

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,

Plaintiffs,

- against -

THE NEW YORK AND PRESBYTERIAN
HOSPITAL,

Defendant.

13 Civ. 5414 (LGS)

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

Plaintiffs,

- against -

THE NEW YORK AND PRESBYTERIAN
HOSPITAL,

Defendant.

13 Civ. 5899 (LGS)

**JOINT STIPULATION OF
SETTLEMENT AND RELEASE**

This Joint Stipulation of Settlement and Release (the “Agreement”) is entered into by and between the Named Plaintiffs (as defined below), individually and on behalf of the class of individuals they seek to represent (collectively, the “Plaintiffs”), and Defendant The New York and Presbyterian Hospital (“Defendant” or “NYP”) (collectively with Plaintiffs, the “Parties”).

RECITALS

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 the Class Members (as defined below) asserting, *inter alia*, class claims of unjust enrichment and breach of fiduciary duty pursuant to Federal Rule of Civil Procedure 23;

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 the Class Members asserting class claims of unjust enrichment and breach of fiduciary duty pursuant to Federal Rule of Civil Procedure 23; and

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

WHEREAS, on October 29, 2013, the Court granted in part and denied in part Defendant’s motion to stay discovery pending decision on the Defendant’s motion to dismiss and ordered certain limited discovery; and

WHEREAS, on June 23, 2014, the Court denied Defendant’s motion to dismiss the Consolidated Actions; and

WHEREAS, on July 11, 2014, the Court denied Defendant’s motion for reconsideration of the Court’s June 23, 2014 Order; and

WHEREAS, on August 12, 2014, counsel for some of the Named Plaintiffs, Emery Celli Brinckerhoff & Abady, LLP, was appointed Interim Lead Counsel for the putative plaintiff class 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, following denial of the Defendant’s motion to dismiss, the parties engaged in substantial discovery, including propounding and responding to numerous document requests, interrogatories and requests for admission, produced tens of thousands of pages of documents, noticed party depositions, conducted depositions and served subpoenas on third-parties; and

WHEREAS, on March 16, 2015, the Parties, through their counsel, participated in a full-day mediation session overseen by Linda R. Singer, Esq. of JAMS, an experienced neutral, and numerous subsequent negotiations that resulted in this Agreement; and

WHEREAS, the purpose of this Agreement is to settle fully and finally all Released Claims (as hereinafter defined) between Plaintiffs and Defendant, including all claims asserted in the Consolidated Amended Complaint; and

WHEREAS, Plaintiffs’ Counsel thoroughly analyzed and evaluated the merits of the claims made against Defendant in the Consolidated Amended Complaint, including by conducting interviews with a number of the Plaintiffs, obtaining and reviewing thousands of pages of documents relating to Plaintiffs’ claims and consulting with a tax expert, and based on their analysis and evaluation of a number of factors, and recognizing the substantial risks of

litigation, including the possibility that the Consolidated Actions, if not settled now, might not result in any recovery or might result in a recovery less favorable to Plaintiffs and the Class Members than that contemplated by this Agreement (for reasons including without limitation that a court could reasonably characterize the Consolidated Actions as seeking a tax refund), and that any recovery likely would not occur for several years, and that there was a risk of future decertification if class certification was granted, Plaintiffs' Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of the Plaintiffs; and

WHEREAS, Defendant denies all the allegations made in the Consolidated Actions, including but not limited to the allegations made in the Consolidated Amended Complaint, and denies that it is liable or owes damages to anyone with respect to the alleged facts or causes of actions asserted in the Consolidated Actions but nonetheless, without admitting or conceding any liability or damages whatsoever, has agreed to settle the Consolidated Actions on the terms and conditions set forth in this Agreement to avoid the burden, expense, and uncertainty of continuing litigation;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Consolidated Actions on the following terms and conditions:

DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

1. **Agreement.** "Agreement" means this Joint Stipulation of Settlement and Release.
2. **Acceptance Period.** "Acceptance Period" means the ninety (90) days from the date of mailing of the Settlement Checks in which a Class Member may sign and cash a Settlement Check.
3. **Childers Action.** The "Childers Action" means the action styled *Dr. Henry Erle Childers IV, et al.v. The New York and Presbyterian Hospital*, No. 13 Civ. 5414, pending in the United States District Court for the Southern District of New York.
4. **Class Members.** "Class Members" are 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.
5. **Class Period.** The "Class Period" means the period beginning January 1, 1995 and ending June 30, 2001, inclusive.
6. **Consolidated Actions.** The "Consolidated Actions" are collectively the Childers Action and Simon Action.

7. **Court.** “Court” means the United States District Court for the Southern District of New York.

8. **Days.** Unless otherwise specified, “days” means business days if the specified number is less than ten (10), and calendar days if the specified number is ten (10) or greater.

9. **Declaration of Previous Refund.** “Declaration of Previous Refund” shall mean the form declaration attached hereto as Exhibit B. The Notice shall explain to Class Members who must complete a Declaration of Previous Refund and the time limits for doing so, and shall contain instructions for properly completing the Declaration of Previous Refund.

10. **Defendant.** “Defendant” means the New York and Presbyterian Hospital.

11. **Defendant’s Counsel.** “Defendant’s Counsel” means the law firm Skadden, Arps, Slate, Meagher & Flom LLP.

12. **Effective Date.** “Effective Date” shall be the last of the following dates:

- A. If there is no appeal of the Court’s Final Approval Order, the date five (5) days after expiration of the time to appeal the Final Approval Order; or
- B. If there is an appeal of the Court’s Final Approval Order, the date five (5) days after all appeals are resolved in favor of final approval.

13. **Fairness Hearing.** “Fairness Hearing” means the hearing before the Court relating to the Motion for Final Approval.

14. **Final Approval Order.** “Final Approval Order” means the Order entered by the Court after the Fairness Hearing, approving the terms and conditions of this Agreement, extinguishing claims against the Released Parties, distribution of the Settlement Checks and Service Awards, and dismissal of the Consolidated Actions with Prejudice.

15. **Gross Settlement Amount.** “Gross Settlement Amount” means the sum of Six Million Six Hundred Thirty-Two Thousand Dollars (\$6,632,000), which Defendant has agreed to pay to Class Members to settle the Consolidated Actions. The Gross Settlement Amount includes any and all administrative fees and expenses associated with the settlement contemplated by this Agreement, including administrative fees that Defendant advances at Plaintiffs’ request, but does not include the attorneys’ fees and ordinary litigation costs incurred by NYP.

16. **Initial Distribution.** “Initial Distribution” means the first set of Settlement Checks that the Settlement Claims Administrator shall send following Final Approval to Class Members who do not timely opt out of this settlement.

17. **Interim Lead Counsel.** “Interim Lead Counsel” means the law firm Emery, Celli, Brinckeroff & Abady LLP (“ECBA”).

18. **Named Plaintiffs.** “Named Plaintiffs” means Dr. Lori Simon, Dr. Bezalel Dantz, Dr. Peter Hahn, Dr. Tracey Marks, Dr. Henry Erle Childers, IV, Dr. George Bino Rucker, Dr. Evan Nadler, and Dr. Kambiz Dardashti, except if any of these named in this paragraph fail to sign the settlement agreement by May 26, 2015, then they shall not be considered Named Plaintiffs as defined in the Agreement. These individuals will be sent the Agreement with the option to sign it as soon as it is executed by Interim Lead Counsel and Defendant. Those individuals who refuse or fail to sign will be treated like any other absent Class Member and shall have the opportunity to participate, object, or opt out.

19. **Net Settlement Fund.** “Net Settlement Fund” means the Gross Settlement Amount minus any amounts awarded by the Court to compensate for attorneys’ fees, costs (including administrative costs), Service Awards, or other similar purposes.

20. **Notice.** “Notice” means the Court-approved Notice of Settlement of Class Action Lawsuit and Fairness Hearing. A proposed Notice that will be submitted for the Court’s approval shall be attached to this Agreement as Exhibit A.

21. **Objector.** “Objector” means an individual who timely files an objection to this Agreement, and does not include any individual who timely opts-out of this Agreement.

22. **Opt-out Period.** “Opt-out Period” means the period of time during Class Members may opt out of the settlement, which period shall begin upon the initial mailing of the Notice to Class Members and conclude thirty (30) days before the Fairness Hearing.

23. **Opt-out Statement.** “Opt-out Statement” is a written signed statement by a Class Member who has decided to opt out and not be included in this Agreement.

24. **Parties.** “Parties” shall mean, collectively, Plaintiffs and Defendant.

25. **Plaintiffs.** “Plaintiffs” means the Named Plaintiffs and all other Class Members.

26. **Plaintiffs’ Counsel.** Plaintiffs’ Counsel means ECBA, PCT Law Group, PLLC, and Stueve Siegel Hanson LLP, except if no representative from one of these firms signs the Agreement by May 26, 2015, then they shall not be considered Plaintiffs’ Counsel. These firms will be sent the Agreement with the option to sign it as soon as it is executed by Interim Lead Counsel and Defendant.

27. **Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Court preliminarily approving the terms and conditions of this Agreement, and directing the manner and timing of providing Notices to the Class Member.

28. **Released Parties.** “Released Parties” shall mean The New York and Presbyterian Hospital, as well as all of its families, parent entities, controlling persons, associates, affiliates or subsidiaries and each and all of their respective past or present officers, directors, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, advisors or agents, insurers, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors or assigns .

29. **Settlement Award.** Each Plaintiff's "Settlement Award" is the portion of the Net Settlement Fund attributable to that Class Member based on the allocation formula described in this Agreement.

30. **Settlement Claims Administrator.** The "Settlement Claims Administrator" means an entity, to be selected by Interim Lead Counsel and approved by the Court, which shall have responsibility for administering the settlement herein described.

31. **Settlement Checks.** "Settlement Checks" means checks issued to Class Members who do not opt-out for their share of the Net Settlement Fund calculated in accordance with this Agreement.

32. **Settlement Fund.** "Settlement Fund" means the account established by the Settlement Claims Administrator for the Gross Settlement Amount paid by Defendant. The Settlement Fund will be controlled by the Settlement Claims Administrator subject to the terms of this Agreement and the Court's Orders for Preliminary Approval and Final Approval.

33. **Simon Action.** The "Simon Action" means the action styled *Dr. Lori Simon, et al. v. New York and Presbyterian Hospital*, No. 13 Civ. 5899, pending in the United States District Court for the Southern District of New York.

34. **Withheld Amount.** The "Withheld Amount" means the sum of all Social Security Tax and Medicare Tax withheld by Defendant from Class Members' wages during the Class Period, minus the amount of FICA refunded to Class Members as determined by the Declaration of Refunds submitted by Class Members, exclusive of statutory overpayment interest. Social Security Tax and Medicare Tax is referred to throughout as "FICA."

APPROVAL AND CLASS NOTICE

35. **Binding Agreement.** Upon full execution, this Agreement is a binding agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Consolidated Actions.

36. **Retention of the Settlement Claims Administrator.** Interim Lead Counsel will be responsible for selecting and retaining the Settlement Claims Administrator.

- A. All fees and costs associated with the administration of the settlement, including the Settlement Claims Administrator's fee(s), shall be paid from the Settlement Fund and shall be taken out of the Gross Settlement Amount. Prior to the entry of a Final Approval Order by the Court, NYP shall advance administrative fees at the request of Plaintiffs, 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 Settlement Fund.
- B. The Settlement Claims Administrator will be responsible for locating Class Members as necessary; mailing Notices to Class Members in accordance with the Court's Preliminary Approval Order; receiving executed Declarations of Previous Refund, Opt-out Statements, and statements from Objectors; establishing and administering the Settlement Fund and closing the Settlement Fund upon conclusion of the settlement process; calculating the Settlement Awards; distributing the Settlement Checks to Class Members, developing procedures and responding to inquiries from Class Members about this Agreement, the Notice, and the procedures contained therein, including by the use of a dedicated toll-free telephone line and email address; creation and operation of a settlement website; creating a database of Class Members who have returned Declarations of Previous Refund; creating a database of Class Members who have received and negotiated Settlement Checks; creating a database of Class Members who have returned Opt-out statements; creating a database of Objectors and providing the Parties with all Objectors' statements; providing Interim Lead Counsel's contact information to any Class Member who requests the same from the Settlement Claims Administrator; for responding to inquiries from Plaintiffs' Counsel concerning the settlement process; and for any other duties and responsibilities necessary to administer the settlement under the terms and conditions of this Agreement. The Settlement Claims Administrator shall provide regular informal reports to the Parties regarding the status of the mailing of the Notices to Class Members, the claims administration process, the substance and status of disputes raised by Class Members regarding the calculation of Settlement Awards, and distribution of the Settlement Checks.

- C. In the event of a dispute concerning a Class Member's Settlement Award, the Settlement Claims Administrator shall promptly report the nature of the dispute to Interim Lead Counsel, who will confer in good faith with the Settlement Claims Administrator in an effort to resolve the dispute. In the event counsel are unable to reach agreement, Interim Lead Counsel shall decide the dispute, and their decision shall be final.

37. **Preliminary Approval Motion.**

- A. On or before May 15, 2015 or as otherwise directed by the Court, Interim Lead Counsel will file the Preliminary Approval Motion. In connection with the Preliminary Approval Motion, Interim Lead Counsel will submit to the Court an executed copy of this Agreement; a proposed Notice in the form attached hereto as Exhibit A; a proposed Declaration of Previous Refund in the form attached hereto as Exhibit B; and a proposed Preliminary Approval Order.
- B. The proposed Preliminary Approval Order will request that the Rule 23 Class be certified for settlement purposes and will include the findings required by Federal Rule of Civil Procedure 23(a) and 23(b)(3). The Preliminary Approval Motion also will seek the setting of date(s) for individuals to opt out of this Agreement, or provide objections to this Agreement, which period shall begin upon the initial mailing of the Notice to Class Members and conclude thirty (30) days before the Fairness Hearing, and for a Fairness Hearing for Final Approval of the settlement before the Court at the earliest practicable date.
- C. In the Preliminary Approval Motion, Interim Lead Counsel will inform the Court of the intended process to obtain a Final Approval that will, *inter alia*: (1) approve the proposed settlement as fair, adequate and reasonable; (2) incorporate the terms of the Release, as described herein; (3) dismiss the Consolidated Actions with prejudice; (4) award Plaintiffs' Counsel fees and costs; (5) award out-of-pocket costs to the Named Plaintiffs; and (6) award Service Awards to the Named Plaintiffs as more fully set forth herein. Interim Lead Counsel will also seek a Court Order compelling Defendant to produce the Class Member Information, as hereafter defined. Defendant will not oppose the relief sought in the Preliminary Approval Motion, but may respond to ensure that the Preliminary Approval Motion is consistent with the terms of this Agreement.
- D. If the Court denies the Preliminary Approval Motion, unless the Parties jointly agree to seek reconsideration of the ruling or to seek Court approval of a renegotiated settlement, the Consolidated Actions will resume as if no settlement had been attempted. However, in the event the Court denies the Preliminary Approval Motion based solely upon the amount of attorneys' fees, costs, and/or service awards sought therein, then the terms of this Agreement shall remain binding except to the extent

necessary to address the Court's stated concerns, and any subsequent application for Preliminary Approval shall be limited to adjusting the amounts sought by Plaintiffs' Counsel in accordance with the Court's Order.

- E. The Parties will work together, diligently and in good faith, to obtain expeditiously a Preliminary Approval Order, Final Approval Order, and Final Judgment and Dismissal.

38. Provision of Class Member Data.

- A. Within seven (7) days following the Preliminary Approval Order, NYP will provide to Interim Lead Counsel Excel spreadsheets containing, to the extent such information exists, the names and last known mailing addresses of all Class Members, along with the pay period(s) within the Class Period when each Class Member trained at NYP, each Class Member's regular earnings during such period(s), 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."). Consistent with its representation in Paragraph 36(B) below, NYP has collected, and will provide to Plaintiffs' counsel, Class Member Information by searching information from existing electronic records reasonably accessible to NYP. The Parties agree that NYP is not obligated to conduct additional searches beyond the scope of the searches it has conducted or merge or reconcile information from different databases, or to otherwise investigate, process, verify, synthesize, merge, or generate any such information. The Parties agree to treat these spreadsheets as "Highly Confidential" under the protective order in effect in the Consolidated Actions. Plaintiffs' Counsel may share the spreadsheets containing the Class Member Information with the Settlement Claims Administrator, provided that a representative of the Settlement Claims Administrator has executed Exhibit A to the protective order.
- B. NYP warrants and represents that, to the best of its knowledge, the aggregate amount of withholdings for all Class Members for each calendar year, as will be reflected in the spreadsheets described in paragraph 36(A), will be substantially consistent with the information it provided to Interim Lead Counsel on April 22, 2015. NYP acknowledges that the reliability of the aggregate amount of withholding provided to Interim Lead Counsel was material to reaching agreement on the Gross Settlement Amount.
- C. In the Preliminary Approval Motion, Plaintiffs' Counsel shall advise the Court that they require the Class Member Information in order to effectuate this Agreement, and shall seek a Court Order compelling NYP to provide such information to Plaintiffs' Counsel. NYP agrees not to oppose any such motion or similar request. Plaintiffs agree to use Class

Member Information only for the purpose of distributing the Settlement Fund to Class Members, to treat such information as Highly Confidential, and to indemnify NYP for any judgments stemming from any claims by Class Members alleging that NYP has improperly disclosed Class Member Information to Plaintiffs' Counsel.

39. Notice to Class Members.

- A. As soon as practicable following the Preliminary Approval Order, Interim Lead Counsel will provide the Settlement Claims Administrator with a copy of the Court-Approved Notice and the Class Member Information.
- B. Within fifteen (15) days of receiving the Class Member Information, the Settlement Claims Administrator shall provide to Plaintiffs' Counsel a preliminary calculation of each Class Member's Settlement Award, which shall be calculated in accordance with the allocation formula hereafter described.
- C. Within ten (10) days of receiving the preliminary calculations described above, Interim Lead Counsel shall approve the preliminary calculations of Settlement Awards or provide the Settlement Claims Administrator with proposed revisions thereto. In the event Interim Lead Counsel propose any such revisions, Interim Lead Counsel shall confer in good faith with the Settlement Claims Administrator to create a final listing of each Class Member's Settlement Awards, which shall be finalized as quickly as is practicable.
- D. Before mailing the Notice, the Settlement Claims Administrator will use best efforts, including without limitation publicly available databases, to determine the current mailing address for each Class Member.
- E. Intentionally Left Blank.
- F. Within five (5) days of the finalization of the listing of Class Members' Settlement Awards, the Settlement Claims Administrator will mail a copy of the Notice to all Class Members via First Class United States Mail, postage prepaid.
- G. The Settlement Claims Administrator will take reasonable steps including running a check through credit and government databases to obtain the correct address of any Class Members for whom a Notice is returned by the post office as undeliverable and shall attempt re-mailings as described in this Agreement. The Settlement Claims Administrator will notify Plaintiffs' Counsel of any Notice sent to a Class Member that is returned as undeliverable after the first mailing, as well as any such Notice returned as undeliverable after any subsequent mailing(s) as set forth in this Agreement.

- H. The Settlement Claims Administrator shall keep accurate records of the dates on which it sends Notices to Class Members.
- I. By no later than the date the Settlement Claims Administrator first mails the Notice to Class Members, NYP shall place at the URL www.nyp.org/ficasettlement a webpage that shall contain: (a) the class definition and a short summary of the allegations of the Simon Action written by Interim Lead Counsel with approval from Defendant's Counsel; (b) a short summary of the settlement terms, the settlement process, and key dates written by Interim Lead Counsel with approval from Defendant's Counsel; (c) a link to download an electronic copy of the Notice; and (d) a link in a prominent place that directs Class Members to the Settlement Claims Administrator's website for this matter. The webpage described in this paragraph shall be maintained until no earlier than 30 days after the Court enters a Final Approval Order.
- J. The Parties share a mutual interest in maximizing participation in the settlement. If, in the mutual view of the Parties, circumstances surrounding the mailing of the Notice so warrant, the Parties will cooperate in addressing any problems concerning the mailing of the Notice, including discussing whether to provide the Settlement Claims Administrator with supplemental information to engage in additional outreach efforts.

40. Declaration of Previous Refund.

- A. The Notice shall specify that any Class Member who has previously received a refund for any amount of FICA tax withheld or paid during the Class Period must complete and return to the Settlement Claims Administrator a Declaration of Previous Refund, specifying for which years he or she received a refund and the amount of the refund exclusive of interest (if known), and if the amount is not known, in order to obtain a Settlement Award then that Class Member must either (i) obtain that information from the IRS before the date of the Fairness Hearing, (ii) sign an authorization permitting Interim Counsel to obtain that information directly from the IRS prior to the Fairness Hearing, or (iii) provide a copy of their Attachment 83050 prior to the Fairness Hearing. The Notice shall specify that in the event the Agreement is finally approved, any participating Class Member who does not return a Declaration of Previous Refund will be required to affirm that he or she has never previously received a refund for any amount of FICA tax withheld or paid during the Class Period in order to negotiate his or her Settlement Check.
- B. The Notice shall specify that, where applicable, Declarations of Previous Refund must be received by the Settlement Claims Administrator at least ten (10) days before the date of the Fairness Hearing.

- C. The Settlement Claims Administrator will notate the receipt date on the original of each completed Declaration of Previous Refund that it receives and shall provide copies of each Declaration of Previous Refund to Plaintiffs' Counsel not later than seven (7) days after receipt thereof. The Settlement Claims Administrator will retain the originals of all Declarations of Previous Refund and all envelopes accompanying Declarations of Previous Refund in its files for one year after the Effective Date.

41. Class Member Opt-outs.

- A. Class Members who choose to opt out of the settlement as set forth in this Agreement must mail via First Class United States Mail, postage prepaid, a written, signed statement to the Settlement Claims Administrator stating that he or she is opting out of the settlement. Such statement must include the name, address, and telephone number(s) of the individual and must state that the individual wishes to opt out of the settlement and acknowledge that by excluding him- or herself he or she will not receive any funds from the settlement ("Opt-out Statement"). Unless otherwise provided for in this Agreement, to be effective, an Opt-out Statement must be received during the Opt-out Period.
- B. The Settlement Claims Administrator will notate the receipt date on the original of each Opt-out Statement that it receives and shall provide copies of each Opt-out Statement to the Parties' counsel not later than seven (7) days after receipt thereof. Interim Lead Counsel will, within seven (7) days of the end of the Opt-out Period, promptly file with the Court copies of any Opt-out Statements. The Settlement Claims Administrator will retain the originals of all Opt-out Statements and originals of all envelopes accompanying Opt-out Statements in its files for one year.
- C. Any Class Member who does not properly and timely submit an Opt-out Statement pursuant to this Agreement will be deemed to have accepted the Rule 23 settlement and the terms of this Agreement and will be issued a Settlement Check in the Initial Distribution. Such check will contain a release as set forth in this Agreement. If a Class Member does not Opt-out during the Opt-out Period, that Class Member shall be bound by this Agreement and the release herein even if he or she does not sign the release and/or cash the check.

42. Objections to Settlement.

- A. Class Members who wish to object to the proposed settlement must do so in writing. To be considered, a written objection must be mailed to the Settlement Claims Administrator, postage prepaid, before the expiration of the Opt-out Period. The written objection must state the Class Member's objection to the settlement and all reasons for the objection. Any reasons

not included in the written objection will not be considered. The written objection must also include the name, address, and telephone number(s) for the Class Member making the objection. The Settlement Claims Administrator will notate the date received on the original and send copies of each objection to the Parties' counsel by email no later than three (3) days after receipt thereof. Interim Lead Counsel will promptly file any and all objections with the Court within three (3) days after the end of the Opt-out Period.

- B. A Class Member who files a timely objection to the settlement ("Objector") also has the right to appear at the Fairness Hearing either in person or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing on his or her written objections. A Rule 23 Class Member who has submitted an Opt-out Statement may not submit objections to the Agreement.
- C. The Parties may file with the Court written responses to any filed objections no later than three (3) days before the Fairness Hearing.

43. **Motion for Final Judgment and Final Approval.** Not later than twenty one (21) days before the Fairness Hearing, Interim Lead Counsel will submit a Motion for Final Judgment and Final Approval. Any person who filed an objection prior to the conclusion of the Opt-out Period, may also file an opposition within seven (7) days after the moving papers are filed on ECF. If that person does not have counsel who has filed a Notice of Appearance in these matters, the papers must be served in person or by overnight mail on Interim Lead Counsel. Interim Lead Counsel may reply to those papers no later than three (3) days before the Fairness Hearing.

44. **Entry of Final Judgment.** At the Fairness Hearing, the Parties will request that the Court, among other things, (a) approve the proposed settlement as fair, adequate and reasonable; (b) incorporate the terms of the Release, as described herein; (c) dismiss the Consolidated Actions with prejudice; (d) award Plaintiffs' Counsel fees and costs; (e) award out-of-pocket costs to the Named Plaintiffs; and (f) award Service Awards to the Named Plaintiffs as more fully set forth herein.

45. **Effect of Failure to Grant Final Approval.** If the Court denies Final Approval or materially modifies the settlement, then either Party shall have the right to terminate this Agreement and render its terms null and void, provided that Blue Penciling or the failure by the Court or an appellate court to award or sustain the full amount of the Service Awards to Named Plaintiffs or amounts sought as attorneys' fees and expenses will not constitute a failure to approve the Settlement or a material modification of the Settlement, and provided that the Parties do not jointly agree to: (1) seek reconsideration or appellate review of the decision denying entry of Final Judgment, or (2) attempt to renegotiate the settlement and seek Court approval of the renegotiated settlement. If the settlement becomes null and void:

- A. The Parties shall be restored to their respective positions in the action preceding the mediation, and the terms of this Agreement shall have no force and effect with respect to the Parties and shall not be used in the Consolidated Actions or any other action for any purpose. The Consolidated Actions will proceed as if no settlement had been attempted, no portion of the Gross Settlement Amount will be distributed to Class Members, and the entire Gross Settlement Amount, net of previously advanced administrative fees, will revert to Defendant. In the event a settlement is subsequently reached and approved by the Court, or judgment is subsequently entered in Plaintiffs' favor, all previously advanced administrative fees shall be credited toward the amount of such settlement or judgment.

46. **Releases Upon Negotiation of Settlement Checks.**

- A. A Class Member who does not timely return an Opt-out Statement will be issued a Settlement Check in accordance with this Agreement and the Final Approval Order.
- B. All Settlement Checks, except those sent to those who signed a Declaration of Previous Refund, shall contain on the back of the check, the following limited endorsement:

FINAL RELEASE OF CLAIMS:

I understand that I have up to 90 days from the date I was mailed this Settlement Check to sign and cash this Settlement Check. I understand that if I modify the language on this Settlement Check, it shall become void.

By endorsing this check, I declare under penalty of perjury that I was a medical resident and/or a medical resident who was a fellow employed by The New York and Presbyterian Hospital ("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 during the period from January 1, 1995, through and including June 30, 2001 and that I have never previously received a refund for any amount of FICA tax withheld or paid during that period.

I agree to be bound by the Settlement Agreement approved by the Court in *Simon, et al. v. The New York and Presbyterian Hospital*, No. 13 Civ. 5899 (S.D.N.Y.) and *Dr. Henry Erle Childers IV, et al. v. The New York and Presbyterian Hospital*, No. 13 Civ. 5414. I hereby release of all claims I may possess against The New York and Presbyterian Hospital, its agents and assigns, relating to FICA taxes paid by me, or withheld by the Hospital on my 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 pled therein. I further covenant not to sue the Hospital on any such claims.

Signature

Dated:_____

- C. All Settlement Checks sent to those who signed a Declaration of Previous Refund, shall contain on the back of the check, the following limited endorsement:

FINAL RELEASE OF CLAIMS:

I understand that I have up to 90 days from the date I was mailed this Settlement Check to sign and cash this Settlement Check. I understand that if I modify the language on this Settlement Check, it shall become void.

By endorsing this check, I declare under penalty of perjury that I was a medical resident and/or a medical resident who was a fellow employed by The New York and Presbyterian Hospital ("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 during the period from January 1, 1995, through and including June 30, 2001 and that the information I provided on the Declaration of Previous Refund was true and correct.

I agree to be bound by the Settlement Agreement approved by the Court in *Simon, et al. v. The New York and Presbyterian Hospital*, No. 13 Civ. 5899 (S.D.N.Y.) and *Dr. Henry Erle Childers IV, et al. v. The New York and Presbyterian Hospital*, No. 13 Civ. 5414. I hereby release of all claims I may possess against The New York and Presbyterian Hospital, its agents and assigns, relating to FICA taxes paid by me, or withheld by the Hospital on my 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 pled therein. I further covenant not to sue the Hospital on any such claims.

Signature

Dated: _____

- D. Any modification or amendment of the above-language by a Class Member shall not be accepted and shall void the Settlement Check.
- E. The Settlement Checks will be mailed to Class Members who do not opt-out, and checks for any approved amounts of attorneys' fees and costs mailed to Interim Lead Counsel, by the Settlement Claims Administrator within ten (10) days after the Effective Date.
- F. The Court will retain jurisdiction over the case following the entry of the Final Judgment and Dismissal.

SETTLEMENT TERMS

47. Settlement Amount.

- A. Defendant agrees to pay the Gross Settlement Amount, which shall fully resolve and satisfy any claim for attorneys' fees and costs approved by the Court, any and all amounts to be paid to Class Members, and any Court-approved Service Awards to Named Plaintiffs as more fully set forth herein. The terms of this Agreement shall not require Defendant to pay more than the Gross Settlement Amount, except that Defendant shall remain responsible for its own attorneys' fees and litigation costs.
- B. By no later than fifteen (15) business days after the date of the Final Approval Order, Defendant shall contribute, or cause to be contributed, the Gross Settlement Amount, less any amount paid in advance to the Settlement Claims Administrator, into an account under the control of the Settlement Claims Administrator.
- C. The Settlement Award as calculated pursuant to this Agreement that is attributable to any Class Member who timely opts out pursuant to this Agreement will revert to the Settlement Fund and will thereafter be distributed in accordance with the terms of this Agreement.
- D. Settlement Checks will be mailed by the Settlement Claims Administrator to an any Class Member that has not timely opted out no later than ten (10) days after the Effective Date.
- E. Class Members will have ninety (90) days from the date of mailing to endorse their Settlement Checks (the "Acceptance Period"). Class Members will be informed of the Acceptance Period in the Notices and on the Settlement Checks. The Settlement Claims Administrator shall notify the Parties in writing of the beginning of the Acceptance Period.

- F. Any amount remaining 180 days after the entry of the Final Approval Order, or 90 days after the mailing of the Initial Distribution, whichever is later, will be redistributed among the Class Members who have timely cashed their checks or, if the amount remaining is small enough that a redistribution is not sensible in the discretion of Interim Lead Counsel, the unclaimed funds will be donated to a charity selected by the Named Plaintiffs under the *cy pres* doctrine. If the redistribution of unclaimed funds to Class Members would result in any Class Member receiving in excess of the total amount of FICA tax withheld from that Class Member's residency wages during the Class Period, the Settlement Claims Administrator shall report that amount on a Form 1099 if the excess is above the amount of income required to be reported (currently \$600).
- G. Subject to the other agreements set forth herein, the principal and interest in the Gross Settlement Amount shall be returned to Defendant within five (5) business days if any of the following events occurs: (i) either Party elects to void or terminate this Agreement in accordance with any of the provisions set forth herein; (ii) the Court determines not to enter a Final Approval Order and the time to file a Notice of Appeal has expired and/or the decision not to enter a Final Approval Order is affirmed on appeal; and/or (iii) a Final Approval Order is set aside by an appellate court, unless otherwise agreed in writing by the Parties.

48. Attorneys' Fees, Costs, and Service Awards to Certain Plaintiffs.

- A. At the Fairness Hearing and in the Motion for Final Approval, Plaintiffs' Counsel will petition the Court for an award of attorneys' fees and costs, including any out-of-pocket costs paid directly by the Named Plaintiffs as a result of their participation in the Consolidated Actions, to be paid out of the Gross Settlement Amount. Defendant will not object to Plaintiffs' Counsel's application.
- B. In return for services rendered to the Class Members, at the Fairness Hearing, the Named Plaintiffs will apply to the Court to receive Service Awards. Those Named Plaintiffs who were deposed will seek Service Awards in the amount of Fifteen Thousand Dollars (\$15,000), and those Named Plaintiffs who were not deposed will seek Service Awards in the amount of Ten Thousand Dollars (\$10,000). Defendant will not oppose such applications.
- C. The applications for attorneys' fees, costs, and Service Awards are to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of the Court's ruling on the applications for Service Awards, fees, and costs will not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval or for Final Judgment and Dismissal.

- D. The total amount sought for attorneys' fees, costs, and Service Awards shall not exceed one-third of the Gross Settlement Amount. If any individual listed in paragraph 18 decides not to sign the Agreement but wishes to petition for fees, costs, or Service Awards, he or she must do so at least ten (10) days prior to the conclusion of the Opt-Out Period. Any opposition to that application must be filed at least twenty-one (21) days before the date of the Fairness Hearing. Any reply must be filed at least seven (7) days after the opposition is filed.

49. Net Settlement and Allocation to Class Members.

- A. The allocation to Class Members for Settlement Checks will be made from the Net Settlement Fund.
- B. Each Class Member's Settlement Award Fund will be determined by the Settlement Claims Administrator by:
 - 1. Subtracting any previously refunded amount (exclusive of statutory overpayment interest), if any, as determined by reference to the Class Member's Declaration of Previous Refund, from the total amount of FICA Tax withheld by Defendant from that Class Member's wages during the Class Period;
 - 2. Dividing the difference calculated in Paragraph 49(B)(1) by the Withheld Amount;
 - 3. Multiplying the resulting quotient by the amount of the Net Settlement Fund; and then
 - 4. Rounding to two decimal places.
- C. The amounts described in Paragraph 49(B) above shall be calculated by the Settlement Claims Administrator using the Class Member Information and returned Declarations of Previous Refunds.
- D. Defendant will not object to the allocation formula described in this Paragraph 49.

50. Tax Characterization.

- A. The Parties agree that Class Members' Settlement Awards can be appropriately characterized as a refund for the amount of FICA taxes previously withheld by the Hospital from the Class Members.
- B. Plaintiffs and Class Members will take full responsibility for their own individual tax liability, if any, that may arise from their receipt of their

Settlement Awards or any other consideration under the Settlement Agreement.

- C. The payee portion of all applicable income and payroll taxes, if any, for sums paid pursuant to this Settlement Agreement will be the responsibility of the individual Class Member receiving a Settlement Check. Named Plaintiffs receiving a Service Award will be responsible for all applicable taxes. If any Class Member receives an amount in excess of the total amount calculated pursuant to 49.B.1, those Class Member will be responsible for taxes on the amount over the total calculated in 49.B.1. Each Class Member agrees that he will be solely responsible for paying the payee portion, if any, of all taxes, interest, and/or penalties required to be paid by him by law or under guidance or regulations of all applicable taxing authorities to the extent such taxes exceed amounts, if any, withheld from distributions to Class Members. The Parties agree to cooperate with each other, consistent with applicable law, in connection with any lawful inquiries by any taxing authorities.
- D. Neither Interim Lead Counsel nor Defendant's Counsel intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor will it be relied upon as such.

RELEASE

51. **Release of Claims.** By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement, Named Plaintiffs or any Class Member, whether individual, direct, class, derivative, representative, legal, equitable or any other type or in any other capacity, including their attorneys, accountants, agents, heirs, executors and assigns, who does not timely opt out of the settlement described herein (collectively, the "Releasing Parties") shall completely, fully, finally and forever compromise, settle, release, discharge, extinguish, relinquish, and dismiss with prejudice all claims demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent he or she may have had, now have, or had against the Released Parties, by reason of, arising out of, in connection with or 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 pled therein ("Released Claims"). Upon entry of the Final Approval Order and Final Judgment, all Releasing Parties shall be barred from asserting any Released Claims against any of the Released Parties, and all Releasing Parties shall be deemed to have covenanted that they will not file, prosecute, or intervene in, or receive any benefits from, any other lawsuit or proceeding that is based on or arises from any claim released by operation of this Agreement.

The releases contemplated herein shall extend to the Released Claims that the Releasing Parties do not know or suspect to exist at the time of the release, which if known, might have affected their decision to enter into the release or whether or how to object to this Agreement. This Agreement is intended to extinguish all Released Claims and, consistent with such intention, the Releasing Parties shall waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of any state, federal or foreign law or principle of common law, that may have the effect of limiting the releases set forth in this Agreement. The Releasing Parties shall be deemed to relinquish, to the extent applicable, and to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which states that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

In addition, the Releasing Parties shall be deemed to waive any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code Section 1542. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the Released Claims, but that except as set forth in Paragraph 38(a) it is their intention to fully, finally, and forever compromise, settle, release, discharge, extinguish and dismiss any and all Released Claims, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, without regard to the subsequent discovery of additional or different facts.

INTERPRETATION, ENFORCEMENT, AND MISCELLANEOUS

52. **Cooperation Between the Parties: Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. Furthermore, the Parties agree that:

- A. Plaintiffs will take no action to obstruct or interfere with NYP's efforts in this action (or outside this action) to seek indemnification from the United States for the sums expended in this settlement and/or incurred in connection with the Consolidated Actions. Nothing in this Agreement shall be construed as barring NYP from continuing to pursue its claims against the United States during the pendency of the settlement process or otherwise, nor shall anything in this Agreement be construed as barring NYP from using any confidential information or materials obtained in the Consolidated Actions in pursuing its claims against the United States, subject to an appropriate confidentiality order or agreement. No development in, or resolution of, NYP's efforts to seek indemnification

from the United States can ever constitute a ground for modifying or terminating the binding obligations set forth in this Agreement.

- B. NYP agrees to treat Plaintiffs as non-parties for all purposes in its indemnification litigation against the United States.
- C. Defendant will cooperate with Interim Lead Counsel, and where reasonably requested by Interim Lead Counsel, join Interim Lead Counsel, in continuing to seek information from the IRS concerning the amounts of any refunds already paid to any Class Member for any tax year during the Class Period. Nothing in this Agreement shall be construed as barring Plaintiffs from continuing to seek the information referenced above from any available source, including without limitation, the IRS.
- D. The Parties will vigorously oppose any objections to the Settlement, including without limitation any objections to the terms in the Settlement Agreement or the amount of the settlement.

53. Termination or Modification of Agreement.

- A. Defendant's consent to the terms of this Agreement is premised on the elimination of further expenses and associated burdens relating to putative class action discovery, and a stay of discovery in the Consolidated Actions. Should the Court order discovery in either the Simon Action or the Childers Action to proceed prior to the Court's determination whether to finally approve the settlement, NYP may terminate this Agreement. Nothing in this paragraph shall permit NYP to terminate this Agreement solely on the basis that one or more of the individuals previously named as representative plaintiffs in the Childers Action has opted out of the settlement or pursued claims against NYP on an individual basis in lieu of participation in the settlement.
- B. NYP may terminate this Agreement in the event that the total amount of FICA tax withheld during the Class Period from the earnings of those Class Members opting out of the settlement exceeds a percentage agreed to between the Parties of the total amount of FICA tax withheld from the earnings of all Class Members during the Class Period.
- C. No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding

such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

54. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.

55. **Intentionally Left Blank.**

56. **Intentionally Left Blank.**

57. **Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.

58. **Knowing and Voluntary Agreement:** The Parties agree that they are entering into this Agreement knowingly, voluntarily, and with full knowledge of its significance. The Parties affirm that they have not been coerced, threatened, or intimidated into signing this Agreement, that they have been advised to and have consulted with their attorneys; and understand that the requested relief described herein is subject to Court approval.

59. **Captions.** The captions or headings of the Sections and Paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement. Plaintiffs and Defendant agree that this Agreement is a binding contract, enforceable by all remedies available under applicable law. The Parties further agree, consistent with the above, that they will not, consistent with their duties of candor to a reviewing court, assert positions in any court (whether directly or indirectly) or aid any other entity in asserting positions in any court (whether directly or indirectly) that may compromise the enforceability of this Agreement or approval of the settlement described herein.

60. **Confidentiality.** Subject to any exception explicitly set forth herein, or otherwise jointly agreed to by the Parties, the Parties agree that all information and/or materials obtained in the Consolidated Actions are confidential, will remain sealed, and may not be used in support of, or as the basis of, any future litigation or other proceeding, except to the extent necessary in the good faith judgment of the Parties' counsel to seek approval of the Agreement from the Court, respond to inquiries or objections from Class Members or the Court, or otherwise comply with legal and ethical duties.

61. **Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

62. **Blue Penciling.** If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement

will remain in full force and effect unless the elimination of the invalid provision shall materially affect this Agreement. The Parties shall consult and use their best efforts to agree upon a valid and enforceable provision as a reasonable substitute for such invalid or unenforceable provision. Any modification that requires Defendant to pay any more than presently agreed in this Agreement shall be deemed material and shall permit Defendant to void this Agreement in its entirety at its option. Any modification to: (i) the proposed Notice; (ii) time periods set forth in the Agreement; (iii) the amounts of any Service Awards; or (iv) the amount of attorneys' fees and costs, shall not be considered material and shall not permit either Party to void this Agreement.

63. **Governing Law.** This Agreement shall in all respects to be interpreted, enforced and governed by and under the laws of the State of New York, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

64. **Stay.** The Parties agree to stay all proceedings in the Consolidated Actions, except such proceedings as may be necessary to implement and complete the Settlement, in abeyance pending the Final Approval hearing to be conducted by the Court.

65. **Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby.

66. **Non-disparagement; non-solicitation.** The Named Plaintiffs and Defendant agree not to disparage one another in connection with the subject of FICA withholdings or the Consolidated Actions. The Named Plaintiffs agree not to solicit or cause others to sue NYP for claims similar to those asserted in the Consolidated Actions. Notwithstanding the foregoing, nothing in this paragraph shall be construed as barring NYP from making any statements (written or oral) in connection with pursuing its claims against the United States for indemnification.

67. **When Agreement Becomes Binding; Counterparts.** This Agreement shall become valid and binding upon execution by signature of Interim Lead Counsel and Defendant's Counsel. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.

68. **Signatures of Plaintiffs and Plaintiffs' Counsel.** Those individuals named in paragraph 18 who wish to be Named Plaintiffs must also sign the Agreement by May 26, 2015. Those firms listed in paragraph 26 who wish to be Plaintiffs' Counsel and support this Agreement must sign the Agreement by May 26, 2015.

69. **Facsimile and Email Signatures.** Any Party may transmit the signature page via facsimile or email to counsel for the other Party. Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.

IN WITNESS HEREOF, the Parties, Interim Lead Counsel and Defendant's Counsel each voluntarily and without coercion have caused this Agreement to be signed as of the respective dates written below as their free acts and deeds.

AGREED TO BY THE PLAINTIFFS:

Dr. Henry Erle Childers, IV

Date

Dr. George Bino Rucker

Date

Dr. Evan Nadler

Date

Dr. Kambiz Dardashti

Date

Lori Simon, MD

Dr. Lori Simon

5/15/15

Date

Dr. Bezalel Dantz

Date

Dr. Peter Hahn

Date

Dr. Tracey Marks

Date

IN WITNESS HEREOF, the Parties, Interim Lead Counsel and Defendant's Counsel each voluntarily and without coercion have caused this Agreement to be signed as of the respective dates written below as their free acts and deeds.

AGREED TO BY THE PLAINTIFFS:

Dr. Henry Erle Childers, IV

Date

Dr. George Bino Rucker

Date

Dr. Evan Nadler

Date

Dr. Kambiz Dardashti

Date

Dr. Lori Simon

Date

Dr. Bezalel Dantz

Date



Dr. Peter Hahn

05.15.2015

Date

Dr. Tracey Marks

Date

IN WITNESS HEREOF, the Parties, Interim Lead Counsel and Defendant's Counsel each voluntarily and without coercion have caused this Agreement to be signed as of the respective dates written below as their free acts and deeds.

AGREED TO BY THE PLAINTIFFS:

Dr. Henry Erle Childers, IV

Date

Dr. George Bino Rucker

Date

Dr. Evan Nadler

Date

Dr. Kambiz Dardashti

Date

Dr. Lori Simon

Date

Dr. Bezalel Dantz

Date

Dr. Peter Hahn

Date

Tracey I Marks, MD
Dr. Tracey Marks

5/15/15
Date

EMERY CELLI BRINCKERHOFF &
ABADY LLP

By: _____



5/15/15

Matthew D. Brinckerhoff
O. Andrew F. Wilson
Elizabeth S. Saylor
David A. Lebowitz
New York, New York 10020
Telephone: (212) 763-5000
Facsimile: (212) 763-5001

*Counsel for Plaintiffs and Interim Lead
Counsel for the Putative Plaintiff Class*

PCT LAW GROUP, PLLC

By: _____

Steven K. Barentzen
910 17th Street, NW, Suite 800
Washington, DC 20006
Telephone: (202) 289-4333

Counsel for Plaintiffs

STUEVE SIEGEL HANSON LLP

By: _____

Jason S. Hartley
Jason M. Lindner
550 West C Street, Suite 1750
San Diego, CA 92101
Telephone: (619) 400-5822

Counsel for Plaintiffs

AGREED TO BY THE DEFENDANT:

The New York and Presbyterian Hospital

By: 

5/15/15
Date

**SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP**

By: 

5/15/15
Date

Jonathan J. Lerner
Maura Barry Grinalds
Michael H. Gruenglas
4 Times Square, 42nd Floor
New York, NY 10036
Telephone: (212) 735-7808


Counsel for Defendant

IN WITNESS HEREOF, the Parties, Interim Lead Counsel and Defendant's Counsel each voluntarily and without coercion have caused this Agreement to be signed as of the respective dates written below as their free acts and deeds.

AGREED TO BY THE PLAINTIFFS:

Dr. Henry Erle Childers, IV

Date


Dr. George Bino Rucker


Date

Dr. Evan Nadler

Date

Dr. Kambiz Dardashti

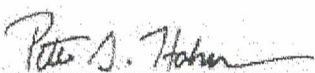
Date

Dr. Lori Simon

Date

Dr. Bezalel Dantz

Date


Dr. Peter Hahn

05.15.2015
Date

Dr. Tracey Marks

Date

IN WITNESS HEREOF, the Parties, Interim Lead Counsel and Defendant's Counsel each voluntarily and without coercion have caused this Agreement to be signed as of the respective dates written below as their free acts and deeds.

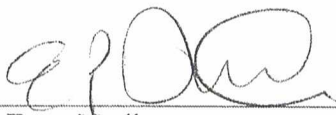
AGREED TO BY THE PLAINTIFFS:

Dr. Henry Erle Childers, IV

Date

Dr. George Bino Rucker

Date



Dr. Evan Nadler



Date

Dr. Kambiz Dardashti

Date

Dr. Lori Simon

Date

Dr. Bezalel Dantz

Date



Dr. Peter Hahn

05.15.2015

Date

Dr. Tracey Marks

Date

IN WITNESS HEREOF, the Parties, Interim Lead Counsel and Defendant's Counsel each voluntarily and without coercion have caused this Agreement to be signed as of the respective dates written below as their free acts and deeds.

AGREED TO BY THE PLAINTIFFS:

Dr. Henry Erle Childers, IV

Date

Dr. George Bino Rucker

Date



Dr. Evan Nadler



Date

Dr. Kambiz Dardashti

Date

Dr. Lori Simon

Date

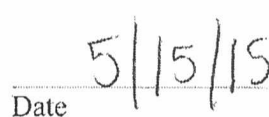
Dr. Bezalel Dantz

Date

Dr. Peter Hahn


Date


Dr. Tracey Marks


Date

IN WITNESS HEREOF, the Parties, Interim Lead Counsel and Defendant's Counsel each voluntarily and without coercion have caused this Agreement to be signed as of the respective dates written below as their free acts and deeds.

AGREED TO BY THE PLAINTIFFS:


Dr. Henry Erle Childers, IV

6/3/15
Date

Dr. George Bino Rucker

Date

Dr. Evan Nadler

Date

Dr. Kambiz Dardashti

Date

Dr. Lori Simon

Date

Dr. Bezalel Dantz

Date


Dr. Peter Hahn

05.15.2015

Date

Dr. Tracey Marks

Date

EMERY CELLI BRINCKERHOFF &
ABADY LLP

By: 

Matthew D. Brinckerhoff
O. Andrew F. Wilson
Elizabeth S. Saylor
David A. Lebowitz
New York, New York 10020
Telephone: (212) 763-5000
Facsimile: (212) 763-5001


*Counsel for Plaintiffs and Interim Lead
Counsel for the Putative Plaintiff Class*

Date

5/15/15

PCT LAW GROUP, PLLC

By: 

Malik K. Cutler 
~~Steven K. Barentzen~~
910 17th Street, NW, Suite 800
Washington, DC 20006
Telephone: (202) 289-4333

Counsel for Plaintiffs

5/29/15 per 5/28/15 Court order
Date and by consent of the parties

STUEVE SIEGEL HANSON LLP

By: 

Jason S. Hartley
Jason M. Lindner
550 West C Street, Suite 1750
San Diego, CA 92101
Telephone: (619) 400-5822

Counsel for Plaintiffs

Date

5-25-15

EXHIBIT A

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

[Address]

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 of at least [Initial Distribution amount] 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.
- 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 no less than [Initial Distribution Amount]**, unless you previously received a refund of FICA taxes paid during the period from January 1, 1995 through June 30, 2001, 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 more than [Initial Distribution 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:

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT: | |
|--|--|
| <p>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</p> | <p>You just simply need to wait. 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.</p> |
| <p>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</p> | <p>You <u>must</u> complete the “Declaration of Previous Refund” form at the end of this Notice and return it by [date 10 days before Fairness Hearing]. 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.</p> |
| <p>EXCLUDE YOURSELF</p> | <p>Submit a signed statement by [date 30 days before Fairness Hearing] expressing your desire to opt out of the Settlement. 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></p> |
| <p>OBJECT</p> | <p>Submit a written objection by [date 30 days before Fairness Hearing] explaining why you do not like the Settlement. 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.</p> |

- 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?

NYP's records state that you were a medical resident in the NYP/Weill Cornell Residency Program at some time between January 1, 1995 and June 30, 2001. A federal judge ordered that you be sent 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.

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). 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 choose to 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 [the administrator's website].

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 will not be less than [Initial Distribution Amount]**, 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. 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 [date], at [time] in Courtroom [##] 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 [the administrator’s website].

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 by [date 10 days before Fairness Hearing].** This form can also be completed online at [the administrator’s website]. 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 [\[the administrator's website\]](#) 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 [date 30 days before Fairness Hearing] 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 [date 30 days before Fairness Hearing].

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. Be sure to include your name, address, telephone number, your signature, and the reasons you object to the Settlement. Mail the objection to the Settlement Claims Administrator at the address in Paragraph 24. Your letter must be received no later than [date 30 days before Fairness Hearing]. **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 [date 21 days before Fairness Hearing], 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 within seven days after it is filed.

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

The Court will hold a Fairness Hearing on [date] in Courtroom [##] 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 timely written objection in accordance with Paragraph 19. 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 [\[the administrator's website\]](#) or by contacting Lead Counsel or the Settlement Claims Administrator at the addresses and phone numbers below:

| <u>Lead Counsel for the Class</u> | <u>Settlement Claims Administrator</u> |
|--|---|
| Matt Brinkerhoff, Andrew Wilson, Elizabeth Saylor, and David Lebowitz Emery Celli, Brinkerhoff & Abady LLP 600 Fifth Avenue, 10th Floor New York, NY 10020 Telephone: (212) 763-5000 | [Insert] |

DATED: [date of Notice]

EXHIBIT B

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
Situating,

Plaintiffs,

- against -

THE NEW YORK AND PRESBYTERIAN
HOSPITAL,

Defendant.

13 Civ. 5414 (LGS)

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

Plaintiffs,

- against -

THE NEW YORK AND PRESBYTERIAN
HOSPITAL,

Defendant.

13 Civ. 5899 (LGS)

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 [date 10 days before Fairness Hearing].
- ☐ 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 [date of Fairness Hearing].
- ☐ 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 [date 30 days before Fairness Hearing] 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 [\[the administrator's website\]](#) 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