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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. HENRY ERLE CHILDERS IV, DR.
GEORGE BINO RUCKER, DR. EVAN
NADLER, and DR. KAMBIZ DARDASHTI, on
Behalf of Themselves and Others Similarly
Situated,

13 Civ. 5414 (LGS)

Plaintiffs,

- against -

THE NEW YORK AND PRESBYTERIAN
HOSPITAL,

Defendant.

DR. LORI SIMON, DR. BEZALEL DANTZ, DR.
PETER HAHN, and DR. TRACEY MARKS, on
Behalf of Themselves and Others Similarly
Situated,

13 Civ. 5899 (LGS)

Plaintiffs,

- against -

THE NEW YORK AND PRESBYTERIAN
HOSPITAL,

Defendant.

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT, CONDITIONALLY
CERTIFYING RULE 23
SETTLEMENT CLASS, APPOINTING
CLASS COUNSEL, AND APPROVING
PROPOSED NOTICE PROCEDURES**

LORNA G. SCHOFIELD, United States District Judge:

WHEREAS, on August 2, 2013, certain of the Named Plaintiffs filed a putative class action in the United States District Court for the Southern District of New York, captioned *Dr. Henry Erle Childers IV, et al.v. The New York and Presbyterian Hospital*, No. 13 Civ. 5414 (the “Childers Action”), on behalf of a putative class (collectively, “Class Members”) consisting of themselves and all other persons who were medical residents, including those medical residents

who were fellows, employed by Defendant The New York and Presbyterian Hospital (“Defendant” or “NYP”) or its predecessor The Society of The New York Hospital and enrolled in ACGME accredited graduate medical education residency programs at what is now known as NYP’s Weill Cornell Campus from January 1, 1995, through and including June 30, 2001 (“the Class Period”) asserting, *inter alia*, class claims of unjust enrichment and breach of fiduciary duty pursuant to Federal Rule of Civil Procedure 23 against NYP;

WHEREAS, on August 21, 2013, certain of the Named Plaintiffs filed a class action lawsuit in the United States District Court for the Southern District of New York, captioned *Dr. Lori Simon, et al. v. New York and Presbyterian Hospital*, No. 13 Civ. 5899 (the “Simon Action” and, collectively with the Childers Action, the “Consolidated Actions”), on behalf of the Class Members asserting class claims of unjust enrichment and breach of fiduciary duty pursuant to Federal Rule of Civil Procedure 23 against NYP; and

WHEREAS, on October 9, 2013, the Simon Action was consolidated for pretrial purposes with the Childers Action; and

WHEREAS, on August 12, 2014, counsel for some of the Named Plaintiffs, Emery Celli Brinckerhoff & Abady LLP (“ECBA”), was appointed Interim Lead Counsel for the Class Members in the Consolidated Actions; and

WHEREAS, on October 3, 2014, plaintiffs in the Childers Action and the Simon Action filed a Consolidated Amended Complaint pleading causes of action for breach of fiduciary duty, fraud, constructive fraud, negligent misrepresentation, negligence and unjust enrichment; and

WHEREAS, on March 16, 2015, the Named Plaintiffs and Defendant, through their counsel, participated in a full-day mediation session overseen by Linda R. Singer, Esq. of

JAMS, an experienced neutral mediator, and in numerous subsequent negotiations that resulted in this Agreement; and

WHEREAS, the Named Plaintiffs and the Defendant have entered into a Joint Stipulation of Settlement and Release, dated May 15, 2015 (the “Settlement Agreement”), providing for, *inter alia*, monetary relief for the Class Members;

WHEREAS, the Class Members are defined to include the Named Plaintiffs and all other persons who were medical residents, including those medical residents who were fellows, employed by NYP or its predecessor The Society of The New York Hospital and enrolled in ACGME accredited graduate medical education residency programs at what is now known as NYP’s Weill Cornell Campus from January 1, 1995, through and including June 30, 2001;

WHEREAS, the Settlement Agreement provides for a Gross Settlement Amount of Six Million Six Hundred Thirty-Two Thousand Dollars (\$6,632,000), which the Defendant has agreed to pay to Class Members to settle the Consolidated Actions;

WHEREAS, the Settlement Agreement provides that no more than one-third of the Gross Settlement Amount will be spent on attorneys’ fees, costs (including administrative costs) and service awards and that the other two-thirds of the Gross Settlement Amount will be paid to Class Members who do not opt out of the Class;

WHEREAS, following final approval, at least \$4,526,666.67 will be paid to the Class Members in accordance with an allocation plan set out in the Settlement Agreement, except that a larger sum will be paid to the Class Members if the Court reduces the amount proposed for attorneys’ fees, costs, or service awards;

WHEREAS, following final approval, no more than \$2,105,333.33 less the amount advanced for administrative costs will be paid for attorneys' fees, costs (including administrative costs) and service awards in accordance with an allocation plan set out in the Settlement Agreement;

WHEREAS, the Settlement Agreement provides that, following final approval, service awards of \$15,000 shall be paid to those two Named Plaintiffs who were deposed and \$10,000 to the remaining six Named Plaintiffs who were not deposed, for a total of \$90,000 for service awards;

WHEREAS, any Class Member who does not timely opt out of the settlement shall release all claims he or she may possess against NYP, its agents and assigns, relating to FICA taxes paid by him or her, or withheld by NYP on his or her behalf during the period from January 1, 1995 through June 30, 2001, including without limitation the claims that were or could have been asserted in the Consolidated Amended Complaint and any other claims that would be res judicata after judgment on the claims pleaded therein;

WHEREAS, the Settlement Agreement provides that a Settlement Claims Administrator will send a notice in a form and on a schedule approved by the Court to all members of all Class Members, explaining the recipient's rights to opt-out of or object to the proposed settlement;

WHEREAS, the proposed notice, which will be sent to all Class Members, complies with Federal Rule of Civil Procedure 23(c)(2)(B);

WHEREAS, in order to send notice and calculate the amount each Class Member is entitled to, Interim Lead Counsel requires each Class Member's name, last known address, regular earnings during the Class Period and the amount of Social Security Tax and Medicare

Tax withheld from each Class Member's earnings during such period (collectively, "the Class Member Information");

WHEREAS, the Settlement Agreement was negotiated with the assistance of Ms. Singer, and was the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval;

WHEREAS, on May 15, 2015, Interim Lead Counsel filed a notice of motion, memorandum of law, declaration, and exhibits in support of the preliminary approval of the Settlement Agreement;

WHEREAS, a preliminary approval hearing was held on June 22, 2015, and by Orders dated June 22 and 24, 2015 (Dkt. Nos. 115-16, U.S.D.C. No. 13-cv-5414), the Court requested additional information and certain changes to the form of notice and the proposed order;

WHEREAS, on June 24 and 25, 2015, Interim Lead Counsel provided certain additional information and documents that had been ordered;

WHEREAS, upon reading the papers submitted in support of the motion for approval of the settlement agreement and after a preliminary approval hearing held on June 22, 2015 and additional submissions;

NOW, it is HEREBY ORDERED that:

- (a) The proposed settlement as set forth in the Settlement Agreement, is preliminarily approved;
- (b) For the purposes of settlement only, the Rule 23 Class is certified on behalf of the Class Members pending a fairness hearing and further order of the Court;

- (c) For the purposes of settlement only, ECBA, PCT Law Group, PLLC (“PCT”) and Stueve Siegel Hanson LLP are appointed Class Counsel;
- (d) ECBA is designated Lead Counsel;
- (e) Settlement Services, Inc. (“SSI”) is approved as the Settlement Claims Administrator;
- (f) The proposed notices of settlement are approved and shall be mailed to Class Members in accordance with the terms of the Settlement Agreement, and constitute sufficient notice of the fairness hearing and the settlement to all persons entitled to receive such a notice in accordance with Federal Rule of Civil Procedure 23(c)(2)(B);
- (g) Within seven days following this Order, NYP is authorized to and shall provide ECBA the Class Member Information;
- (h) NYP shall advance administrative fees at the request of Lead Counsel, which must be credited toward any future settlement amount or judgment if the Court does not ultimately enter a Final Approval Order. Any such fees are part of the Gross Settlement Amount;
- (i) Unless the Court otherwise directs, no person shall be entitled to object to the approval of the proposed settlement, any judgment entered thereon, the adequacy of the representation of the Class Members by Named Plaintiffs and their counsel or any award of attorneys’ fees or otherwise be heard, except by serving and filing a written objection and supporting papers and documents as prescribed in the proposed notice. Any person who fails to object in the required manner by October 2, 2015, shall be deemed to have waived the right

to object (including any right of appeal) and shall be forever barred from raising such objection in this or any other action or proceeding;

- (j) All proceedings in the Consolidated Actions, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement Agreement, are stayed and suspended until further order of this Court;
- (k) If the proposed settlement in accordance with the Settlement Agreement is not approved by the Court or shall not become effective for any reason whatsoever, the proposed settlement and provisional class certification herein and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein), shall be terminated and shall become void and of no further force and effect. For purposes of this provision, a disallowance or modification by the Court of the attorneys' fees and/or expenses sought for Class Counsel shall not be deemed an amendment, modification or disapproval of the proposed settlement;
- (l) The Settlement Agreement and any negotiations, statements or proceedings in connection therewith, shall not be offered or admitted in evidence or referred to, interpreted, construed, invoked or otherwise used by any person for any purpose in the Consolidated Actions or otherwise, except as may be necessary to enforce or obtain Court approval of the proposed settlement;
- (m) A fairness hearing shall be held on November 20, 2015, at 10:30 a.m., at the United States District Court for the Southern District of New York, 40 Foley Square, New York, NY 10007, Courtroom 1106; and

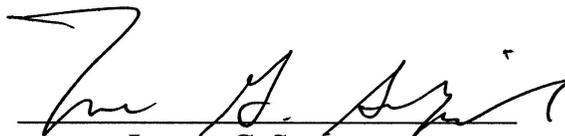
(n) The Court may, for good cause, extend any of the deadlines set forth in this

Order without further notice to Class Members.

SO ORDERED.

Dated: July 6, 2015

New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE