

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED: September 14, 2023 8:40 AM CASE NUMBER: 2018CV34766 <hr/> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case No. 2018CV34766 Div. Courtroom 215
<p>PLAINTIFFS: ROBERT STERNER, ANGELA THOMAS- GRAVES, AND ADAM HORNING, individually and on behalf of all others similarly situated,</p> <p>v.</p> <p>DEFENDANTS: PORTERCARE ADVENTIST HEALTH SYSTEM, d/b/a CENTURA HEALTH-PORTER ADVENTIST HOSPITAL; CENTURA HEALTH CORPORATION; AND PORTER ADVENTIST HOSPITAL.</p>	
<p>PROPOSED ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT</p>	

THIS MATTER, having come before the Court on Plaintiffs’ Unopposed Motion for Final Approval of Class Settlement and Memorandum in Support (“Motion”), the Court having reviewed the Motion and being fully advised in the premises,

FINAL APPROVAL OF SETTLEMENT AGREEMENT

1. The Master Settlement Agreement and Release (“Settlement Agreement”), attached to the Motion as Exhibit 1, is incorporated fully herein by reference. The definitions used in the Settlement Agreement are adopted in this Order and shall have the same meaning ascribed in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of this Action and all parties to the Action, including Plaintiffs Robert Sterner, Angela Thomas-Graves, and Adam Horning (“Plaintiffs”) and Defendants Portercare Adventist Health System, d/b/a Centura Health-Porter

Adventist Hospital, Centura Health Corporation, and Porter Adventist Hospital (“Defendants”) (together with Plaintiffs, “the Parties”).

3. This Order is based on Colorado law, including Rule 23 of the Colorado Rules of Civil Procedure.

4. On July 23, 2020, District Court Judge Morris Hoffman certified an unjust enrichment claim for a class of approximately three thousand patients who underwent surgery during the alleged breach at Porter Hospital. *See* Certification Order. In the Certification Order, the Court concluded that the unjust enrichment claim satisfied the four requirements of Rule 23(a) (numerosity, commonality, typicality, and adequacy) and Rule 23(b)(3) as (i) questions of law or fact, common to the members of the class, predominated over questions affecting only individual members (predominance) and (ii) a class action was superior to individual lawsuits (superiority).

The certified class was defined as:

All individuals who underwent surgery at Porter between July 21, 2016 and April 5, 2018 and either:

- a. Received written notice dated either April 4, 2018 or April 6, 2018 of the cleaning/sterilization problems at Porter and who subsequently underwent testing for bloodborne pathogens such as Hepatitis B, Hepatitis C, and HIV; or
- b. Otherwise learned of the cleaning/sterilization problems at Porter and underwent testing for bloodborne pathogens such as Hepatitis B, Hepatitis C, and HIV.

Excluded from the Class are (1) persons who suffered from surgical site infections or tested positive for bloodborne pathogens; (2) Porter, its employees, affiliates, legal representatives, officers, and directors; and (3) any judge, justice, or judicial officer presiding over this matter, including their immediate family and judicial staff.

See Second Amended Class Action Complaint ¶ 180 (April 3, 2020).

5. On March 29, 2022, the Court granted Plaintiffs' Motion to Approve and Disseminate Class Notice, approving the proposed Class Notice and Plaintiff's request to utilize Epiq Class Action and Claims Solutions, Inc. ("Epiq") to disseminate and administer class notice. *See* Order Granting Plaintiffs' Motion to Approve and Disseminate Class Notice (March 29, 2022); Notice of Class Certification (attached as Ex. 5 to Motion). In May 2022, through Epiq, Plaintiffs sent the Class Notice to 3,011 members of the certified class. *See* Declaration of Plaintiffs' Counsel Joseph J. Zonies ¶ 17 (attached as Ex. 4 to Motion) ("Zonies Dec."). After receiving this Class Notice, 66 individuals opted-out of the Class. *See id.* ¶ 20.

6. On March 14, 2023, the Court granted preliminary approval (the "Preliminary Approval Order") of the Settlement Agreement between Plaintiffs, individually and on behalf of the Class, and Defendants.

7. On April 13, 2023, and pursuant to the Preliminary Approval Order, Epiq sent Settlement Notice to all 2,955 Settlement Class Members. *See* Settlement Notice (attached as Ex. 2 to Motion); Certificate of Mailing Declaration of Lucas Meyer (filed April 28, 2023). In response to this Settlement Notice, no Class Member has objected to the Settlement.

8. On March 23, 2023, the Court granted the Parties' Joint Motion to Approve and Disseminate Supplemental Class Notice.

9. On June 6, 2023, Epiq sent Supplemental Notice to 2,549 additional potential Settlement Class Members. *See* Supplemental Notice (attached as Ex. 3 to Motion); Certification of Mailing Declaration of Lucas Meyer Regarding Supplemental Class Notice (filed June 13, 2023). In response to this Supplemental Notice, 13 persons provided proof of blood testing

demonstrating they satisfied the requirements of membership in the Class and were added to the Settlement Class, and no Class Members opted out of the Settlement.

10. The Class Notice, Settlement Notice, and Supplemental Notice (collectively the “Notice”) were in compliance with the Settlement Agreement and notice program administered by Epiq, due process, Rule 23 of the Colorado Rules of Civil Procedure, and this Court’s orders. “Class Members” are defined as: (1) all recipients of the Class Notice who did not timely opt out and (2) all recipients of the Supplemental Notice who demonstrated they underwent adequate blood testing and did not timely opt out. The Notice:

- a. Fully and accurately informed Class Members about the Litigation and the existence and terms of the Settlement Agreement;
- b. Advised Class Members of the terms of the Settlement Agreement and where to find further information;
- c. Advised Class Members of their right to request exclusion from the Settlement and provided sufficient information so that Class Members were able to decide whether to accept the benefits offered, opt out and pursue their own remedies, or object to the proposed settlement
- d. Provided procedures for Class Members to file written objections to the proposed settlement, to appear at the Final Approval Hearing, and to state objections to the proposed settlement; and
- e. Provided the time, date, and place of the Final Approval Hearing

11. On September 14, 2023, the Court held a Final Approval Hearing to determine whether the proposed settlement is fair, reasonable, and adequate and whether judgment should be entered dismissing this Litigation with prejudice. The Court reviewed Plaintiffs’ Unopposed Motion for Final Approval of Class Settlement and Memorandum in Support and all supporting materials, including but not limited to the Settlement Agreement and the exhibits thereto. The Court also considered the oral argument of counsel and all parties and persons who appeared at

the hearing. Based on this review and the findings below, the Court finds good cause to grant the Motion.

IT IS HEREBY ORDERED AND ADJUDGED as follows:

12. The Settlement Agreement is fair, reasonable, adequate and in the best interests of Class Members. The Settlement Agreement was negotiated at arm's-length, in good faith and without collusion, by capable and experienced counsel, with full knowledge of the facts, the law, and the risks inherent in litigating the Litigation, and with the active involvement of the Parties. Moreover, the Settlement Agreement confers substantial benefits on the Settlement Class Members, is not contrary to the public interest, and will provide the Parties with repose from litigation. The Parties faced significant risks, expense, and/or uncertainty from continued litigation of this matter, which further supports the Court's conclusion that the settlement is fair, reasonable, adequate and in the best interests of the Class Members.

13. The Court finally and unconditionally grants approval of the Settlement Agreement in full, including but not limited to, the Class Benefit (§ 1.4), the Releases (§§ 1.16, 7), the procedures for distribution of funds (§ 2) to Settlement Class Members (§ 1.20, 2.1), Class Counsel (§§ 1.5, 6), and the Claims Administrator (§ 5). All Class Members who have not excluded themselves from the Class are bound by this Final Approval Order and Judgment. This Final Approval Order and Judgment shall have a res judicata effect and bar the Plaintiffs and each Class Member who did not timely opt-out from bringing any action against Defendants asserting any of the Settled Claims (§ 1.18) as provided in the Settlement Agreement.

14. The Parties shall carry out their respective obligations under the Settlement Agreement in accordance with its terms. The Class Benefit provided for in the Settlement

Agreement shall be made available to the various Settlement Class Members, pursuant to the terms and conditions in the Settlement Agreement. The Settlement Agreement is incorporated herein in its entirety as if fully set forth herein and shall have the same force and effect of an order of this Court.

OBJECTIONS AND REQUESTS FOR EXCLUSION

15. No objections to the Settlement, the proposed attorneys' fees, the proposed cost reimbursement, or the proposed service awards were submitted by Class Members. All persons who did not object to the Settlement in the manner set forth in the Notice are deemed to have waived any objections, including but not limited to by collateral attack or otherwise.

16. Sixty-six (66) persons made valid and timely requests to be excluded from the Class (the "Opt-Out Members"). The Opt-Out Members are not bound by the Settlement Agreement and this Final Approval Order and Judgment and shall not be entitled to any of the benefits afforded to Class Members under the Settlement Agreement.

CERTIFICATION OF THE CLASS

17. The Court incorporates and adopts its conclusions and analysis from the Certification Order (July 23, 2020) certifying this Class regarding the satisfaction of Colorado Rules of Civil Procedure 23.

18. The Court grants final approval to the appointment of Representative Plaintiffs Robert Sterner, Angela-Thomas Graves, and Adam Horning as the Class Representatives (or Named Plaintiffs) and concludes that they have fairly and adequately represented the Class and shall continue to do so.

19. The Court grants final approval to the appointment as Class Counsel Daniel Sloane, David Woodruff, and Megan Matthews of Wahlberg, Woodruff, Nimmo & Sloane, LLP, and Joseph Zonies and Greg Bentley of Zonies Law LLC. Class Counsel has fairly and adequately represented the Class and shall continue to do so.

NOTICE TO THE CLASS

20. The Court finds that the Notice, set forth in the Settlement Agreement and the Parties' Joint Motion to Approve and Disseminate Supplemental Class Notice, discussed in the Motion and herein, and effectuated pursuant to this Court's orders: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Class regarding the existence and nature of the Litigation, certification of the Class, the existence and terms of the Settlement Agreement, and the rights of Class Members to exclude themselves from the Class, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Colorado Rules of Civil Procedure, the United States Constitution, and all other applicable law.

ATTORNEYS' FEES AND COSTS, SERVICE AWARDS

21. The Court awards Class Counsel a total of \$2,145,000 in attorneys' fees and \$225,896.08 in costs. The Court finds these amounts to be fair and reasonable. Payment shall be made pursuant to the procedures in the Settlement Agreement.

22. The Court awards \$20,000 to each of the three Representative Plaintiffs as service awards. The Court finds these amounts are justified by their service to the Class. Payment shall be made pursuant to the procedures in the Settlement Agreement.

RELEASE

23. Each Class Member who has not timely opted out, including Representative Plaintiffs, are: (1) deemed to have completely and unconditionally released, forever discharged and acquitted Defendants and the other Releasees identified in Section 1.16 of the Settlement Agreement from all Settled Claims as defined in Section 1.18 of the Settlement Agreement; and (2) barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these claims. The full terms of the release described in this paragraph are set forth in Section 7.1 of the Settlement Agreement and are specifically approved and incorporated herein by this reference as to all Class Members (the “Release”).

24. The Settlement Agreement and this Final Approval Order and Judgment apply to all claims or causes of action settled under the Settlement Agreement and binds Representative Plaintiffs and all Class Members who did not timely submit a valid request for exclusion. The Settlement Agreement and this Final Approval Order and Judgment shall have maximum res judicata, collateral estoppel, and all other preclusive effect in all causes of action, claims for relief, suits, demands, petitions, or any other challenges or allegations that arise out of or relate to the subject matter of the Litigation and/or the Complaint.

OTHER PROVISIONS

25. The Settlement Agreement and this Final Approval Order and Judgment, and all documents, supporting materials, representations, statements and proceedings relating to the Settlement, are not, and shall not be construed as, used as, or deemed evidence of, any admission by or against Defendants of liability, fault, wrongdoing, or violation of any law, or of the validity

or certifiability for litigation purposes of the Class or any claims that were or could have been asserted in the Litigation.

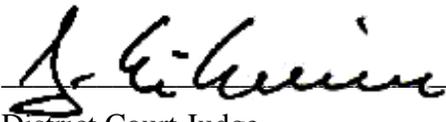
26. Without affecting the finality of this Final Approval Order and Judgment, the Court will retain jurisdiction over this Litigation and the Parties with respect to the interpretation, implementation, and enforcement of the Settlement Agreement for all purposes.

27. The Court hereby dismisses the Action in its entirety with prejudice, and without fees or costs except as otherwise provided for herein.

NOW, THEREFORE, the Court hereby enters judgment in this matter pursuant to Rule 58 of the Colorado Rules of Civil Procedure.

DATED this 14th day of September, 2023.

BY THE COURT



District Court Judge