

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE NORTSHORE UNIVERSITY)	No. 07 C 4446
HEALTHSYSTEM ANTITRUST)	
LITIGATION)	Judge Edmond E. Chang

**ORDER PRELIMINARILY APPROVING SETTLEMENT
AND PROVIDING FOR NOTICE OF SETTLEMENT**

This Court, having reviewed and considered the executed Settlement Agreement between David Freedman and the Class (collectively, “Plaintiffs”) and NorthShore University HealthSystem (“NorthShore”) dated December 13, 2023, and Plaintiff’s Motion for Preliminary Approval of Proposed Settlement, Approval of the Form and Manner of Notice to the Class, and Proposed Schedule for a Fairness Hearing, ORDERS:

1. The Settlement is preliminarily approved, subject to further consideration at the Fairness Hearing described below.

2. Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the Court certifies the following Plaintiff Class:

All persons or entities in the United States of America and Puerto Rico, except those who solely paid fixed amount co-pays, uninsureds who did not pay their bill, Medicaid and Traditional Medicare patients, governmental entities, defendant, other providers of healthcare services, and the present and former parents, predecessors, subsidiaries and affiliates of defendant and other providers of healthcare services who purchased or paid for inpatient hospital services directly from NorthShore University HealthSystem (formerly known as Evanston Northwestern Healthcare), its wholly-owned hospitals, predecessors, subsidiaries,

or affiliates other than those acquired as a result of the merger with Rush North Shore Medical Center from February 10, 2000 to December 31, 2015.

3. Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to those terms in the Settlement Agreement.

4. The Court previously appointed Marvin Miller of Miller Law LLC and Mary Jane Fait as co-lead counsel. Ms. Fait withdrew her appearance and Marvin Miller is the sole Lead Counsel for the Class.

5. The Fairness Hearing shall be held before this Court on May 6, 2024, at 9:30 a.m., before the Honorable Edmond E. Chang, in Courtroom 2341 of the United States District Court for the Northern District of Illinois, Eastern Division, to determine: (i) whether the terms and conditions provided for in the proposed Settlement Agreement and are fair, reasonable, and adequate to the Class and should be finally approved by the Court; (ii) whether a Final Order and Judgment, Exhibit C to the Settlement Agreement, which, *inter alia*, dismisses the Action in its entirety with prejudice and contains releases, should be entered; (iii) whether the proposed Plan of Allocation should be approved; (iv) the amount of reasonable attorneys' fees, costs, and expenses, if any, that should be awarded to Plaintiffs' Counsel; and (v) the amount of a reasonable incentive award, if any, that should be awarded to the Class Representative.

Preliminary Approval of the Settlement Agreement

6. The Court finds that the proposed Settlement, which includes a cash payment from NorthShore that totals Fifty-Five Million Dollars (\$55,000,000) (the "Settlement Fund"), to be deposited into an escrow account for the benefit of the Class, in

exchange for, *inter alia*, dismissal of the litigation between the Class and NorthShore with prejudice and release and discharge of the Released Claims, as set forth in the Settlement Agreement, and which was arrived at by arm's-length negotiations by highly experienced counsel after formal and informal mediations and years of litigation, falls within the range of possibly approvable settlements. The proposed Settlement is, therefore, hereby preliminarily approved, subject to further consideration at the Fairness Hearing.

Approval of the Notice Plan

7. Members of the Class have previously been given notice of the pendency of the litigation and the opportunity to exclude themselves from the Class. Six Hundred Fifty-Eight (658) members of the Class ultimately requested exclusion. The Court finds that the prior notice of class certification to the Class satisfied the requirements of Rule 23 and due process, and because the prior notice to the Class provided an opt-out period that closed on February 3, 2015, there is no need for an additional opt-out period for those who previously opted out of the Class pursuant to Fed. R. Civ. P. 23(e)(4). The Court approves, as to form and content, the notice plan ("Notice Plan") and exhibits attached to the Declaration of Elaine Pang, and finds that the direct mailing and email distribution of the Postcard Notice and publishing of the Summary Notice substantially in the manner and form set forth therein meet the requirements of Federal Rule of Civil Procedure 23 and due process, and constitute the best notice practicable under the circumstances and shall constitute due and sufficient notice to all entitled to be noticed.

8. The Court further reserves the right to enter a Final Order and Judgment that approves the Settlement and dismisses the Action (as defined in the Settlement

Agreements) on the merits and with prejudice regardless of whether the Court has approved the Plan of Allocation or awarded attorneys' fees and expenses or awarded the Class Representative an incentive award.

9. The Court appoints A.B. Data, Ltd. as Notice and Claims Administrator ("Notice and Claims Administrator") to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) Not later than 7 days after entry of this Order, NorthShore shall produce to Lead Counsel the following information for purchasers of inpatient hospital services from February 10, 2000 through December 31, 2015, to the extent such information is known to NorthShore and available using reasonable efforts: Date of service, Patient Name, Patient ID number, Patient Address, Patient Social Security Number, Patient email address, Insurer name, Insurer address, Total claim amount, Patient Claim amount, Insurer claim amount. For the avoidance of doubt, nothing in this agreement shall require NorthShore to obtain such information from any third party.

(b) Not later than 21 days after entry of this Order (the "Notice Date"), Lead Counsel shall cause a link to the Notice and the Claim Forms, substantially in the forms annexed as Exhibits attached to the Declaration of Elaine Pang and hosted on a website maintained by the Notice and Claims Administrator, to be emailed to all members of the Class whose last-known email addresses can be identified with reasonable effort. Where a last-known email address is not reasonably available or where an email is returned as being undeliverable, Lead Counsel shall cause a copy of the Postcard Notice providing an address, phone number and website address where members of the Class can obtain the

Notice and Claim Form, advising them of their right to object to the Settlement, and of the date and time for the Fairness Hearing to be mailed by first-class mail to all members of the Class who can be identified with reasonable effort. Since members of the Class have, by earlier notice been afforded the opportunity to opt out of the Class and the deadline to do so expired February 3, 2015, no further opt out period shall be provided to those members of the Class who opted out.

(c) Not later than the Notice Date, Lead Counsel shall cause the Summary Notice to be published once in a nationally distributed newswire, and not later than 21 days after the issuance of this Order, Lead Counsel shall place a copy of the Class Action Complaint And Demand For Jury Trial and the Settlement Agreement (including Exhibits) on the website, <http://www.NorthShoreAntitrustLitigation.com> maintained by the Notice and Claims Administrator.

(d) Not later than 30 days after the entry of this Order, Lead Counsel shall cause to be served on NorthShore's counsel and filed with the Court proof, by affidavit or declaration, of compliance with the notice requirements of this Order.

(e) Not later than 7 days prior to the Fairness Hearing, the Notice and Claims Administrator shall submit a report outlining the implementation of the Notice Plan, including how many Notices were sent, and how many Claim Forms were submitted.

10. All members of the Class shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class. For the reasons provided in ECF No. 989, NorthShore's motion for summary judgment, ECF No. 898, is granted in part against former class representatives Amit

Berkowitz, Steven Messner, Henry Lahmeyer, and Painters District Council No. 30 Health & Welfare Fund, who are hereby dismissed. Because there is no just reason for delay, the Court will enter final judgment under Federal Rule of Civil Procedure 54(b) against former class representatives Steven Messner, Amit Berkowitz, Henry Lahmeyer, and Painters District Council No. 30 Health & Welfare Fund.

11. Members of the Class who wish to participate in the Settlement shall complete and submit a Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be submitted electronically by, or if mailed, postmarked no later than April 4, 2024. Any member of the Class that does not submit a timely Claim Form within the time provided shall be barred from sharing in the distribution of the proceeds of the Net Settlement Amount unless otherwise ordered by the Court.

12. Any member of the Class who or which requested exclusion from the Class set forth in the earlier Notice shall have no rights under the Settlement Agreement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Settlement Agreement or the Final Order and Judgment.

13. Members of the Class may enter an appearance in the Action, at their own expense, individually or through counsel of their choice. Members of the Class who do not enter an appearance will be represented by Lead Counsel.

14. Members of the Class may appear and show cause if they have any reason why the proposed Settlement should or should not be approved as fair, reasonable, and adequate, why a judgment should or should not be entered thereon, why the Plan of

Allocation should or should not be approved, why attorneys' fees and expenses should or should not be awarded, or why an incentive award should or should not be provided to the Class Representative.

15. Any member of the Class who does not make a written objection in the manner provided in the Notices or appear in person or through a representative at the Fairness Hearing shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the Settlement, to the Plan of Allocation, or to any award of attorneys' fees, reimbursement of expenses, and incentive awards.

16. The Court appoints Valley National Bank to be the Escrow Agent pursuant to the terms of the Escrow Agreement entered into between Valley National Bank and Lead Counsel. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and Plan of Allocation.

17. No Releasees or Released Parties shall have any responsibility for or liability with respect to the Plan of Allocation or any application for attorneys' fees, reimbursement of expenses, or incentive awards and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

18. At or after the Fairness Hearing, the Court will determine whether the Plan of Allocation and the application for attorneys' fees, reimbursement of expenses, and incentive awards shall be approved.

19. All reasonable expenses incurred in identifying and notifying members of the Class, as well as administering the Settlement Fund, including any taxes, shall be paid as set forth in the Settlement Agreement. In the event the Settlement is not approved by the Court, or the Settlement Agreement is otherwise terminated, (1) the Parties shall be responsible for Notice Expenses as provided in the Settlement Agreement and (2) the Settlement Fund shall be returned to NorthShore as provided in the Settlement Agreement. All reasonable expenses incurred in identifying and notifying members of the Class, as well as administering the Settlement Fund, including any taxes, shall be paid as set forth in the Settlement Agreement. In the event the Settlement is not approved by the Court, or the Settlement Agreement is otherwise terminated, (1) the Parties shall be responsible for Notice Expenses as provided in the Settlement Agreement and (2) the Settlement Fund shall be returned to NorthShore as provided in the Settlement Agreement.

20. Neither this Order, the Settlement, nor any of their terms or provisions, nor any act performed or document executed pursuant to or in furtherance of them, nor any of the negotiations or proceedings connected with them, shall be construed as an admission or concession by any party of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind and shall not be construed as, or deemed to be evidence of, or an admission or concession that, Plaintiffs or any members of the Class have suffered any damages, harm, or loss.

21. In the event that the Settlement does not become final in accordance with its terms, this Order shall be vacated and rendered null and void to the extent provided by and in accordance with the terms of the Settlement Agreement. In such event, all orders

entered, and releases delivered in connection herewith shall also be null and void to the extent provided by and in accordance with the Settlement Agreement.

Schedule

22. The Court reserves the right to continue the Fairness Hearing without further notice to the Class other than by ECF and posting on the website, <http://www.NorthShoreAntitrustLitigation.com>, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlements. The Court may approve the Settlement, with such modifications as may be agreed to by the parties, if appropriate, without further notice to the Class other than by ECF.

23. Pending the Fairness Hearing, all members of the Class are enjoined from initiating or prosecuting any actions or claims against any Releasees or Released Parties that are within the scope of the releases provided for by the Settlement Agreement.

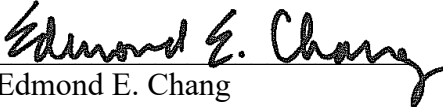
24. The following schedule of dates shall govern the resolution of the Settlements:

EVENT:	DEADLINE:
Deadline for Lead Counsel to provide notice to Class Members by effectuating the Summary Notice and Postcard Notice as specified in the Notice Plan	<u>February 23</u> , 2024
Deadline for Lead Counsel to cause the Summary Notice to be published twice in nationally distributed, business-focused newswires	<u>February 23</u> , 2024
Deadline for Lead Counsel to file affidavit of notice of emailing, mailing, and publication	April 8, 2024

EVENT:	DEADLINE:
<p>Deadline for members of the Class to file objections to the (i) the Settlement, (ii) the Plan of Allocation, (iii) the application by Class Counsel for attorneys' fees and/or reimbursement of expenses (collectively, the "Applications");</p> <p>Deadline to request exclusion from the Current Class</p>	March 25, 2024
<p>Deadline for filing of Final Approval papers in support of (i) the Settlement, (ii) the Plan of Allocation, (iii) the application by Class Counsel for attorneys' fees and/or reimbursement of expenses, and incentive award (collectively, the "Applications")</p>	April 29, 2024
<p>Deadline for Class Members in the Class to submit:</p> <ul style="list-style-type: none"> • Proof of Claim and Release Forms 	April 4, 2024
<p>Deadline for Lead Counsel to file reply to any opposition to the Applications for award of Attorneys' fees, reimbursement of expenses, and incentive awards or any response to any objection(s) filed</p>	April 4, 2024
<p>Deadline for Notice and Claims Administrator to submit report outlining implementation of the Notice Plan</p>	April 29, 2024
<p>Date of Fairness Hearing</p>	May 6, 2024, at 9:30 a.m.

IT IS SO ORDERED:

DATED: January 24, 2024


 Edmond E. Chang
 United States District Judge