

**IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION**

KELLY PONTILLO, individually, and
on behalf of all similarly situated,

Plaintiff,

Case No.: 22-CA-000099

v.

Division: I

FLORIDA HEALTH SCIENCES CENTER, INC.
d/b/a TAMPA GENERAL HOSPITAL,

Defendant.

**ORDER GRANTING
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT, CERTIFYING CLASS
FOR SETTLEMENT PURPOSES ONLY, DIRECTING THE ISSUANCE
OF CLASS NOTICE, AND SCHEDULING A FINAL APPROVAL HEARING**

THIS MATTER came before the Court on November 9, 2022, on the Joint Motion for Preliminary Approval of Class Action Settlement Agreement (the “Motion”), and the Court, having reviewed the Motion, including the Settlement Agreement and Release (the “Settlement Agreement” or “Settlement”) and all exhibits thereto, and having heard the argument of counsel and being otherwise fully advised in the premises, it is **HEREBY ORDERED, ADJUDGED and DECREED** as follows:

1. **Settlement.** The Plaintiff and Florida Health Sciences Center, Inc., d/b/a Tampa General Hospital (“FHSC”) (collectively the “Parties”) have negotiated a potential settlement of this action (the “Action”) to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims against the Released Parties, in all capacities, including FHSC, and any of such entities’ past, present, and future divisions, parents, subsidiaries,

predecessors, investors, parent companies, affiliates, and each and all of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, brokers, distributors, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures, assigns, or related entities, and each and all of their respective executors, successors, assigns, and legal representatives (“Related Entities”).

2. **Review.** The Court has carefully reviewed the Settlement Agreement, as well as the files, records, and proceedings to date in this Action. The terms and conditions in the Settlement Agreement are hereby incorporated as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the meanings attributed to them in the Settlement Agreement.

3. **Preliminary Approval.** The Settlement Agreement entered into by and among the Named Plaintiff Kelly Pontillo (“Named Plaintiff” or “Plaintiff”), on behalf of herself and the Settlement Class, and FHSC, has been negotiated at arm’s length through the course of three mediation sessions with the assistance of an esteemed mediator and is approved on a preliminary basis as fair, reasonable, and adequate.

4. **Monetary Relief Settlement Class.** The Settlement creates a Monetary Relief Settlement Class and a Prospective Relief Settlement Class (collectively referred to as the “Settlement Classes”). The proposed relief to the Monetary Relief Settlement Class Members as specified in Paragraph 4 of the Settlement Agreement is approved on a preliminary basis as fair, reasonable, and adequate. The Monetary Relief Settlement Class shall consist of each person who at any time during the Class Period:

- (a) received services or care from FHSC and the charges for services or care were covered and paid, in part, by PIP insurance governed by section 627.736, Florida Statutes (“Services or Care”);
- (b) paid or have agreed to be financially responsible to FHSC for charges for those Services or Care;

- (c) FHSC owns the right to collect charges for the Services or Care provided to the person; and
- (d) FHSC billed the person in excess of the reduction contemplated by section 627.736, Florida Statutes.

But excluded from the foregoing group are any claims of such persons who, prior to the Opt-Out Deadline: (a) have been fully resolved through litigation, release, or settlement; and/or (b) are the subject of any pending litigation against FHSC.

The “Class Period” is the time period that began on January 5, 2017, and ended on October 31, 2022.

5. **Prospective Relief Settlement Class:** The Settlement also creates a Prospective Relief Settlement Class. The Prospective Relief Settlement Class consists of all persons eligible for Florida PIP insurance coverage under Section 627.736, Florida Statutes, for whom FHSC provides services or care covered in part by PIP insurance. The Settlement contemplates that once PIP insurance makes a payment for services or care, FHSC will not bill or attempt to collect from the Prospective Relief Class Members any amount in excess of the maximum reimbursement limits set forth in Section 627.736(5)(a)1, Florida Statutes, for such services and care until the PIP insurance limits exhaust. The proposed relief to the Prospective Relief Settlement Class Members as specified in Paragraph 4 of the Settlement Agreement is approved on a preliminary basis as fair, reasonable, and adequate, although the entry of a final Declaratory Judgement will be determined after a Final Approval Hearing, as specified in Paragraph 9 below.

6. **Preliminary Certification of Settlement Class.** The Court makes the following determinations as to certification of the Settlement Classes:

- a. The Court preliminarily and conditionally certifies the Monetary Relief Settlement Class for purposes of settlement only, under Fla. R. Civ. P. 1.220(a) and (b)(3);
- b. The Court preliminarily and conditionally certifies the Prospective Relief Settlement Class for purposes of settlement only, under Fla. R. Civ. P. 1.220(a) and (b)(2);

- c. The Settlement Classes are so numerous that joinder of all members is impracticable;
- d. There are questions of law or fact common to the members of the Settlement Classes;
- e. The claims of the Plaintiff are typical of the claims of the other members of the Settlement Classes;
- f. Plaintiff is capable of fairly and adequately protecting the interests of the members of the Settlement Classes, in connection with the Settlement Agreement;
- g. FHSC has acted or refused to act on grounds generally applicable to all the members of the Settlement Classes, making final declaratory relief concerning the Prospective Relief Settlement Class as a whole appropriate;
- h. Common questions of law and fact predominate over questions affecting only individual members of the Monetary Relief Settlement Class for purposes of enforcing and implementing this Settlement Agreement;
- i. The Settlement Classes, as defined, are ascertainable; and
- j. Resolution of the claims in this Action by way of a settlement class action is superior to other available methods for the fair and efficient resolution of the claims of the Settlement Classes.

7. **Designation of Class Representative.** Plaintiff Kelly Pontillo is designated as class representative of the Settlement Classes for the sole purpose of seeking a settlement of this Action.

8. **Designation of Class Counsel.** The law firms of Craig Rothburd, P.A., Jeeves Law Group, P.A., and Neff Insurance Law, PLLC, are hereby designated as Class Counsel for the Settlement Classes.

9. **Final Approval Hearing.** A hearing regarding final approval of the Settlement (“Final Approval Hearing”) will be held at **3:30 p.m. on April 4, 2023, before the Honorable Paul L. Huey, George Edgecomb Courthouse, Thirteenth Judicial Circuit Court, Hillsborough County, Florida, 800 Twiggs St. E, Tampa, Florida, 33602.** At present, this hearing is scheduled for in-person attendance. If no testimony is to be taken at the hearing, it will be conducted via Zoom link (<https://zoom.us/j/7196320493>). The purpose of the Final Approval Hearing shall be to determine, among other things: (a) whether the Settlement of this Action should be approved finally as fair, reasonable, and adequate; (b) whether this Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (c) whether Settlement Class Members should be bound by the Release set forth in the Settlement Agreement; and (d) whether the application of Class Counsel for an award of attorneys’ fees and costs, and the proposed class representative service award to Plaintiff Kelly Pontillo should be approved.

10. **Class Notice.** With respect to the Class Notice attached to the Settlement Agreement as Exhibit A, and the publication/postcard notice attached to the Settlement Agreement as Exhibit B, both of which were submitted to the Court with the Parties’ Joint Motion for Preliminary Approval, the Court orders as follows:

- a. The Class Notice attached as Exhibit A to the Settlement Agreement and the Postcard/Publication Notice attached as Exhibit B to the Settlement Agreement are approved.
- b. The manner of providing notice to Settlement Class Members by email, postcard, and publication, as set forth in the Settlement Agreement is approved. The Court finds that the means of notice set forth under the Settlement Agreement is the best practicable notice under the circumstances and is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of this Action, the

terms of the Settlement Agreement, and their rights to object to or otherwise exclude themselves from the Settlement.

- c. The Court specifically finds that sending the Class Notice by email to Class Members for whom email addresses are available, and postcards to Class Members for whom email addresses are not available, is reasonable, and constitutes due, adequate, and sufficient notice to all persons entitled to receive such notice and meets the requirements of the Due Process Clauses of the Florida and United States Constitutions.
- d. The Class Notice shall be sent no less than fifteen (15) days after the Settlement Administrator receives the Class List from FHSC. FHSC shall provide the Class List to the Settlement Administrator no later than thirty (30) days after the date this Preliminary Approval Order is entered, unless otherwise ordered by the Court or agreed to by the Settling Parties.
- e. No later than ten (10) days before the Final Approval Hearing, Class Counsel shall obtain from the Settlement Administrator and thereafter shall file with the Court a proof of sending of the Class Notice.

11. **Settlement Administrator.** The Court authorizes and directs the Parties to retain American Legal Claim Services as Settlement Administrator to implement the terms of the Settlement Agreement and authorizes and directs such Settlement Administrator to (a) send the Class Notice; (b) publish the Publication Notice; (c) receive and process any opt-out requests; and (d) carry out such other responsibilities as are provided for in the Settlement Agreement or may be agreed to by the Parties.

12. **Exclusion from the Settlement Class.** Any Settlement Class Member who wishes to opt out or be excluded from the Settlement Classes must send a written Request for Exclusion to the Settlement Administrator, by first-class mail, postage prepaid, to the address

provided in the Class Notice. Any such Request for Exclusion must be postmarked no later than forty-five (45) days after the Class Notice Date.

- a. To be valid, the Request for Exclusion must: (1) identify the case name and number; (2) identify the name and address of the Settlement Class Member; (3) be personally signed by the Settlement Class Member requesting exclusion; and (4) contain a statement that indicates a desire to be excluded from a Settlement Class in this Action, such as “I hereby request that I be excluded from a proposed Settlement Class in the Pontillo Class Action.” The Request for Exclusion must identify the Settlement Class from which the Settlement Class Member seeks exclusion (whether Monetary Relief or Prospective Relief). A single Request for Exclusion is required for each Class Member requesting exclusion; mass or class opt outs shall not be allowed.
- b. A Settlement Class Member who desires exclusion must take timely affirmative written action pursuant to this Order and the Settlement Agreement, even if the Settlement Class Member desiring exclusion: (1) files a separate action against any of the Released Parties, or (b) becomes a putative class member in any other class action filed against any of the Released Parties.
- c. Except for those Settlement Class Members who timely and properly file a Request for Exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members for purposes under this Order, and upon the Effective Date of the Settlement Agreement, will be bound by its terms, including, but not limited to, the Releases in Section 11 of the Settlement Agreement.

- d. If the Settlement Agreement receives final approval, any Settlement Class Member who has not submitted a timely, written Request for Exclusion from the Class shall be bound by all subsequent proceedings, orders, and judgments in this Action, even if he or she subsequently initiates litigation against FHSC or any other Released Party, relating to any of the Released Claims.

13. **Objections and Appearances.** Any Settlement Class Member who has not filed a timely written Request for Exclusion and who complies with the requirements of this Paragraph may object to any aspect of the Settlement Agreement either on his or her own or through an attorney hired at his or her expense.

- a. Any Settlement Class Member who wishes to object to the Settlement Agreement must do so in writing and must file with the Clerk of Court and serve on Class Counsel and FHSC's Counsel, at the addresses listed below, a written statement of objection in accordance with the requirements set forth below and in the Settlement Agreement no later than forty-five (45) days after the Class Notice Date:

For Plaintiffs and the Settlement Class:

CRAIG E. ROTHBURD, P.A.

Craig E. Rothburd, Esq.
320 W. Kennedy Blvd., Suite 700
Tampa, Florida 33606-1459
Telephone: (813) 251-8800
Fax: (813) 251-5042
Email: craig@rothburdpa.com

or

JEEVES LAW GROUP, P.A.

Scott R. Jeeves, Esq.
2132 Central Avenue
St. Petersburg, Florida 33712
Telephone: (727) 894-2929
Fax: 727-822-1499

Email: sjeeves@jeeveslawgroup.com

For FHSC:

CARLTON FIELDS, P.A

Simon Gaugush, Esq.

Austin M. Eason, Esq.

4221 West Boy Scout Blvd., Suite 1000

Tampa, Florida 33607

Tel: 813-223-7000

Fax: 813-229-4133

Primary E-mail:

sgaugush@carltonfields.com

aeason@carltonfields.com

Secondary Email:

plowden@carltonfields.com

lrodriguez@carltonfields.com

tpacfcfdom.net

- b. The requirements to assert a valid written objection shall be set forth in the Class Notice, and shall include: (1) the case name and number; (2) the factual and legal basis for the objection; (3) the objector's name, address, telephone number, and, if represented by counsel, the contact information of the objector's counsel; (4) a statement of whether the Class Member intends to appear at the Final Approval Hearing, either with or without counsel; and (5) be personally signed by the Class Member.
- c. Any Settlement Class Member who fails to object to the Settlement in the manner described in the Class Notice and consistent with this Order shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement Agreement at the Final Approval Hearing, and shall be deemed to have waived any right to seek review of the Settlement Agreement by appeal or other means.
- d. Any Settlement Class Member who submits a timely written objection may appear, individually or by counsel, at the Final Approval Hearing

held by the Court, to show cause why the proposed Settlement Agreement should not be approved as fair, adequate, and reasonable, provided that the objecting Settlement Class Member: (1) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing (“Notice of Intent to Appear”), which must include the case name and number and the Settlement Class Member’s name, address, telephone number, and signature, postmarked by the Objection Deadline; and (2) serves the Notice of Intention to Appear on all counsel designated in the Class Notice by the Objection Deadline. The Notice of Intention to Appear must identify the name, address, email address, and telephone number of each witness and include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing. Any attorney who intends to represent an objecting Settlement Class Member at the Final Approval Hearing must do so at the Settlement Class Member’s expense and must file a notice of appearance at least two weeks before the Final Approval Hearing. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the applicable deadlines and other specifications set forth in this Order, the Settlement Agreement, and Class Notice will not be entitled to appear at the Final Approval Hearing to raise any objections to the Settlement.

14. **Releases.** If the Settlement is finally approved, all Settlement Class Members who have not filed a timely and proper Request for Exclusion shall release the Released Parties from all Released Claims, as described in Section 11 of the Settlement Agreement.

15. **Attorneys’ Fees and Costs, and Class Representative Service Award.** Plaintiff and Class Counsel agree not to seek an award of attorneys’ fees and costs in this Action in an

amount exceeding \$301,000.00. In addition, Plaintiff shall also apply for a Class Representative Service Award of \$5,000.00 for her work and assistance in this Action. Except as otherwise provided by the Settlement Agreement, FHSC will not pay any amounts greater than \$301,000.00 for attorneys' fees and costs in this Action.

16. **Service of Papers.** FHSC's counsel and Class Counsel shall serve on each other and on all other parties who have filed notices of appearance, at or before the Final Approval Hearing, any further documents in support of the proposed Settlement Agreement, including responses to any papers filed by Settlement Class Members. FHSC's counsel and Class Counsel shall promptly furnish to each other any and all objections or written requests for exclusion that may come into their possession and shall file such objections or Requests for Exclusion with the Court on or before the date of the Final Approval Hearing.

17. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before the Court entered this Order, if the proposed Settlement Agreement: (a) is not finally approved by the Court; or (b) does not become final, pursuant to its terms; or (c) is terminated pursuant to its terms. In such event, and except as provided therein, the proposed Settlement Agreement shall become null and void and be of no further force and effect; the preliminary certification of the Settlement Classes for settlement purposes shall be automatically vacated; neither the Settlement Agreement nor the Court's Orders, including this Order, shall be used or referred to for any purpose whatsoever; the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification; and the Parties and this Action shall be returned to the status quo that existed prior to the Settlement Agreement.

18. **Use of Order Following Termination of Settlement.** This Order shall be of no force and effect if the Settlement Agreement does not become final and shall not be construed or used as an admission, concession, or declaration by or against FHSC or any Related Entities of

any fault, wrongdoing, breach, or liability, or by or against Plaintiff or the Settlement Class Members that their claims lack merit or that the relief requested in the Class Complaint in this Action is inappropriate, improper, or unavailable, or as a waiver by FHSC of any defenses it may have.

19. **Necessary Steps.** The Court authorizes the Parties to take all necessary and appropriate steps to implement the Settlement Agreement.

DONE AND ORDERED in chambers, in Tampa, Hillsborough County, Florida, on this _____ day of _____, 2022.

Electronically Conformed 11/10/2022
Paul Huey

HONORABLE PAUL L. HUEY
Circuit Court Judge

Conformed copies to:

- Craig E. Rothburd (*CERPA File No. 6954*)
- Scott R. Jeeves
- Casim A. Neff
- Simon Gaugush
- Austin M. Eason