River Group, Inc., CentraCore Properties Trust, Bioenvision, Inc., Mossimo, Inc., Centerpoint Inc., Genencor International Inc., Uni-Marts, Inc., Nassda Corp., and Chaparral Steel, Co.

***Trial Experience**:*

One of the reasons Wolf Popper maintains a favorable, formidable reputation is because of the Firm's demonstrated willingness to prosecute cases through trial in order to achieve a favorable result for our clients. The Firm's trial (and arbitration) experience includes, among other cases:

- In re PHC, Inc. Shareholder Litig., C.A. No. 11-11049-PBS, Chief Judge Patti Saris, who oversaw the two-week jury trial in federal court in Boston in February-March 2017, entered a post-trial judgment ordering the former chief executive officer of PHC to disgorge $2,964,396, plus interest, which the United States Court of Appeals for the First Circuit affirmed on July 2, 2018, noting that the issues on appeal were "intricate, entangled, and in some instances novel." MAZ Partners LP v. Shear (In re PHC, Inc. S'holder Litig.), Nos. 17-1821, 17-1904, 2018 U.S. App. LEXIS 18035, *1 (1st Cir.), cert. denied, 139 S. Ct. 489 (2018). The District Court Chief Judge complimented counsel for their skill and professionalism, stating:

> I think you all [ ] did a great job trying this case. I was telling my law clerks you don't often see commercial litigation actually go to trial so [this is] a great example ….

- Zuckerman v. FoxMeyer Health Corp., 3-96-CV 2258-L (N.D. Tex. 2002), where Wolf Popper successfully prosecuted a mini-trial before a former Magistrate Judge in the context of an ADR Proceeding to determine a binding fair value of a settlement of the action. Notwithstanding the fact that the defendant company was on the brink of insolvency (and subsequently filed for bankruptcy), the company providing the initial layer of insurance coverage was in liquidation, and the individual defendants were not wealthy, after presentation of the evidence, the neutral arbiter determined in plaintiffs' favor.

- In an arbitration before a court appointed arbitrator in Retsky Family Limited Partnership v. Price Waterhouse LLP, No. 97 C 7694 (N.D. Ill., June 18, 2001), after a full hearing and several days of testimony, the arbitrator awarded plaintiffs the total damages claimed.

- Plaintiffs' co-trial counsel in Abzug, et ano. v. Kerkorian, et al., CA 000981, Superior Court, Los Angeles, California, which was settled during trial for $35 million.

- The Firm was co-lead counsel for plaintiffs in litigation involving the alleged "greenmail" of Walt Disney Company by Saul Steinberg and his Reliance Group, Heckmann v. Ahmanson, C.A. 000851 (Superior Court, Cal.) (Co-lead counsel for derivative actions). There the Los Angeles Superior Court in September 1989 approved a settlement at trial providing for a cash payment of $45 million plus the therapeutic benefit of the termination of certain defendants' claim for rescission which potentially would have cost the company in excess of a billion dollars.

- Citron v. E.I. duPont de Nemours & Co., Del. Ch. (Civil Action No. 6219), in Delaware Chancery Court in which the Vice-Chancellor complimented plaintiffs' counsel "for the able way in which they presented the case," their "well-done" pre-trial briefs, and the "good job" done.

- The Firm also has tried several other actions on behalf of plaintiffs and plaintiff classes in securities and other actions in other federal courts, as well as in Delaware Chancery Court and elsewhere.

***Court Commentary On The Firm**:*

Throughout the history of the Firm, the Courts before whom Wolf Popper has appeared have commented favorably and repeatedly on the ability and performance of the Firm and its members. A sampling of some of the praise the Firm has consistently received over the course of its practice include the following cases:

- Judge Josephine Stanton of the Central District of California granted preliminary approval of a consumer class action settlement in Casey v. Doctor's Best, Inc., (Case No. 8:20-cv-01325-JLS-JDE) (Feb. 28, 2022). In so doing, the Court stated, "Wolf Popper LLC has focused on representing plaintiffs in class actions for a significant portion of its 75-year history, and the individual attorneys from Wolf Popper have a wealth of experience in class actions in general, as well as, in litigating dietary supplement labelling class actions in particular." Order, at 18.

- Judge Sandra L. Lynch of the United States Court of Appeals for the First Circuit noted the quality of the Firm's oral argument in In re PHC, Inc. Shareholder Litigation, MAZ Partners LP v. Bruce A. Shear, Nos. 17-1821, 17-1904 (1st Cir., May 9, 2018), stating "I'd just like to say, this was an unusually good argument from both sides. It's more of a pleasure to be a judge when we get good arguments from counsel. Thank you." Chris Villani, *CEO Asks 1st Circ. To Nix $3M 'Little Red Hen' Payout*, https://www.law360.com/articles/1042069/ceo-asks-1st-circ-to-nix-3m-little-red-hen-payout (last visited Mar. 29, 2021). Judge Raul R. Torruella, who also sat on the First Circuit panel, agreed: "I join Judge Lynch's statement." (The Firm ultimately prevailed on appeal). Chief Judge Patti Saris of the District of Massachusetts,

who had presided at trial, remarked that counsel "did a great job trying this case" and that "someone should study the case in terms of how attorneys should treat one another."

- In certifying the class in a comprehensive consumer class action against, *inter alia*, the Procter & Gamble Company and other manufacturer and retailer defendants for defects in labeling "flushable toilet wipes", the Court in Belfiore v. The Procter & Gamble Company, 14-CV-4090 (E.D.N.Y. March 27, 2017), stated that "Counsel for plaintiff have handled the case with great skill and full attention."

- At a settlement hearing before the Delaware Chancery Court on January 26, 2017, in In re: Cornerstone Therapeutics Inc. Stockholder Litigation, Case 8922, (Del. Ch.), in which the Firm served as Co-Lead Counsel, Vice Chancellor Glasscock approved a settlement that established a gross settlement fund of $17.9 million for the benefit of Cornerstone's minority stockholders. The Court stated that class attorneys achieved "almost nothing short of the best result." The Court pointed out that "[t]here was a great deal of litigation done. Interesting and undetermined areas of law had to be explored by counsel for both sides." Vice Chancellor Glasscock later said at the hearing that it was "vanishingly unlikely" that shareholders left any claims behind in the deal.

- In Plumbers' & Pipefitters' Local #562 Supplemental Plan & Trust, et al., v. J.P. Morgan Acceptance Corp., et al., No. 08-cv-1713 (PKC) (E.D.N.Y. May 1, 2014), in preliminarily approving a $280 million settlement on behalf of persons who acquired mortgage pass-through certificates and asset-backed pass-through certificates pursuant and/or traceable to certain registration statements and prospectus supplements, Judge Pamela K. Chen stated "it's very clear that this has been a hard fought and well negotiated, seemingly well negotiated, result. So I think that's kudos to you all certainly better than any kinds of trial I would say."

- In Semon and Meister v. Swenson, No. 5:10-cv-143 (D. Vt. March 11, 2013), following what the Court described as "tenacious" litigation by Wolf Popper LLP on behalf of the minority stockholders of Rock of Ages Corporation ("ROAC") in this class action challenging the buyout of the stockholders by ROAC's majority stockholder, Judge Christina Reiss approved the $3.2 million settlement and certified the case as a class action. The settlement further increased the price to be paid to shareholders in the buyout by 14.5% and included other, non-monetary benefits (including Defendants earlier publication of extensive disclosures that plaintiffs had complained were lacking in the defendants' public filings about the buyout, and that Defendants had also increased the buyout price after plaintiffs had brought suit.) The Judge said that she will "pay the compliment of tenaciousness" to Wolf Popper, noting that Wolf Popper "stuck with the litigation, continued to vigorously pursue it, and convince[d] [her], through that, that they were willing to stick with the class through thick and thin …" The Judge further found that the firm was "experienced, competent, zealous," and that "it's been an interesting case for me and very professionally handled. . . ."

- In Tsereteli, et ano., v. Residential Asset Securitization Trust 2006-A8 et al., No. 08 Civ. 10637 (LAK) (S.D.N.Y. June 29, 2012), the Court granted plaintiff's motion for class certification over the vigorous objections of defendants, commenting that ". . . lead counsel Wolf Popper is qualified and capable of prosecuting this action. It has conducted discovery, engaged in motion practice, and protected the interests of Vazurele and the prospective class throughout the more than three years this case has been before the Court. It has done so diligently and professionally. . . ."

- In Middlesex Retirement System v. Quest Software, Inc., No. CV 06-6863 DOC (RNBx) (C.D. Cal. Dec. 7, 2009), in which Wolf Popper had been appointed by the Court as Lead Counsel and Class Counsel, the Court stated in preliminarily approving the $29.4 million (plus cost of providing notice) proposed settlement of the action, "once again on the record . . .I want to compliment counsel for working extraordinarily hard; . . .this appears to be an extraordinarily fair settlement for all parties concerned. * * * [Y]ou really have the court's profound congratulations and compliments."

• In approving the $190,000,000 recovery for the Class in the Motorola Sec. Litig., No. 03C287 (N.D. Ill.), where Wolf Popper represented the lead plaintiff, the Court stated as follows "You did a great very professional job here. This was a hard fought, but extremely professionally fought battle and I appreciate it. Thank you."

• Wolf Popper served as co-lead counsel for plaintiffs in Conolly v. Universal American Financial Corp., No. 13422/07 (Sup. Ct. Westchester Cnty.). At the final hearing in the action, Transcript Dec. 9, 2008 at 74-75, Hon. Alan D. Scheinkman complimented plaintiffs' co-lead counsel, stating: "The Court has had the opportunity to see these lawyers on numerous occasions and read their submissions, not just those relating to fees but those relating to the merits of the case and the Court has become familiar with counsel and is impressed with their skill and knowledge and their professionalism."

• On October 7, 2008, the Court approved the settlement reached by Wolf Popper LLP and its co-counsel, on behalf of former and current employees of AIG, in the amount of $24.2 million in In re AIG ERISA Litig., No. 04 Civ. 9387 (JES)(AJP) (S.D.N.Y.), stating that "without the work of these [plaintiffs'] attorneys there would be nothing."

• In In re TJX Companies Retail Security Breach Litig., Master Docket No. 07-10162, MDL Docket No. 1838 (D. Mass.), in which Wolf Popper was Co-Lead Counsel, the Court in approving the settlement on July 15, 2008, stated that Plaintiffs' counsel achieved an "excellent settlement" for the consumer class, that they "have been very creative" and performed "a wonderful job."

• In Dusek v. Mattel, Master File No. CV-99-10864-MRP (CWx) (C.D. Cal.), in approving the settlement of the action along with a companion action, for $122 million, the Judge, in her Findings of Fact and Conclusions of Law entered on November 6, 2003, complimented counsel saying that "Wolf Popper LLP vigorously prosecuted the Dusek action and zealously represented the interests of the Dusek Class members," and that Wolf Popper performed in a "very capable and professional manner."

• The Firm served as Co-Lead Counsel for plaintiffs in Stanley v. Safeskin, No. 99cv454-BTM (LSP) (S.D. Cal.), in which the Judge noted in approving a $55 million settlement that "Plaintiffs' counsel are highly skilled in these cases" and that he was "kind of looking forward to trying this case, because it would have the best lawyers in the country trying this case. . . ." The Honorable Barry T. Moskowitz subsequently further complimented Co-Lead Counsel at a hearing on November 20, 2003, stating:

> I think I learned more about the honorability of the firms and the competency -- and competency is too weak of a word -- the extraordinary ability of these firms in handling the cost aspects of it, and expenses aspect of it, . . .I don't think I've seen lawyers so honest with the Court . . . .I really thought that the Plaintiffs' law firms in this case not only had extraordinary ability to deal with the complicated factual issues -- and it certainly was a difficult case, and you should be applauded in that regard.
>
> * * *
>
> And it's not usual that the court sees lawyers behave -- we usually see them behave well, but this is extraordinarily positive. And I wanted to make that notation. . . I can -- come out of it having incredible respect for the work that the lawyers did in this case.
>
> * * *
>
> From the plaintiffs' perspective -- and I say this for all the firms -- you handled it on a much higher plane, probably on a textbook or ideal plane. If they would teach people how it should be done in law school, this would be the example of, how the lawyers handle this case.

_____

CAUSE NO. 2020-CI-18623

KENNETH KESLAR, II, individually and on behalf of all others similarly situated, Plaintiff, vs. EMERUS / BHS SA THOUSAND OAKS, LLC d/b/a BAPTIST EMERGENCY HOSPITAL - SHAVANO PARK, EMERUS HOSPITAL PARTNERS, LLC, and EMERUS HOLDINGS, INC., Defendants.	§ § § § § § § § § § § § § § § § §	IN THE DISTRICT COURT BEXAR COUNTY, TEXAS 73rd JUDICIAL DISTRICT

DECLARATION OF PHILIP H. HILDER ESQ. IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF REQUESTS FOR ATTORNEYS' FEES, EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARD

I, Philip H. Hilder, hereby declare as follows:

1. I am a member in good standing of the Texas and Illinois Bars. I am also admitted to practice in the following courts:

- U.S. Supreme Court
- U.S. District Court Northern District of Illinois Trial Bar
- U.S. District Court Northern District of Texas
- U.S. District Court Southern District of Texas
- U.S. District Court Eastern District of Texas
- U.S. District Court Western District of Texas

- U.S. Court of Appeals 5th Circuit
- U.S. Court of Appeals 7th Circuit

2. I am an attorney at Hilder & Associates P.C. ("Hilder Law" or "Firm"). Our Firm has been liaison counsel in this Action since the inception of the case. I submit this Declaration on behalf of Hilder Law in support of Plaintiff's Motion for Final Approval of Settlement and Requests for Attorneys' Fees, Expenses and Class Representative Service Award.

3. Hilder Law undertook this litigation, including the prosecution of this Action, on an entirely contingent basis.

4. I fully support the Settlement and believe it is an excellent outcome given the risks of the litigation.

5. Beginning on or around September 29, 2020 through January 27, 2023, myself and Q. Tate Williams, another attorney at the Firm, spent 27.20 hours on the prosecution of this Action for a lodestar value of $20,340 based on our usual and customary rates in cases such as the Action.

6. The hours Mr. Williams and I expended on behalf of Firm were reasonably spent, especially given the complex and high-risk nature of this Action. A breakdown of the hours, based on the accounting records of Firm, is reflected below:[1]

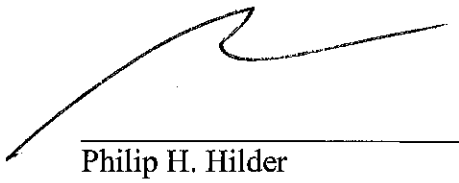
NAME	POSITION/TITLE	HOURS	HOURLY RATE	LODESTAR
Philip H. Hilder	Attorney	5.20	$950	$4,940
Q. Tate Williams	Attorney	22.00	$700	$15,400
TOTAL		**27.20**		**$20,340**

[1] If required by the Court, Hilder Law will provide detailed time entries in support of its lodestar chart.

7. During the course of the Action, Hilder Law incurred $340 in expenses towards court filing fees, which were necessary to the prosecution of the Action.

8. The expenses and charges pertaining to the Action are reflected in the books and records of Firm. These books and records are prepared from receipts, expense vouchers, check records and other documents and are an accurate record of the expenses

9. Hilder Law has experienced in the area of consumer class actions and has successfully prosecuted such litigations on behalf of consumers. I declare under penalty of perjury under the laws of Texas that the foregoing is true and correct. Executed on the 17th days of April 2023.



Philip H. Hilder
Hilder & Associates P.C.
819 Lovett Blvd
Houston, Texas 77006

CAUSE NO. 2020-CI-18623

KENNETH KESLAR, II, individually and on behalf of all others similarly situated Plaintiff, v. EMERUS / BHS SA THOUSAND OAKS, LLC d/b/a BAPTIST- EMERGENCY HOSPITAL- SHAVANO PARK, EMERUS HOSPITAL PARTNERS, LLC, and EMERUS HOLDINGS, INC., Defendants.	IN THE DISTRICT COURT 73rd JUDICIAL DISTRICT BEXAR COUNTY, TEXAS

DECLARATION OF KENNETH KESLAR II IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF REQUESTS FOR ATTORNEYS' FEES, EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARD

I, Kenneth Keslar II, hereby declare as follows:

1. I am the Plaintiff and proposed Class Representative in the above-captioned action ("Action").[1]

2. I submit this declaration in full support of Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Requests for Attorneys' Fees, Expenses and Class Representative Service Award.

[1] All capitalized terms not otherwise defined herein have the same meanings as defined in the Stipulation of Settlement dated January 27, 2023 ("Settlement Agreement").

3. I currently reside in Ashtabula County, Ohio. I was a resident of San Antonio, Texas at the time of my visit to Baptist Emergency Hospital Shavano Park ("BEHSP").

4. On September 21, 2019, I received a bill from BEHSP for services I received there on December 31, 2018. More than 50% of the bill was for laboratory services. The bill did not break down the charges associated with the lab work. Therefore, my wife and I started inquiring more about the bill from BEHSP and my insurance company Blue Cross Blue Shield ("BCBS") and also began conducting independent research regarding laboratory billing of panels. We spent more than 130 hours trying to find answers to why we were being charged so much.

5. Eventually, from the information we received from BEHSP and subsequent documents from Defendants, I learned what the charges for the two Current Panels were. I also learned that the list charges of the Current Panels were so high because the Current Panels offered at BEHSP and other BNH Facilities did not have a single CPT code by which they could be billed, and therefore were billed by each individual component in the panel.

6. Consequently, my wife and I reached out to Wolf Popper LLP regarding our bill and any potential claims we had against the Defendants based on Wolf Popper's experience in health care billing cases. Prior to that initial contact neither my wife nor I had been clients of Wolf Popper or Hilder & Associates (together "Plaintiff's Counsel"). After a series of conversations and emails with Wolf Popper LLP, my wife and I decided to file a lawsuit against Defendants. I discussed with Plaintiff's Counsel my responsibilities as a potential Class Representative. I thereafter authorized Wolf Popper to prepare a class action petition against Emerus / BHS SA Thousand Oaks, LLC d/b/a Baptist Emergency Hospital - Shavano Park; Emerus Hospital Partners, LLC; and Emerus Holdings, Inc. (i.e., "Defendants") on my behalf. I reviewed drafts of

the petition and provided comments and authorized its filing, which occurred on September 25, 2020 ("Class Action Petition").

7. On December 30, 2020, I authorized Plaintiff's Counsel to file the First Amended Class Action Petition (the "Amended Petition"). I was provided with a copy of the Petition, which I discussed with my counsel.

8. Subsequently, I have monitored the Action by means of periodic telephone, email, and Zoom updates of all material developments from my attorneys. Among other things, I was provided with copies of Defendants' document requests and interrogatories, which I reviewed and discussed with my attorneys. I gathered documents and information in response to these requests, which involved extensive search and collection efforts, and provided more than 1,100 documents to my attorneys. I also reviewed the written responses to Defendants' discovery requests, and verified my interrogatory responses, including providing a supplement to my interrogatory responses. I also discussed with my attorneys regarding the discovery to be sought from Defendants.

9. Further, I prepared and sat for my deposition scheduled on February 14, 2022, which lasted almost three-hours. The deposition of my wife had also been scheduled, which she also spent time preparing for.

10. Following my deposition, the Parties decided to explore settlement negotiations, due to which, all depositions scheduled by both Parties, but not yet taken, were put on hold. My counsel kept me informed of the progress on negotiating the settlement terms and I provided my input on it. I also reviewed the Settlement Agreement and the notices and provided my comments to Plaintiff's Counsel.

11. Throughout the pendency of this Action, I have endeavored to be a responsible and diligent representative of the Class. In aid of this goal, I participated in numerous telephone calls and email exchanges with Plaintiff's Counsel to discuss case status and updates, important case filings, and strategy.

12. As explained above, I initiated this action after my wife and I had spent several hours on the phone with the hospital and their insurance company trying to understand why the listed charges were so high for the two panels that were ordered and performed. And I eventually initiated this action because I found Defendants' conduct concerning their unbundling scheme, to be misleading and deceptive, and calculated to increase payment.

13. I applaud my counsel for their tenacity in developing an extensive factual record with respect to the claims, notwithstanding Defendants' equal tenacity in defending the Action. I whole-heartedly endorse the Settlement. I also wholeheartedly support my counsel's request in the Action for an award of attorneys' fees and expenses. Plaintiff's Counsel's diligent efforts to achieve this excellent result for the Class deserves compensation. I understand that Plaintiff's Counsel has been paid nothing to date for the significant amount of time they have devoted to this matter, and that their requested fee is completely reasonable taking into account how complex and lengthy these types of cases are and the risks associated with it. Accordingly, I support the requested fee award as fair and reasonable.

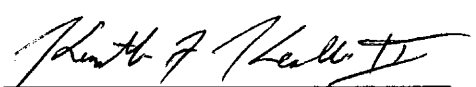
14. I also understand that Plaintiff's Counsel are requesting reimbursement of costs and expenses incurred in prosecution of the Action. I believe that the expenses were necessary for the successful prosecution of the Action, and I support Plaintiff's Counsel's request for reimbursement of these expenses (the requested amount which Defendants have agreed to pay is inclusive of fees and expenses).

15. I have not received nor been guaranteed any special compensation for serving as a plaintiff in this Action or in achieving a Settlement. As noted above, I have been quite involved in all stages of the litigation process. I provided drafting comments, content suggestions, and additional ideas and points to be included in our filings. I likely spoke with my counsel on the phone many times and exchanged numerous emails in connection with this litigation. In acting as Class Representative, I estimate that I expended much time, likely in excess of 185 hours, including the time I spent on investigating the case before contacting my attorneys. Had I not spent this time on the Action, I would have spent it at work or on other endeavors.

16. Given the time and effort I have expended on this matter, and the result achieved for the benefit of the Class, I consider a $5,000 service award for my work on behalf of the Class to be reasonable and appropriate. My support for the Settlement is not contingent on me receiving my requested award. I understand that the Court may award me less or no additional compensation, and such a result would not change my support for the Settlement. I understand I will receive no compensation if the Settlement is not approved by the Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 17th day of April, 2023.



Kenneth Keslar, II

CAUSE NO. 2020-CI-18623

KENNETH KESLAR, II, individually and on behalf of all others similarly situated, Plaintiff, vs. EMERUS / BHS SA THOUSAND OAKS, LLC d/b/a BAPTIST EMERGENCY HOSPITAL - SHAVANO PARK, EMERUS HOSPITAL PARTNERS, LLC, and EMERUS HOLDINGS, INC., Defendants.	§ § § § § § § § § § § § § § §	IN THE DISTRICT COURT BEXAR COUNTY, TEXAS 73rd JUDICIAL DISTRICT

[PROPOSED] FINAL ORDER AND JUDGMENT GRANTING
FINAL APPROVAL OF CLASS ACTION SETTLEMENT

This matter came before the Court for hearing on May 15, 2023 in the Courtroom of the 73rd Judicial District of Bexar County, Texas on application of the Parties for approval of the proposed Settlement. The Court has considered the Parties' Stipulation of Settlement dated January 27, 2023 ("Settlement Agreement") and its exhibits; the Motion in Support of Final Approval of the Settlement, Attorneys' Fee and Expenses, and Class Representative Award filed on April 18, 2023 ("Final Approval Motion"); the Order Preliminary Certifying Class for Settlement Purposes, Granting Preliminary Approval of Settlement and Approving Class Notice dated February 17, 2023 ("Preliminary Approval Order"); and other documents filed related to the Settlement, all matters raised and evidence presented at the time of the heating, any objections or comments received regarding the Settlement, if any, the record in the Action, and all oral arguments presented to the Court.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Order incorporates and makes a part hereof: (i) the Settlement Agreement (attached as Exhibit A to the Raghavan Declaration accompanying the Preliminary Approval Motion); (ii) the Notice (attached as Exhibit A to the Waldman Declaration accompanying the Final Approval Motion) and (iii) the Summary Notice (attached as Exhibit [ ] to the Settlement Administrator's Declaration filed on May 5, 2023). All capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of the Action, including all matters necessary to effectuate the Settlement, and over all Parties to the Action, including all Class Members.

3. The Court fully and final approves the Settlement as set forth in the Settlement Agreement and finds that the Settlement is fair, reasonable, and adequate in all respects; meets all of the requirements under Rule 42 of the Texas Rule of Civil Procedure; and was reached in good faith following arms-length negotiations between the Parties.

4. Neither the Settlement Agreement, this Order, nor any part of the Settlement are admissions of liability or fault by Defendants or the Released Parties, nor are they findings of the validity of any claims in the Action or any wrongdoing or violation of law by Defendants or the Released Parties. Neither this Order, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action or proceeding to establish any liability of, or admission by, any of the Defendants or the Released Parties. Notwithstanding the foregoing, nothing in this Order shall be interpreted to prohibit the use of this Order in a proceeding to consummate or enforce the Settlement Agreement or this Order, to defend against the assertion of Released Claims in any other proceeding, or as otherwise required by law.

5. No objections to the Settlement and Settlement Agreement have been made.

6. Pursuant to Rule 42(c) of the Texas Rule of Civil Procedure, the Court certifies the following Class:

7.

> All patients treated at a facility operated by Baptist Neighborhood Hospital (formerly Baptist Emergency Hospital) between September 25, 2016 and January 27, 2023, for whom one or more of the Current Panels was ordered and performed, and the patient was billed some Patient Responsibility for, at least one of the Current Panels (the "Class"). Excluded from the Class are Defendants and their respective parents, subsidiaries, representatives, officers, directors, partners, and co-ventures and on and after the exercise of opt out rights pursuant to Paragraph 8 of the Settlement Agreement, anyone who timely requested to be excluded from the Settlement.

8. Pursuant to Rule 42(c)(3) of the Texas Rules of Civil Procedure, the Class shall consist of all Class Members who did not timely and validly exclude themselves from the Settlement and are thereby bound by this Order.

9. The distribution of the Summary Notice and posting of Notice on the Settlement Website, constituted the best notice practicable under the circumstances and fully satisfied the requirements of Rule 42 of the Texas Rule of Civil Procedure, due process, and all other applicable laws.

10. In accordance with the terms of the Settlement Agreement, Defendants shall pay the Settlement Administrator the Total Refund Payment Amount, an amount sufficient to cover all Refunds to eligible Class Members within thirty (30) days upon receiving the list of Refund Payment Class Members from the Settlement Administrator. The Settlement Administrator shall then remit, electronically or through checks, refunds to all eligible Class Members in accordance with the Settlement Agreement.

11. In accordance with the terms of the Settlement Agreement, Defendants shall pay the Settlement Administration Costs.

12. In accordance with the terms of the Preliminary Approval Order and the Settlement Agreement, a Class Representative Award of $5,000 will be paid to the Plaintiff in recognition of the time and effort spent as a class representative in this Action and for serving the interests of the Class Members.

13. Having considered the factors set forth in Rule 42(g) of the Texas Rules of Civil Procedure, the Court finds that Plaintiff's Counsel have fairly and adequately represented the Class Members for purposes of entering into and implementing the Settlement.

14. In accordance with the Settlement Agreement, an attorneys' fee award of $800,000 to be paid to Class Counsel by Defendants is reasonable, fair, and appropriate to compensate Plaintiff's Counsel for the time and effort spent to investigate, file, litigate, and settle the Action. Such an award meets the requirements of Rules 42(h) and (i) of the Texas Rules of Civil Procedure.

15. In accordance with the Settlement Agreement, the Plaintiff and all Class Members together with any of their heirs, agents, attorneys, or assigns, will forever release and discharge the Defendants' Released Parties of and from any and all claims in law or in equity, of whatever kind or nature including, without limitation, claims for monetary damages, equitable, declaratory, and injunctive relief, restitution and disgorgement, and attorneys' fees, including those claims asserted or which could have been asserted in the Action including, without limitation, claims arising from, concerning, or in any way relating to the (i) billing of the Current Panels during the Class Period that is the basis of the litigation; and (ii) pricing transparency and disclosure or non-disclosure concerning billing for the Current Panels (all such claims that are released by the Class Members as to Defendants' Released Parties to be the "Settled Class Claims"). Upon the Effective Date, Plaintiff and all Class Members are permanently barred and enjoined from initiating, asserting, or prosecuting any Settled Class Claims against Defendants' Released Parties in any court or any forum.

16. In accordance with the Settlement Agreement, Defendants' Released Parties shall be deemed to have fully, finally, and forever released, relinquished, and discharged Plaintiff, Plaintiff's Counsel and Class Members ("Plaintiff's Released Parties") from all claims (including, without limitation, unknown claims), which arise out of or relate to the initiation, litigation, prosecution, or settlement of this Action including (but not limited to) any claims of bad faith or abuse of process against Plaintiff's Released Parties relating to their initiation, litigation, prosecution, or settlement of the Action and they shall forever be barred and enjoined from commencing, instituting, or prosecuting any of the claims against Plaintiff's Released Parties (all such claims that are released by the Defendants' Released Parties as to Plaintiff's Released Parties to be the "Settled Defendant Claims").

17. The Court hereby dismisses with prejudice the Action, and all released claims against any and all Released Parties and without costs to any of the Parties as against the others (other than set forth above in this Order).

18. Without affecting the finality of this Order, the Court reserves jurisdiction over the implementation, administration and enforcement of the Settlement Agreement, this Order, and all matters ancillary thereto.

19. The Court finds that no reason exists for delay in ordering final approval. And the clerk is hereby directed to enter this Order forthwith. This is a Final Order and Judgment and is final for purposes of appeal.

20. The Parties are hereby authorized, without further approval from the Court, to agree to and adopt such modifications and expansions of the Settlement Agreement, including without limitation, the forms to be used in the process of distributing settlement payments, which are consistent with this Order and do not limit the rights of the Class Members under the Settlement Agreement.

Signed on this _____ day of _____, 2023.

_____

JUDGE PRESIDING