

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION  
LAWSUIT AND FAIRNESS HEARING**

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK**

**If you were a medical resident in The New York and Presbyterian Hospital's Weill Cornell Campus Residency Program between January 1, 1995 and June 30, 2001, you may be entitled to a payment from a lawsuit settlement.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- This Notice is being sent to all persons who were medical residents, including those medical residents who were fellows, employed by The New York and Presbyterian Hospital or its predecessor The Society of The New York Hospital (collectively, "NYP") and enrolled in ACGME accredited graduate medical education residency programs at what is now known as NYP's Weill Cornell Campus (collectively, the "NYP/Weill Cornell Residency Program") from January 1, 1995, through and including June 30, 2001 ("Class Period"). If you do not receive this Notice in the mail by August 20, 2015 and meet this definition, contact the Administrator at the email or number at the end of this Notice.
- Former medical residents have sued NYP claiming that NYP acted against your interest when it agreed with the IRS not to seek refunds of Federal Insurance Contribution Act ("FICA") taxes paid by or on behalf of itself and medical residents in the NYP/Weill Cornell Residency Program during the period from January 1, 1995 through June 30, 2001 and failed to disclose the agreement. These lawsuits were filed as class actions under Federal Rule of Civil Procedure 23.
- NYP denies all allegations in the lawsuit and maintains that it acted appropriately at all times, and that its agreement with the IRS did not preclude residents from filing their own refund claims.
- To avoid the burden, expense, inconvenience, and uncertainty of continued litigation, the parties have concluded that it is in their best interests to resolve and settle the lawsuit by entering into a Settlement Agreement. Accordingly, NYP has agreed to deposit \$6,632,000.00 into a fund that will be used to pay former medical residents who qualify for a settlement payment, as well as attorneys' fees, service awards, and litigation costs.
- Under the allocation formula created by the Settlement, **you may be entitled to receive approximately 50% of FICA taxes withheld from you by NYP** from January 1, 1995 through June 30, 2001, unless you previously received a refund of FICA taxes paid during that period, in which case you will receive less. This amount is based on a formula that takes into account the amount of FICA tax that was withheld from your wages during your medical residency in the NYP/Weill Cornell Residency Program during this period. You may receive a second additional amount, depending on how many other former medical residents participate in the Settlement.
- Neither Class Counsel nor NYP make any representations concerning any tax consequences of this Settlement or participation in it, and you are advised to seek your own personal tax advice prior to acting in response to this Notice.

- Your legal rights may be affected. You have a choice to make now:

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT AND HAVE <u>NEVER</u> PREVIOUSLY RECEIVED ANY REFUND FROM THE IRS FOR FICA TAX WITHHELD FROM YOUR NYP/WEILL CORNELL RESIDENCY PROGRAM WAGES</b>	<b>You just simply need to wait.</b> If you are receiving this Notice, you are eligible to receive money from this Settlement. As further described below, if you wish to remain part of the case, you will be sent a check settling your claims. If you choose this option, you will no longer be able to sue NYP about any claims relating to FICA taxes withheld by NYP on your behalf during the period from January 1, 1995 through June 30, 2001.
<b>IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT AND <u>HAVE</u> PREVIOUSLY RECEIVED A REFUND FROM THE IRS FOR FICA TAX WITHHELD FROM YOUR NYP/WEILL CORNELL RESIDENCY PROGRAM WAGES</b>	<b>You <u>must</u> complete the “Declaration of Previous Refund” form at the end of this Notice and return it by November 10, 2015.</b> You are still eligible to receive money from this Settlement (unless you previously received full refunds for all the years of your residency), but the amount will be reduced because you have already received some money directly from the IRS. Once you return the Declaration of Previous Refund, you will be sent a check settling your claims, and you will no longer be able to sue NYP about any claims relating to FICA taxes withheld by NYP on your behalf during the period from January 1, 1995 through June 30, 2001.
<b>EXCLUDE YOURSELF</b>	<b>Submit a signed statement received by October 2, 2015 expressing your desire to opt out of the Settlement.</b> This option allows you to preserve any rights you may have to bring an individual lawsuit against NYP involving claims relating to FICA taxes withheld by NYP on your behalf during the period from January 1, 1995 through June 30, 2001. If you do not exclude yourself, you will give up any such claims you may have against NYP, even if you later decide not to cash your settlement check. <i>If you exclude yourself from the Settlement, you will not be entitled to receive any payment from this Settlement.</i>
<b>OBJECT</b>	<b>Submit a written objection by October 2, 2015 explaining why you do not like the Settlement.</b> If you exclude yourself from the Settlement, you may not object. If you object in writing, you may also ask to speak in Court about the fairness of the Settlement. You may only appear in Court to speak about the fairness of the Settlement if you file a timely written objection to the Settlement and if you do not exclude yourself from the Settlement. If you object and the Settlement is approved, you will receive payment and will no longer be able to sue NYP about the claims in this case.

- These rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- The Court still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

## **BASIC INFORMATION**

### **1. Why did I get this Notice?**

This notice was publicly posted. Class Members were medical residents in the NYP/Weill Cornell Residency Program at some time between January 1, 1995 and June 30, 2001. If you are not sure if you are a Class Member or to update your address, contact the Administrator at the number or email at the end of this Notice. A federal judge approved this Notice because you have a right to know about a proposed class action settlement, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, payments will be mailed to Class Members who do not exclude themselves once objections and appeals are heard.

This Notice explains the lawsuit, the Settlement, your legal rights, and what benefits are available. The Court overseeing this case is the United States District Court for the Southern District of New York. The lawsuits are known as *Dr. Lori Simon, et al. v. New York and Presbyterian Hospital*, No. 13 Civ. 5899 and *Dr. Henry Erle Childers IV, et al. v. The New York and Presbyterian Hospital*, No. 13 Civ. 5414.

The people who filed the lawsuit are called the “Plaintiffs.” NYP is called the “Defendant.”

### **2. What is this lawsuit about?**

This lawsuit is about whether NYP acted against your interest when it entered into an agreement with the IRS that, among other provisions, stated that NYP would not seek refunds of FICA taxes paid by or on behalf of itself and medical residents in the NYP/Weill Cornell Residency Program during the period from January 1, 1995 through June 30, 2001. The lawsuits allege that the agreement in question caused former medical residents to miss out on the opportunity to obtain FICA tax refunds when the IRS later ruled that medical residents were not properly subject to FICA taxes during this period. NYP denies this allegation and maintains, among other defenses, that residents were able to file their own individual refund claims.

### **3. Why is this a class action?**

In a class action, one or more people called “Class Representatives” sue on behalf of people who have similar claims. The people together are a “Class” or “Class Members.” The former medical residents who sued are called the Plaintiffs. One court resolves the issues for everyone in the Class—except for those who choose to exclude themselves from the Class.

### **4. Why is there a Settlement?**

The Court did not decide in favor of Plaintiffs or Defendant. Both sides believe they would have prevailed in the case, but there was no decision ruling in favor of either party. Instead, both sides agreed to a Settlement. That way, they avoid the cost and delays of litigation. The Class Representatives and their attorneys think the Settlement is best for all Class Members.

## WHO IS PART OF THE SETTLEMENT

### 5. How do I know if I am part of the Settlement?

You are automatically a member of the Class if you were a medical resident employed by NYP and enrolled in the NYP/Weill Cornell Residency Program during the period from January 1, 1995 through June 30, 2001. Contact the Administrator at the phone or email at the end of this Notice with questions.

### 6. I'm still not sure if I am included.

If you are still not sure whether you are included, you can ask for free help. You can contact Class Counsel at the contact information provided at the end of this Notice.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 7. What does the Settlement provide?

NYP has agreed to create a \$6,632,000.00 fund to be divided among former medical residents who are covered by the Settlement. This money will be allocated to Class Members who do not exclude themselves from the Settlement Class (minus amounts described in Paragraphs 17 and 18 below). You will receive your proportionate share of the Settlement, less any refund amount already received. The amount each participating Class Member receives will be based on the amount of FICA tax that was withheld from his or her wages during his or her medical residency in the NYP/Weill Cornell Residency Program in the period from January 1, 1995 through June 30, 2001; the amount of any refunds previously received from the IRS; and the number of former residents who participate. The Settlement is memorialized in a Settlement Agreement, which contains the exact allocation formula. You may obtain a copy of the Agreement by contacting Class Counsel at the contact information provided in Paragraph 24 below or by visiting [www.nyficasttlement.com](http://www.nyficasttlement.com).

Each Class Member is entitled to a specific portion of the total \$6,632,000 fund. As explained in Paragraphs 13, 14, and 15, Class Members (including you) have the option of excluding themselves from this Settlement.

Every Class Member who does not exclude himself will receive a check for his portion of the settlement fund. If any Class Member receives a check but does not cash it within a certain amount of time, the amount of his check will be returned to the settlement fund. Thereafter, the unclaimed funds will be distributed to the participating Class Members who previously cashed their checks. If that happens, participating Class Members who previously cashed their checks will receive a second check in the mail. You do not need to do anything to claim this second check.

### 8. How much will my payment be?

Based on the formula that has been preliminarily approved by the Court, **the amount you will be entitled to receive was calculated and can be learned by contacting the Administrator**, unless you have previously received a FICA refund from the IRS for taxes withheld from your NYP/Weill Cornell Residency Program wages at any time from January 1, 1995 through June 30, 2001, in which case the amount will be less. This amount is approximately 50% of the total amount of FICA taxes withheld by NYP during the Class Period. If you have previously received such a refund, you are required to complete

and return the Declaration of Previous Refund form at the end of this notice. If this applies to you, please read Paragraph 11 below carefully.

Additionally, as explained in Paragraph 7, depending on how many other Class Members participate in the Settlement, you may be entitled to more than the amount set forth above. In that case, you will not need to take any action to claim the additional money.

## HOW YOU GET A PAYMENT

### 9. How can I get my payment?

If you have never previously received a FICA refund from the IRS for taxes withheld from your NYP/Weill Cornell Residency Program wages between January 1, 1995 and June 30, 2001, then you do not need to do anything to receive the payment identified in Paragraph 8. If you choose to exclude yourself, then you will not receive a payment.

### 10. When will I get my payment?

The Court will hold a hearing on November 20, 2015, at 10:30 am in Courtroom 1106 at the U.S. District Court for the Southern District of New York, 40 Foley Square, New York, New York, 10007 to determine whether to approve the Settlement. If the Court approves the Settlement, there may be appeals after that. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Please be patient.

### 11. What if I want to participate in the Settlement, but I previously received an individual refund from the IRS for some of the FICA taxes that were withheld from my NYP/Weill Cornell Residency Program wages between January 1, 1995 and June 20, 2001?

Although this scenario does not apply to many Class Members, some Class Members received refunds of the FICA taxes withheld from their NYP/Weill Cornell Residency Program pay for one or more years from 1995 through 2001. **This only occurred if you or your tax preparer affirmatively claimed a FICA tax refund from the IRS for one or more of the years in question by filing paperwork in 2005 or earlier.** If you never claimed an individual FICA tax refund from the IRS, this paragraph does not apply to you.

This paragraph applies to you if you received a letter from the IRS stating that you claimed a refund of FICA taxes withheld from wages you earned as a medical resident. If you received such a letter, it probably would have been sent to you in 2010, and it would have contained an "Attachment 8305I" setting forth the years for which you claimed a refund, the amount of your claim, and your employer's name (the Society of the New York Hospital or New York and Presbyterian Hospital) and identification number. You can view a sample of such a letter and Attachment 8305I at [www.nyficasttlement.com](http://www.nyficasttlement.com).

If you claimed an individual refund, you would have received the full amount of FICA tax withheld from your residency wages during any years for which you claimed refunds, plus interest.

Even if you received an individual refund, you may still be eligible to receive a payment in this Settlement. However, **you must complete and return the Declaration of Previous Refund form at the end of this Notice so that it is received by November 10, 2015.** This form can also be found at [www.nyficasttlement.com](http://www.nyficasttlement.com) and emailed to [info@nyficasttlement.com](mailto:info@nyficasttlement.com). The amount you are entitled to receive in the Settlement will be reduced, because you already received some money from the IRS. **If**

**you did not receive an individual refund, you do not need to fill out the Declaration of Previous Refund.**

If you participate in the Settlement and do not complete and return the Declaration of Previous Refund form, we will assume that you have not previously received an individual refund. As a result, **you will be required to affirm this under oath** in order to cash your check.

If you are unsure how to proceed, please contact the Settlement Claims Administrator using the information in Paragraph 24 or go to [www.nyficasttlement.com](http://www.nyficasttlement.com) to view Frequently Asked Questions.

## **12. What am I giving up to get a payment or stay in the Class?**

Unless you exclude yourself (as explained in Paragraph 12 below), you will remain in the Class. This means that you cannot sue, continue to sue, or be part of any other lawsuit against NYP about the same issues covered by this case. If you do not exclude yourself, all of the Court's orders will apply to you and legally bind you.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment from this Settlement, and you want to keep the right to sue or continue to sue NYP, on your own, about the issues in this case, then you must take steps to get out of the case. This is called excluding yourself—or is sometimes referred to as “opting out” of the Settlement Class.

## **13. How do I opt out of the Settlement?**

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to be excluded from this Settlement and acknowledging that by excluding yourself, you will not receive any funds from the Settlement. You must include your name, address, telephone number, and signature. Your exclusion request must be received no later than October 2, 2015 and it must be mailed to the Settlement Claims Administrator, at the address listed in Paragraph 24.

If you ask to be excluded, you will not get any money from this Settlement, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this case. You may also be able to sue (or continue to sue) NYP in the future with respect to the legal issues in this case. If you wish to exclude yourself in order to file an individual lawsuit against NYP, you should speak to a lawyer as soon as possible because any claim(s) you may have are subject to a statute of limitations, which means that they expire on a certain date (which may have passed).

## **14. If I don't exclude myself, can I sue NYP for the same thing later?**

No. If you do not exclude yourself, you will be giving up any rights to sue NYP in any case involving claims relating to FICA taxes withheld by NYP on your behalf during the period from January 1, 1995 through June 30, 2001. Failing to exclude yourself extinguishes your right to sue NYP in such a case whether or not you cash a settlement check. **If you have a pending lawsuit against NYP, speak to your lawyer in that case immediately to see if this Settlement will affect your other case.** Remember, the exclusion deadline is October 2, 2015.

## **15. If I exclude myself, can I get money from this Settlement?**

No. If you exclude yourself, you will not receive any money from this lawsuit.

## THE LAWYERS REPRESENTING YOU

### 16. Do I have a lawyer in this case? Who represents NYP?

The Court has decided that the lawyers at the law firm of Emery, Celli, Brinkerhoff & Abady LLP are qualified to represent you and all Class Members. These lawyers are called “Lead Counsel” for the Class. You will not be charged individually for these lawyers; their fees will come from the settlement fund. The firms PCT Law Group, PLLC and Stueve Siegel Hanson LLP also represent the Class. You do not need to retain your own attorney in order to participate as a Class Member, although you may do so if you choose. If you do not opt out of the Class and want to be represented by your own lawyer, you may hire one at your own expense. If you wish to contact Lead Counsel, you may find their contact information at the end of this Notice.

NYP is represented by the law firm Skadden, Arps, Slate, Meagher & Flom LLP.

### 17. How will the lawyers be paid?

Class Counsel, which includes Lead Counsel as well as other attorneys for the Plaintiffs, will ask the Court to approve a payment for attorneys’ fees and costs. These fees would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement. This amount will also be to reimburse Class Counsel and the Plaintiffs for their out-of-pocket costs. The Court may award less than the amount Class Counsel request. NYP has agreed not to oppose these fees, and Plaintiffs and their Counsel have agreed not to request more than one-third of the total settlement fund for attorneys’ fees, costs, and service awards.

### 18. What is a “service award?”

A service award is an extra amount that is paid to the individuals who bring a lawsuit on behalf of other people. It is meant to reward those individuals for bringing the lawsuit to vindicate the rights of themselves and others. In this case, Class Counsel will ask the Court to approve payments of \$15,000 to two of the Class Representatives who gave testimony in a deposition, and \$10,000 to each of the other Class Representatives. These amounts will be paid out of the overall settlement fund.

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you don’t agree with the Settlement or some part of it.

### 19. How do I tell the Court that I don’t like the Settlement?

If you are a Class Member, you can object to the Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter to the Settlement Claims Administrator saying that you object to this Settlement and explaining all the reasons why you object. Be sure to include your name, address, telephone number, your signature, the reasons you object to the Settlement, and whether you want to speak at the Fairness Hearing. Mail the objection to the Settlement Claims Administrator at the address in Paragraph 24. Your letter must be received no later than October 2, 2015. **Do not contact the Court directly for any reason.**

**20. What's the difference between objecting and excluding myself?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you, but you are free to file your own claim.

**THE COURT'S FAIRNESS HEARING**

The Court will hold a Fairness Hearing to decide whether to approve the Settlement. You may attend and may ask to speak, or you may have a lawyer attend and speak for you, but you do not have to. If you wish to bring anything to the Court's attention about the Settlement, you must provide it in writing in accordance with Paragraph 19 above. Class Counsel will provide your letter to the Court before the Fairness Hearing.

On or before October 8, 2015, Class Counsel will file a motion asking the Court to finally approve the Settlement. If you submit a timely written objection under Paragraph 19, you have the right to file with the Court an opposition to Class Counsel's motion by October 15, 2015.

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

The Court will hold a Fairness Hearing on November 20, 2015 in Courtroom 1106 at the United States District Court for the Southern District of New York, 40 Foley Square, New York, New York. At this 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 listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

**22. Do I have to come to the hearing?**

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**23. May I speak at the hearing?**

You may speak at the Fairness Hearing, but only if you first send a letter received by the Administrator at the address in paragraph 24 by October 2, 2015. The letter must include your name, address, telephone number, your signature, and the issues you want to speak about. You cannot speak at the hearing if you exclude yourself from the Settlement.

## GETTING MORE INFORMATION; CONTACTING CLASS COUNSEL AND THE SETTLEMENT CLAIMS ADMINISTRATOR

### 24. Are there more details about the settlement?

This Notice summarizes the proposed Settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement and more information by visiting [www.nyficasttlement.com](http://www.nyficasttlement.com) or by contacting Lead Counsel or the Settlement Claims Administrator at the addresses and phone numbers below:

<b><u>Lead Counsel for the Class</u></b>	<b><u>Settlement Claims Administrator</u></b>
<p>Matt Brinckerhoff, Andrew Wilson, Elizabeth Saylor, and David Lebowitz Emery Celli Brinkerhoff &amp; Abady LLP 600 Fifth Avenue, 10th Floor New York, NY 10020 Telephone: (212) 763-5000</p>	<p><i>Simon/Childers v. New York and Presbyterian Hospital</i> Settlement Claims Administrator P.O. Box 1858 Tallahassee, FL 32302-1858 Telephone: 877-804-9743 Email: <a href="mailto:info@nyficasttlement.com">info@nyficasttlement.com</a> <a href="http://www.nyficasttlement.com">www.nyficasttlement.com</a></p>

**Do not contact the Court directly for any reason.**

DATED: July 6, 2015

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.

**DECLARATION OF PREVIOUS REFUND**

*Only complete this form if you previously received a refund from the Internal Revenue Service for FICA tax that was withheld from NYP/Weill Cornell Residency Program wages that you earned during the period from January 1, 1995 through June 30, 2001.*

I, \_\_\_\_\_, declare under penalty of perjury:  
YOUR FULL NAME

1. My name is \_\_\_\_\_.
2. My current mailing address is \_\_\_\_\_.
3. The best telephone number to reach me during business hours is \_\_\_\_\_.

4. I trained in the NYP/Weill Cornell Residency Program beginning on \_\_\_\_\_ and until \_\_\_\_\_.

5. I received a refund from the IRS of at least some FICA tax that was withheld from NYP/Weill Cornell Residency Program wages that I earned during the period from January 1, 1995 through June 30, 2001.

6. The option I have checked off from the list below best describes my situation:

I have a copy of the Attachment 8305I that I previously received from the IRS concerning my individual FICA refund. I have attached a copy to this declaration, or I will separately provide a copy of this document to the Settlement Claims Administrator on or before November 10, 2015.

I do not have a copy of the Attachment 8305I that I previously received from the IRS concerning my individual FICA refund, but I know which year or years of my NYP/Weill Cornell Residency Program I received FICA refunds for. I received refunds for the following year(s):

1995    1996    1997    1998    1999    2000    2001

I am not certain which year or years of my medical residency in the NYP/Weill Cornell Residency Program I received FICA refunds for, but I will obtain this information from the IRS myself and provide it to the Settlement Claims Administrator on or before November 20, 2015.

I am not certain which year or years of my medical residency in the NYP/Weill Cornell Residency Program I received FICA refunds for, and I want Class Counsel to obtain this information from the IRS on my behalf. I will complete and return to the Settlement Claims Administrator by October 21, 2015 an IRS Form 2848 authorizing Class Counsel to obtain this information from the IRS. I understand that a fillable PDF version of Form 2848 is available at [www.nyficasttlement.com](http://www.nyficasttlement.com) and that I may contact the Settlement Claims Administrator for help completing it.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE