

DOCKET NO.: (X10) UWY-CV15-6029965-S : COMPLEX LITIGATION
: :
ANTHONY DIAZ, ET AL. : J.D. OF WATERBURY
: :
V. : AT WATERBURY
: :
GRIFFIN HEALTH SERVICES :
CORPORATION, ET AL. : AUGUST 9, 2023

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (the “Agreement”) is entered into between the Settlement Class Representatives, on behalf of themselves and the Class, on the one hand, and Griffin (as defined below) on the other hand (together the “Parties”), subject to preliminary and final Court approval as required by Connecticut Practice Book §§ 9-8 and 9-9.¹

WHEREAS, the Civil Action is currently pending in the Connecticut Superior Court, Complex Litigation Docket of the Judicial District of Waterbury, alleging that some health care providers at Griffin Hospital misused multi-dose insulin pens, potentially exposing patients receiving insulin from multi-dose insulin pens to various blood borne diseases, including the hepatitis B virus (HBV), hepatitis C virus (HCV) and the human immunodeficiency virus (HIV);

WHEREAS, all parties agree that there is no evidence in this case that any Griffin Hospital employee reused an insulin pen needle. The parties agree that Griffin Hospital always used special safety needles on its insulin pens that prevented the needle from being used for more than a single injection. However, even when using a new needle for a new patient, there was a potential that a pen’s insulin cartridge could have been contaminated through the backflow of blood or skin cells from one patient, thus there was a remote possibility to transmit an infection if used on another patient.

WHEREAS, the class plaintiffs do not claim that they contracted any blood borne pathogens as a result of the misuse of insulin pens by Griffin Hospital staff nor has there been any evidence produced in this matter that the alleged misuse of the insulin pens by Griffin Hospital staff led to any disease transmissions to the class plaintiffs;

WHEREAS, the named class plaintiffs availed themselves of the free blood-borne pathogen testing and tested negative for any blood-borne pathogens;

¹ Capitalized terms used herein are defined in Paragraphs 1-30 below.

WHEREAS, the Court (Lager, J.) granted the Plaintiffs' Motion for Class Certification on November 23, 2020, and further revised the Court's Order regarding Class Certification on March 10, 2021;

WHEREAS, the Certified Class consists of “[a]ll patients of Griffin Hospital, located in Derby, Connecticut, for whom a multi-dose insulin pen was prescribed during their hospitalization between September 1, 2008 and May 7, 2014 and to whom insulin was administered from a multi-dose insulin pen, who received a notification letter from Griffin Hospital on or about May 16, 2014 and who subsequently underwent testing for hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV)”;

WHEREAS, the Court certified the following questions:

1. Whether, at the relevant time, there was a prevailing professional standard of care applicable to Griffin Hospital to ensure that multi-dose insulin pens were not improperly used on multiple patients, which Griffin breached because Griffin did not have appropriate policies, procedures, rules and/or guidelines, failed to properly train, educate, supervise and monitor its employees, agents and/or servants, failed to have an effective system for the distribution of pertinent information related to the use of the pens and failed to warn or notify its employees, agents and/or servants of the risks of using the pens;
2. Whether having to undergo blood testing for HBV, HCV and HIV is an actual harm or injury proximately caused by Griffin's proven professional negligence, and if so, whether undergoing blood testing alone is compensable and the monetary value of the compensation.

WHEREAS, the Court further noted that if the Plaintiffs prevail on the certified questions, issues regarding the adjudication of any individualized claim of damages can be resolved at that time;

WHEREAS, on March 16, 2022 the defendants moved for the entry of Summary Judgment dismissal;

WHEREAS, the plaintiffs have not yet filed an objection to the Summary Judgement Motion while the parties attempted to resolve this matter;

WHEREAS, extensive arms-length settlement negotiations have taken place between counsel for Plaintiffs and Defendants (collectively, the “**Parties**”), with the assistance of mediators Judge Linda Lager (Ret.) and then Attorney Patrick Noonan;

WHEREAS, Griffin denies the allegations in the Civil Action, asserts numerous legal and factual defenses to the claims made in the Civil Action, and denies any liability whatsoever;

WHEREAS, the Settlement Class Representatives and Settlement Class Counsel have concluded, after discovery and investigation of the facts and after carefully considering the circumstances of the Civil Action, including the claims asserted in the Complaint, the status of the Civil Action and the possible legal, factual and procedural defenses thereto, that it would be in the best interests of the Settlement Class to enter into this Agreement, which interests include the substantial value to be derived from this Settlement and the interest in avoiding the uncertainties of litigation and assuring that the benefits reflected herein are obtained for the Settlement Class; and, further, that Settlement Class Counsel consider the Settlement set forth herein to be fair, reasonable and adequate and in the best interests of the Settlement Class;

WHEREAS, Griffin, after vigorous, arms-length negotiations, has agreed to payment of certain sums and other relief in settlement for the benefit of the Settlement Class, as provided in this Agreement;

WHEREAS, the Settlement Class Representatives and Settlement Class Counsel, despite their belief that they have valid claims and evidentiary support for their asserted causes of action, have nevertheless agreed to enter into this Agreement to reduce and avoid further expense, inconvenience and delay, and thereby to resolve this controversy;

WHEREAS, Griffin, despite its belief that it has valid and complete defenses to the claims asserted against it in the Civil Action, has nevertheless agreed to enter into this Agreement to reduce and avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and thereby to resolve this controversy;

NOW, THEREFORE, it is agreed by and between the undersigned on behalf of the Parties that any and all claims made or that could have been made against Griffin or the Released Entities (as defined in Paragraph 24 of this Agreement) by the Settlement Class and/or the Settlement Class Representatives in the Civil Action be settled and compromised and, except as hereafter provided, without costs as to the Settlement Class, Settlement Class Representatives, or Griffin, subject to the approval of the Court, on the following terms and conditions.

I. DEFINITIONS

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

1. The term “Civil Action” means the action captioned Anthony Diaz, et al. v. Griffin Health Services Corporation, et al., Docket No. (X10) UWY-CV15-6029965-S, pending on the Complex Litigation Docket of the Connecticut Superior Court for the Judicial District of Waterbury.

2. The term “Class” or “Class Members” means all patients of Griffin Hospital, located in Derby, Connecticut, for whom a multi-dose insulin pen was prescribed during their

hospitalization between September 1, 2008 and May 7, 2014 and to whom insulin was administered from a multi-dose insulin pen, who received a notification letter from Griffin Hospital on or about May 16, 2014 and who subsequently underwent testing for hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

3. The term “Compensation” means the amount payable to a particular Settlement Class Member as set forth in Paragraph 34 of this Agreement.

4. The term “Complaint” means the Second Amended Complaint filed on February 4, 2020 [Dkt. No. 218.00] in the Civil Action.

5. The term “Court” means the State of Connecticut Superior Court, Complex Litigation Docket, in the Judicial District of Waterbury.

6. The term “Effective Date” has the meaning ascribed to it in Paragraph 38 of this Agreement.

7. The term “Final Approval Hearing” means the final hearing at which the Court determines whether to enter the Order and Final Judgment.

8. The term “Griffin” means Griffin Hospital and Griffin Health Services Corporation.

9. The term “Griffin Blood Test Class Members” means the 1,067 people who received a letter on or about May 16, 2014 from Griffin Hospital, and subsequently returned to Griffin Hospital for blood testing for hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

10. The term “Griffin Counsel” means the law firm of Robinson & Cole LLP, including, but not limited to, Theodore J. Tucci and Wystan M. Ackerman of Robinson & Cole LLP, as well as the law firm of Neubert Pepe & Monteith, including, but not limited to, Michael Neubert of Neubert Pepe & Monteith.

11. The term “Long Form Notice” refers to the notice to be made available to the Class Members on the settlement website maintained by the Settlement Administrator, without material alteration from Exhibit B attached hereto, except as ordered by the Court (with no Party exercising its termination rights under Paragraph 47 below), or as determined necessary for formatting purposes by the Settlement Administrator.

12. The term “Motion for Final Approval” means the pleading to be filed by the Settlement Class Representatives pursuant to Paragraph 36 of this Agreement seeking entry of an Order and Final Judgment pursuant to Connecticut Practice Book § 9-9(c).

13. The term “Motion for Preliminary Approval” means the pleading to be filed by the Settlement Class Representatives pursuant to Paragraph 32 of this Agreement, which pleading shall be mutually acceptable to, and may not be modified without the mutual consent of, each of the Parties in their sole and absolute discretion. This Agreement shall be filed with the Motion for Preliminary Approval.

14. The term “Non-Griffin Blood Test Class Members” refers to any persons who received a letter on or about May 16, 2014 from Griffin Hospital, and then obtained a blood test for hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV) from a facility unaffiliated with Griffin.

15. The term “Order and Final Judgment” means an order of the Court granting final approval of the Settlement and the corresponding final judgment.

16. The term “Party” or “Parties” means, collectively, the Settlement Class Representatives, acting on behalf of the Settlement Class, and Griffin.

17. The term “Preliminary Approval Order” means an order issued by the Court preliminarily approving the Settlement. The Parties’ proposed preliminary approval order, to be filed with the Motion for Preliminary Approval, is attached as Exhibit C hereto.

18. The term “Released Claims” means any and all known and Unknown Claims, rights, demands, actions, causes of action, allegations, or suits of whatever kind or nature, whether *ex contractu* or *ex delicto*, statutory, common law or equitable, including but not limited to any tort, quasi-contractual, contractual, extra-contractual, or statutory claims, any claims for punitive or exemplary damages, restitution, disgorgement, attorneys’ fees, costs of suit, injunctive relief, or prejudgment or postjudgment interest, arising from or relating in any way to the use or alleged misuse of multidose insulin pens by Defendants between September 1, 2008 and May 7, 2014, including, but not limited to, any claims that were alleged or could have been alleged by the Class in the Civil Action.

19. The term “Releasers” means any and all Settlement Class Members, as well as their respective present and former heirs, executors, trustees, administrators, assigns, subrogees, agents, attorneys and any of their legal representatives, and any entities or persons on whose behalf the Settlement Class Member is or was authorized to act, and all past and present officers, directors, agents, attorneys, employees, stockholders, successors, assigns, insurers, reinsurers, independent contractors, and legal representatives of any such persons or entities, but only to the extent such other persons or entities listed in this paragraph are acting, or purporting to act, on behalf of, or in the shoes of, a Settlement Class Member.

20. The term “Releasees” or “Released Entities” means (a) Griffin (as defined in Paragraph 8 above); (b) all of the past and present divisions, parent entities, affiliates, and subsidiaries of Griffin; (c) all past and present officers, directors, agents, attorneys, employees, successors, assigns, insurers, reinsurers, independent contractors, and legal representatives of Griffin; and (d) all of the heirs, estates, successors, assigns, and legal representatives of the persons and entities described in (a) through (c) above.

21. The term “Settlement” means the settlement provided for by this Agreement.

22. The term “Settlement Administrator” means RG/2 Claims Administration LLC (“RG/2”).

23. The term “Settlement Class” or “Settlement Class Member” means all Class Members (as defined in Paragraph 2 above), other than Settlement Class Opt-Outs. The Settlement Class includes the Settlement Class Representatives.

24. The term “Settlement Class Counsel” means the law firm of Silver Golub & Teitell, LLP, including, but not limited to, Ernest F. Teitell and Marco A. Allocca of Silver Golub & Teitell LLP.

25. The term “Settlement Class Opt-Out” means any person or entity falling within the definition of the Class set forth in Paragraph 2 of this Agreement who timely and validly submits a request for exclusion from the Settlement Class in accordance with the procedures set forth in Paragraph 33.i of this Agreement and in the Settlement Notice.

26. The term “Settlement Class Period” means September 1, 2008 through May 7, 2014.

27. The term “Settlement Class Representatives” means Anthony Diaz, Bruce Sypniewski and Daisy Gmitter and/or any substitute or additional class representatives later named in the Civil Action with approval of the Court.

28. The term “Settlement Notice” means the notice to be provided by the Settlement Administrator to the Class pursuant to Connecticut Practice Book §§ 9-9(a)(2)(B) and 9-9(c)(1)(B), as detailed in Paragraph 33 below. The parties’ proposed Short Form Notice is attached as Exhibit A. The parties’ proposed Long Form Notice is attached as Exhibit B. In addition, the Settlement Notice includes the publication notice described in Paragraph 33.c below.

29. The term “Short Form Notice” refers to the notice to be provided to the Class Members by mail, without material alteration from Exhibit A hereto, except as ordered by the Court (with no Party exercising its termination rights under Paragraph 47 below), or as determined necessary for formatting purposes by the Settlement Administrator.

30. The term “Unknown Claims” means any claim and its related relief and/or damages arising out of newly discovered facts and/or facts found hereafter to be other than or different from the facts now believed to be true.

II. IMPLEMENTATION OF SETTLEMENT

31. Reasonable Best Efforts to Effectuate This Settlement. Consistent with the terms of this Agreement and notwithstanding the rights of the Parties to terminate this Agreement at certain times, the Parties and their counsel agree to use their reasonable best efforts, including all steps and efforts contemplated by this Agreement and any other reasonable steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Agreement.

32. Motion for Preliminary Approval. Following the execution of this Agreement, Settlement Class Counsel shall promptly file the Motion for Preliminary Approval, seeking entry of the Preliminary Approval Order.

33. Notice, Claim Forms, Opt-Outs and Objections.

a. Class Member Notice. In the event the Court enters the Preliminary Approval Order, Griffin shall provide to the Settlement Administrator within 14 days after entry of the Preliminary Approval Order a list of the names and last known addresses of all Class Members. The Settlement Administrator shall make reasonable efforts to update and correct contact information of Class Members. The Settlement Administrator shall, in accordance with Connecticut Practice Book § 9-9(a)(2), the Preliminary Approval Order, and the terms set forth below, provide each Class Member with a copy of the Settlement Notice. All costs of the Settlement Notice and fees of the Settlement Administrator shall be paid by Griffin.

b. Form of Direct Notice to Class. No later than 30 days after entry of the Preliminary Approval Order, the Settlement Administrator will mail a Short Form Notice sent via First Class U.S. Mail notifying the recipient (A) of the nature of the class action; (B) that the class action may affect Class Members' rights; (C) that, if the Class Member desires to opt out, it must do so by a stated date certain; (D) of a link to a webpage from which they can view or download the Long Form Notice; and (E) of a phone number the Class Member can call to request that a Long Form Notice be mailed to them or with any questions. A copy of the proposed Short Form Notice is attached as Exhibit A. A copy of the proposed Long Form Notice is attached as Exhibit B.

c. Publication Notice. In addition to the Direct Notice to Class Members set forth above, the Settlement Administrator shall arrange for publication notice one time in the following newspapers of general circulation in the area served by Griffin Hospital: Connecticut Post, The Hartford Courant, The New Haven Register, and The Republic-American. This notice will contain the following text: "If you received a letter from Griffin Hospital [on or about] May 16, 2014 relating to the possible misuse of insulin pens between September 1, 2008 and May 1, 2014, and later underwent blood testing, your rights may be affected by a class action settlement. For further information, visit [website url] or call [Settlement Administrator phone number]."

d. Website. The Settlement Administrator shall maintain a website, beginning on or before the date on which the Settlement Notice is mailed and ending 30 days after the date of the final disposition of all Compensation payments, that includes copies of the Complaint, this Agreement, the Long Form Notice, the Motion for Preliminary Approval, the Preliminary Approval Order, any motions filed seeking attorneys' fees or costs for Settlement Class Counsel and/or a Service Award for the Settlement Class Representatives, the Motion for Final Approval, and (after it is entered by the Court) the Order and Final Judgment. The website shall also include a "Frequently Asked Questions" page with content drawn from the Settlement Notice and agreed to by the Parties.

e. Telephone Support. The Settlement Administrator will provide automated telephone support to, among other things, answer questions, update mailing addresses to the extent any Class Members have moved, or provide paper copies of the Long Form Notice to any Class Member who requests one. There will also be a voicemail box available in which Class Members may request a call-back from a live operator to answer questions related to the Settlement.

f. No Claim Form Required for Griffin Blood Test Class Members. All Griffin Blood Test Class Members who do not submit a timely and valid opt-out request will automatically be entitled to receive, and will be provided the Compensation provided for herein, unless the Class Member has already released their claims relating to this matter pursuant to a separate agreement, or if the Settlement Administrator cannot locate such Class Member using the Settlement Administrator's customary methods for locating Class Members.

g. Claim Form Required for Non-Griffin Blood Test Class Members. In order to receive the Compensation provided for herein, Non-Griffin Blood Test Class Members must, within 90 days after the date of mailing of the Short Form Notice, properly complete the Claim Form attached as Exhibit D hereto, executed under penalty of perjury and sworn to before a Notary Public, Commissioner of Superior Court or other authority competent to administer oaths. The Claim Form shall be accompanied by a true and accurate copy of blood test results for HBV, HCV and HIV obtained within six (6) months of May 16, 2014 letter from Griffin Hospital, unless the Non-Griffin Blood Test Class Member is unable to obtain a copy of the blood test results, in which case the Class Member shall affirm that they made reasonable efforts to obtain a copy of such blood test results and provide an explanation as to why they were not able to obtain a copy of the blood test results. If a Non-Griffin Blood Test Class Member fails to timely submit a Claim Form on or before the deadline set forth in this paragraph, the Class Member shall not be entitled to Compensation but shall otherwise be bound by all of the terms of this Agreement, including but not limited to the Release provided for herein. The Settlement Administrator shall review all Claim Forms for compliance with this Agreement and the requirements stated on the Claim Form. If the Settlement Administrator determines that a Claim Form is deficient, it shall notify the Class Member by letter, providing a 14-day period to resubmit the Claim Form and remedy any deficiencies. If the Class Member fails to resubmit the Claim Form or fails to timely remedy any deficiency, the Class Member shall not be entitled to Compensation. The Settlement Administrator's determination regarding whether a Claim Form complies with this Agreement and the requirements stated on the Claim Form shall be final and binding, and shall not be subject to appeal or review by the Court or otherwise.

h. Class Members Who Have Died or are Incapacitated. If a Class Member has died or is legally incapacitated, a representative of the estate or a person authorized to act on behalf of an incapacitated Class Member must identify themselves to the Settlement Administrator and provide evidence satisfactory to the Settlement Administrator that they are the authorized representative of the Class Member in order to receive the Compensation. The deadline to provide such evidence will be 90 days from the date that the Short Form Notice is mailed. The Settlement Administrator shall review all submissions by alleged representatives of a Settlement Class Member for compliance with this Agreement. If the Settlement Administrator determines that a submission by an alleged representative of a Settlement Class Member is deficient, it shall notify the representative by letter, providing a 14-day period to remedy any deficiencies. If the alleged representative of the Class Member fails to remedy any deficiency, the alleged representative shall not be entitled to Compensation. The Settlement Administrator's determination regarding whether a submission by an alleged representative of a Class Member complies with this Agreement shall be final and binding, and shall not be subject to appeal or review by the Court or otherwise.

i. Opt-Outs. A Class Member may opt out of the Settlement by submitting an opt-out request as instructed in the Settlement Notice. Any such opt-out request, in order to be timely, must be made on the Opt-Out form attached as Exhibit E hereto, or in a letter mailed to the Settlement Administrator and postmarked by the deadline set forth in the Settlement Notice, which shall be 60 days after the date of mailing of the Short Form Notice. Any such opt-out request must identify this Settlement or the Civil Action, identify the Class Member by name and address, and clearly and unequivocally state that the Class Member wishes to be excluded from this Settlement. Opt-out requests must be exercised individually by a Class Member, not as or on behalf of a group, class, or subclass, except that such opt-out requests may be submitted by a Class Member's legal representative. A list of Class Members submitting a timely opt-out request shall be submitted to the Court with the Motion for Final Approval. All Class Members who do not timely and properly opt out of the Class shall be bound by this Agreement, and their claims shall be released as provided for herein.

j. Objections. Any Class Member may, as instructed in the Settlement Notice, mail an objection to the Settlement to the Clerk of Court as instructed in the Settlement Notice, or may file a motion to intervene. For an objection to be considered by the Court, the objection must:

- (1) clearly identify the case name and number (Diaz v. Griffin Health Services Corporation, Docket No. (X10) UWY-CV15-6029965-S);
- (2) identify the objector's full name, address, email address, and telephone number;
- (3) provide an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- (4) identify all grounds for the objection, accompanied by any legal support for the objection;
- (5) include the identity of all counsel who represent the objector in relation to the objection (even if not appearing), including any former or current counsel who may seek compensation for any reason related to the objection to the Settlement, the fee application, or the application for Service Awards;
- (6) include a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
- (7) include a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection;
- (8) include all documentary evidence that will be offered at the Final Approval Hearing in support of the objection;
- (9) identify all counsel representing the objector who will appear at the Final Approval Hearing;

(10) include the objector's signature (an attorney's signature is not sufficient);

(11) be submitted to the Court either by mailing them to the Clerk of the Waterbury Superior Court, by e-filing by an authorized e-filer, or by filing them in person at the Waterbury Superior Court, with a copy to Griffin Counsel and Settlement Class Counsel; and

(12) be filed or postmarked on or before the deadline set forth in the Settlement Notice, which shall be 60 days after mailing of the Short Form Notice.

Any Class Member who has timely filed an objection in compliance with this paragraph may appear at the Final Approval Hearing to be scheduled by the Court, in person or by counsel, and be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness, and adequacy of the proposed settlement, and on the applications for awards of attorneys' fees and costs and any enhancement award. The right to object to the Settlement or to intervene in the Civil Action must be exercised individually by a Class Member or his or her attorney, and not as a member of a group, class, or subclass, except that an objection or a motion to intervene may be submitted by a Class Member's legally authorized representative.

Class Members who file objections are still entitled to receive benefits under the Settlement if it is approved.

Class Members have the right to opt out of the Settlement and pursue a separate and independent remedy by submitting an opt-out request as described in Paragraph 33.i of this Agreement. Class Members who object to the Settlement shall remain Class Members, and have voluntarily waived their right to pursue an independent remedy. To the extent any Class Member objects to the Settlement, and such objection is overruled in whole or in part, such Class Member will be forever bound by the Order and Final Judgment. Class Members can avoid being bound by any judgment of the Court by opting out as described in Paragraph 33.i of this Agreement.

A Class Member is not entitled to submit both an opt-out request and an objection. If a Class Member submits both an opt-out request and an objection, the Settlement Administrator will send a letter explaining that the Class Member may not make both of these requests, and asking the Class Member to make a final decision as to whether to opt out or object and inform the Settlement Administrator of that decision within 10 days from when the letter from the Settlement Administrator is postmarked. If the Class Member does not respond to that communication by letter postmarked within 10 days after the Settlement Administrator's letter was postmarked (or by the objection deadline, whichever is later), the Class Member will be treated as having opted out of the Class, and the objection will not be considered, subject to the Court's discretion.

34. Compensation. Within 30 days of the Effective Date of this Settlement as defined in Paragraph 38 herein, Griffin shall pay One Million Dollars (\$1,000,000.00) (the "Total Settlement Amount") to an account to be held by the Settlement Administrator in full and final settlement of the Civil Action. Any amounts awarded by the Court for attorney's fees and litigation costs of Settlement Class Counsel and for service awards for the Settlement Class

Representatives shall be paid by the Settlement Administrator from the Total Settlement Amount to calculate the Net Settlement Amount. Each Settlement Class Member who qualifies for payment under the terms of this Agreement will then receive a pro rata share of the Net Settlement Amount. For example, if the Court were to award attorney's fees, costs and class representative service awards totaling \$400,000, for a Net Settlement Amount of \$600,000, and if the total number of Settlement Class Members qualifying for payment were determined to be 1,300, each Settlement Class Member qualifying for payment would receive \$461.53 (calculated as \$600,000 divided by 1,300). This determination will be made by the Settlement Administrator, in consultation with Settlement Class Counsel and Griffin Counsel, within ten (10) days after the occurrence of items (1) through (4) as set forth in the definition of the Effective Date, and will be posted on the Settlement website.

- a. The Settlement Administrator will issue checks to each Settlement Class Member for their respective pro rata share of the Net Settlement Amount. Checks issued to Settlement Class Members by the Settlement Administrator will be valid for 180 days. If any of the checks distributed to Settlement Class Members go uncashed within the 180 day time period, resulting in an unclaimed balance of the Net Settlement Amount, the Class Administrator will issue checks for the total remaining balance of the Net Settlement Amount to be split equally between Team, Inc. and the Boys and Girl's Club, Lower Naugatuck Valley Chapter, as a charitable donation.

35. Costs of Administration. Griffin will pay the reasonable costs of notice as incurred and administration of the Settlement. This amount will not be included in the Total Settlement Amount set forth in Paragraph 34 above.

36. Motion for Final Approval. In accordance with a schedule to be established by the Court, Settlement Class Counsel shall file a Motion for Final Approval seeking entry of an Order and Final Judgment pursuant to Connecticut Practice Book § 9-9(c).

37. Entry of Final Judgment. If, after the Final Approval Hearing scheduled by the Court in the Preliminary Approval Order, the Court approves this Agreement, then Settlement Class Counsel shall request that the Court enter an Order and Final Judgment pursuant to Connecticut Practice Book § 9-9(c)(1), with the proposed form of such order to be reviewed and approved by Griffin Counsel. The Order and Final Judgment shall provide that the Court retain jurisdiction to enforce the terms of the Order and Final Judgment.

38. Effective Date of Settlement. The Settlement shall be effective on the first date after all of the following events have occurred: (1) entry of the Preliminary Approval Order substantially in the form submitted by the parties, or entry of a preliminary approval order not substantially in the form submitted by the parties, with respect to which neither Griffin nor Settlement Class Counsel invoke their termination rights within the period prescribed in Paragraph 47 of this Agreement; (2) final approval by the Court of this Agreement, following notice to the Class and a Final Approval Hearing; (3) entry by the Court of an Order and Final Judgment, in a form not materially inconsistent with this Agreement; (4) if any Settlement Class Member files an objection to the Settlement, the expiration of any time for appeal or review (including by writ of certiorari or otherwise) of such Order and Final Judgment, or, if any appeal

is filed, after such Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review on appeal or review by writ of certiorari; and (5) this Agreement is no longer subject to termination by any Party as provided for in Section IV.

39. Attorneys' Fees, Costs and Expenses and Service Awards to the Settlement Class Representatives.

The Settlement Administrator shall pay from the Total Settlement Amount any attorneys' fees and litigation expenses as awarded by the Court and any Class Representative Service Awards as awarded by the Court, provided that any such awards are included (along with the Compensation provided to Settlement Class Members) in the Total Settlement Amount, and in accord with the following provisions.

- a. The Settlement Class Representatives may receive the Compensation in accord with Paragraph 34 of this Agreement.
- b. The Settlement Class Representatives also may each receive a service award in recognition of their service in bringing the Civil Action on behalf of the Class (the "Service Award") of up to \$25,000 each, if such an award is approved by the Court, to be paid from the Total Settlement Amount.
- c. The Court may award Settlement Class Counsel attorneys' fees and litigation expenses to be paid from the Total Settlement Amount.
- d. The Parties agree that any award of attorneys' fees, costs and expenses and any Service Awards in this action are committed to the sole discretion of the Court within the limitations set forth in this paragraph. Settlement Class Counsel shall file any motion for attorneys' fees, costs and expenses no later than 21 days before the deadline for objections to the Settlement, and a copy of the motion shall be placed on the Settlement Administrator's website. Any motion of the Settlement Class Representatives for Service Awards must be filed with the Court no later than 21 days before the deadline for objections to the Settlement, and posted on the Settlement Administrator's website. The Court shall determine the appropriate amount of any attorneys' fees, costs and expenses to be paid to Settlement Class Counsel and the appropriate amount of any Service Awards in the Court's discretion, to be paid from the Total Settlement Amount. Griffin agrees not to oppose any applications for Service Awards and attorneys' fees, costs and expenses consistent with the terms of this Agreement.
- e. If the Court chooses, in its sole discretion, to award attorneys' fees and costs and Service Awards that are lower than the amounts sought in the motion to be filed by Settlement Class Counsel, this Agreement shall remain fully enforceable. Upon payment of the attorneys' fees, costs and expenses as awarded by the Court in its discretion, Settlement Class Counsel shall release and forever discharge any claims, demands, actions, suits, causes of action, or other liabilities relating to any attorneys' fees, costs or expenses incurred in the Civil Action as to Griffin. Any attorneys' fees, costs and expenses awarded by the Court in accordance with this

paragraph shall be paid within 30 days after the Effective Date. In order to receive such payment, no more than 10 business days (not counting Saturdays, Sundays or legal holidays) before the payment is due, Settlement Class Counsel must provide a completed and signed IRS Form W-9 (Request for Taxpayer Identification Number and Certification) to the Settlement Administrator. The Settlement Administrator shall pay any Service Awards made by the Court in accordance with this paragraph within 30 days of the Effective Date. In order to receive such payment, no more than 10 business days (not counting Saturdays, Sundays or legal holidays) before the payment is due, the Settlement Class Representatives must provide a completed and signed IRS Form W-9 (Request for Taxpayer Identification Number and Certification) to the Settlement Administrator. Settlement Class Counsel and the Settlement Class Representatives agree that any federal, state, municipal, or other taxes, contributions, or withholdings that may be owed or payable by them, or any tax liens that may be imposed, on the sums paid to them pursuant to this paragraph are their sole and exclusive responsibility, and any amount required to be withheld for tax purposes (if any) will be deducted from those payments.

40. Responsibility for Certain Potential Costs Incurred by Settlement Class Counsel. Griffin shall not be responsible for any cost that may be incurred by the Class or Settlement Class Counsel in: (a) responding to inquiries about the Agreement, the Settlement, or the Civil Action; (b) defending the Agreement or the Settlement against any challenge to it; or (c) defending against any challenge to any order or judgment entered pursuant to the Agreement, unless otherwise specifically agreed, except that Griffin shall pay the costs incurred by the Settlement Administrator to prepare declarations, affidavits, or status reports at the request of the Parties or the Court for the purpose of obtaining preliminary or final approval of the Settlement or for staying informed of developments in the Settlement.

41. All Claims Satisfied; Covenant Not to Sue. Each Settlement Class Member shall look solely to the relief described in Paragraph 34 of this Agreement for settlement and satisfaction, as provided herein, of all Released Claims. The Settlement Class Representatives, on behalf of themselves and the Settlement Class Members, (1) covenant and agree that neither the Settlement Class Representatives nor any of the Settlement Class Members, nor anyone authorized to act on behalf of any of them, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Agreement, against the Released Entities, or any of them, in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to, any alleged loss, harm, or damages allegedly caused by the Released Entities, or any of them, in connection with the Released Claims; (2) waive and disclaim any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by, or on behalf of, any of them, concerning the Released Claims; and (3) agree that this Agreement shall be a complete bar to any such action by any Settlement Class Representative or Settlement Class Member.

III. RELEASES AND JURISDICTION OF COURT

42. Release of Released Entities. Upon the Effective Date of this Agreement, the Released Entities shall be released and forever discharged from any Released Claims that any Releasor has or may have had. All Releasors covenant and agree that they shall not hereafter seek to establish liability against any Released Entity based, in whole or in part, on any of the Released Claims. Upon the Effective Date, all Releasors will be forever barred and enjoined from commencing, filing, initiating, instituting, prosecuting, maintaining, or consenting to any action against any Released Entity with respect to the Released Claims.

43. Waivers of Provisions of Law Limiting the Release of Unknown or Unsuspected Claims. The Settlement Class Representatives and all Settlement Class Members hereby expressly, knowingly, and voluntarily waive the provisions of any state, federal, municipal, local, or territorial law or statute providing in substance that releases shall not extend to claims, demands, injuries, and/or damages that are unknown or unsuspected to exist at the time a settlement agreement is executed and/or approved by a court. The Settlement Class Representatives and all Settlement Class Members expressly acknowledge and assume all risk, chance, or hazard that the damage allegedly suffered may be different, or may become progressive, greater, or more extensive than is now known, anticipated, or expected. Furthermore, the Settlement Class Representatives and all Settlement Class Members specifically release any right they may now or hereafter have to reform, rescind, modify, or set aside this Release or this Agreement through mutual or unilateral mistake or otherwise; and they assume the risk of such uncertainty and mistake with respect to the consideration herein mentioned and with respect to this being a final settlement.

44. California Civil Code Section 1542 Waiver. Without limiting Paragraph 42 or 43 above, as to the Released Claims, all Releasors waive all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, if applicable, and any similar provision applicable in any other jurisdiction, and do so understanding the significance of that waiver. Section 1542 provides:

"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."

Notwithstanding the provisions of section 1542, or any other law designed to prevent the waiver of unknown claims, and for the purpose of implementing a full and complete release and discharge of all Released Claims against all Released Entities, Releasors expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all of the Released Claims that Releasors do not know or suspect to exist in their favor against the Released Entities, or any of them, at the time of execution hereof, and that this Agreement extinguishes any such claims.

45. Consent to Jurisdiction. The Parties hereby irrevocably submit to the exclusive jurisdiction of the Court for purposes of any suit, action, proceeding or dispute arising out of, or relating to, this Agreement or the applicability of this Agreement.

46. Resolution of Disputes; Retention of Jurisdiction. Any disputes between or among the Parties concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court for resolution. The Court shall retain jurisdiction over the implementation and enforcement of this Agreement.

IV. TERMINATION OF THE AGREEMENT

47. Rejection or Material Alteration of Settlement Terms. Griffin and Settlement Class Counsel (with the consent of the Settlement Class Representatives) shall each have the right to terminate this Agreement by providing written notice of their election to do so to each other within 14 days of (1) the Court declining to enter the Preliminary Approval Order in a form materially consistent with the form submitted jointly by the Parties, or declining to approve the Settlement Notice without material alteration of the form submitted jointly by the Parties; (2) the Court declining to enter the Order and Final Judgment in a form materially consistent with this Agreement (other than determining, in the Court's sole discretion, the amount of the attorneys' fee and expenses award and Service Awards); (3) the date upon which the Order and Final Judgment is modified or reversed in any material respect by any court of competent jurisdiction (except with respect to the amount of the attorneys' fees and costs or Service Awards); or (4) the mutual written agreement of the Settlement Class Representatives, Settlement Class Counsel, and Griffin to terminate the Agreement. Griffin shall also have the right to terminate this Agreement by providing written notice of its election to do so to Settlement Class Counsel within 14 days of: (5) the date upon which the deadline for opting out of the Class has expired and more than 10% of Class Members have declined to participate in the Settlement by opting out of the Settlement Class; or (6) any financial obligation is imposed upon Griffin arising out of the Released Claims in addition to and/or greater than those specifically accepted by Griffin in this Agreement. If an option to terminate this Agreement arises under this paragraph, no Party is required for any reason or under any circumstance to exercise that option.

48. Return to Pre-Agreement Status. In the event any of the Parties exercise the right of termination enumerated in Paragraph 47 of this Agreement, this Agreement shall be null and void (except for provisions explicitly designated as surviving the termination of this Agreement), the Parties shall jointly request that any orders entered by the Court in accordance with this Agreement be vacated, and the rights and obligations of the Parties shall be identical to those prior to the execution of this Agreement (except with respect to provisions explicitly designated as surviving the termination of this Agreement). In the event either Party exercises any right of termination, the Parties agree to jointly request that the Court provide a reasonable opportunity to file motions, objections thereto, and engage in such other further proceedings as were contemplated before the Parties entered into this Agreement.

49. No Admission of Liability / Compromise of Disputed Claims. The Parties hereto agree that this Agreement, whether or not the Effective Date occurs, and any and all negotiations, documents and discussions associated with this Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Griffin or any Released Entity, or of the truth of any of the claims or allegations contained in the Complaint; and evidence thereof shall not be discoverable or used directly or indirectly by the Class or any third party, in any way for any purpose, except that the provisions of this Agreement may be used by the Parties to enforce its terms, whether in the Civil Action or in any

other action or proceeding. This Agreement, all discussions leading thereto, and all of the terms herein constitute compromises and offers to compromise under Connecticut Code of Evidence 4-8 and any similar state court rule or statute precluding admissibility thereof as evidence of the validity or amount of a disputed claim. In the event that this Agreement is terminated pursuant to Paragraph 47 of this Agreement, nothing in this Agreement or its negotiation may be used as evidence in any action. The Parties expressly waive the potential applicability of any doctrine, case law, statute, or regulation, which, in the absence of this paragraph of this Agreement, could or would otherwise permit the admissibility into evidence of the matters referred to in this paragraph. The Parties expressly reserve all their rights and defenses if this Agreement does not become final and effective substantially in accordance with the terms of this Agreement. The Parties also agree that this Agreement, any orders, pleadings or other documents entered in furtherance of this Agreement, and any acts in the performance of this Agreement are not intended to be, nor shall they in fact be, admissible, discoverable or relevant in any other case or other proceeding against Griffin to establish grounds for certification of any class, to prove either the acceptance by any Party hereto of any particular legal theory, or as evidence of any obligation that any Party hereto has or may have to anyone. This provision shall survive any termination of this Agreement.

V. REPRESENTATIONS AND WARRANTIES

50. Authorization to Enter This Agreement. The undersigned representative of Griffin represents and warrants that he or she is fully authorized to enter into and to execute this Agreement on behalf of Griffin. Settlement Class Counsel represent and warrant that they are fully authorized to conduct settlement negotiations with Griffin Counsel on behalf of the Settlement Class Representatives and to enter into, and to execute, this Agreement on behalf of the Settlement Class Representatives and the Settlement Class, subject to Court approval.

51. Assignment. The Settlement Class Representatives represent and warrant that they have not assigned or transferred any interest in the Civil Action which is the subject of this Agreement, in whole or in part.

52. Representation. The Settlement Class Representatives acknowledge that they have been represented by counsel of their own choosing in the Civil Action and the negotiation and execution of this Agreement, that they participated in the settlement negotiations and the decision to enter into this Agreement, that they fully understand this Agreement, and that they have had a reasonable and sufficient opportunity to consult with counsel before executing this Agreement.

VI. ADDITIONAL PROVISIONS

53. Use of This Agreement. The provisions of this Agreement, and any orders, pleadings or other documents entered in furtherance of this Agreement, may be offered or received in evidence solely (i) to enforce the terms and provisions hereof or thereof, (ii) as may be specifically authorized by a court of competent jurisdiction after hearing upon application of a

Party hereto, (iii) in order to establish payment or a defense in a subsequent case, including res judicata, or (iv) to obtain Court approval of this Agreement.

54. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

55. No Party is the Drafter. This Agreement has been negotiated at arm's length, with the participation of the Parties and their counsel. In the event of a dispute arising out of this Agreement, none of the Parties shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of construction that would or might cause any provision to be construed against the drafter hereof.

56. Headings. The headings to this Agreement have been inserted for convenience only and are not to be considered when construing the provisions of this Agreement.

57. Construction. This Agreement shall be construed and interpreted to effectuate the intent of the Parties, which is to provide, through this Agreement, for a complete resolution of the Released Claims with respect to the Released Entities.

58. Choice of Law. All terms of this Agreement shall be governed by and interpreted according to the substantive laws of the State of Connecticut, without regard to its choice of law or conflict of laws principles.

59. Amendment or Waiver. This Agreement shall not be modified in any respect except by a writing executed by all the Parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach of this Agreement, whether prior, subsequent or contemporaneous.

60. Modification. Prior to entry of the Order and Final Judgment, this Agreement may, with approval of the Court, be modified by written agreement of the Parties without giving any additional notice to the Settlement Class, provided that such modifications are not materially adverse to the Settlement Class and are approved by the Court in issuing the Order and Final Judgment. To the extent that Settlement Class Members desire to be notified regarding any additional changes as described in this paragraph, or otherwise after the initial notice of the Settlement, they must file with the Clerk of Court in the Civil Action a request for notice, or send such a request in writing to the Settlement Administrator or Settlement Class Counsel, who shall maintain a list of all such requests that are received. Settlement Class Members who have and who provide an e-mail address agree to electronic notification.

61. Execution in Counterparts. This Agreement may be executed in counterparts. Facsimile signatures or signatures in PDF format shall be considered valid signatures as of the date thereof, and may be filed with the Court.

62. Integrated Agreement. This Agreement, including the exhibits hereto, contains an entire, complete, and integrated statement of each and every term and provision agreed to by and between the Parties hereto, and supersedes any prior oral or written agreements and

contemporaneous oral agreements among the Parties. The exhibits to this Agreement are integral parts of the Settlement and are hereby incorporated and made parts of this Agreement.

63. Notices. All notices and other communications required or permitted under this Agreement, other than requests for exclusion or objections to the Settlement, shall be in writing and delivered in person, by overnight delivery service or by email. Any such notice shall be deemed given as of the date of receipt and shall be delivered to the Parties as follows:

If to the Settlement Class Representative, Settlement Class Counsel and/or the Settlement Class:

Ernest F. Teitell
Marco A. Allocca
Silver Golub & Teitell LLP
1 Landmark Sq. 15th floor
Stamford, CT 06901
mallocca@sgtlaw.com

If to Griffin:

Theodore J. Tucci
Wystan M. Ackerman
Robinson & Cole LLP
280 Trumbull St.
Hartford, CT 06103
ttucci@rc.com

64. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision if the Parties mutually elect to proceed as if such invalid, illegal or unenforceable provision had never been included in the Agreement.

65. Confidential Information. All persons involved in the Settlement will be required to keep confidential any personal identifying information of the Class Members, and any otherwise nonpublic information of the Class Members. Any documents or nonpublic information provided by Griffin to the Settlement Administrator or Settlement Class Counsel must be destroyed within 30 days of the Settlement Administrator completing the issuance of all settlement payments, except insofar as Settlement Class Counsel shall have the right to retain any work product and, in the case of pleadings submitted to the Court, any exhibits to such pleadings.

66. Deadlines. In the event any date or deadline set forth in this Agreement falls on a weekend or federal or state legal holiday, such date or deadline shall be on the first business day thereafter.

67. Retention of Records. The Settlement Administrator and Settlement Class Counsel shall retain copies or images of all returned mailed notices, correspondence related

thereto and settlement checks in their possession for a period of two (2) years after the Effective Date. After this time, the Settlement Administrator shall provide its records to Griffin if Griffin so desires. The Settlement Administrator and Settlement Class Counsel shall destroy any such documentary records they have in their possession regarding the administration of the Settlement (including all Class Member information), and Griffin will have the option, in its sole discretion, to destroy such records.

68. Contact With Class Members. Griffin may communicate with Settlement Class Members in the ordinary course of its business. It may answer any question posed by a patient seeking medical treatment, guidance and/or counsel. Griffin will refer inquiries regarding this Agreement and the administration of the Settlement to the Settlement Administrator or Settlement Class Counsel. Class Counsel may respond to Class Member inquiries.

69. Public Statements. As part of the negotiated settlement agreement, the Parties agree that they each are prohibited from making, and will refrain from making or engaging in any out-of-court public statements or comments concerning the Settlement, and the Parties further agree that they will remain silent and not provide any response to any inquiries or request for comment from anyone regarding the Settlement. At no time is any Party or their counsel permitted to speak publicly about the Settlement outside of court proceedings. The Parties further agree that they are not permitted to directly or indirectly promote, advertise, disclose or otherwise facilitate distribution of this Agreement, the Motion for Preliminary Approval or any other filing with the Court concerning the Settlement, except as required by law, or to effectuate the Settlement Notice, or as otherwise provided for in this Agreement. Nothing in this paragraph shall interfere with communication by counsel privately with their clients, including Settlement Class Counsel communicating privately with individual Settlement Class Members. Nothing in this paragraph shall prevent or prohibit Settlement Class Counsel from publicly disclosing that they represented the Plaintiffs/Class Members in the Civil Action or that this matter was resolved by settlement. Moreover, nothing in this paragraph shall prevent or prohibit Settlement Class Counsel from disclosing public information about this matter to any state or federal court of competent jurisdiction in furtherance of any motion or application to be appointed class counsel or lead class counsel in other matters or as otherwise required by law.

SIGNED AND AGREED

For the Settlement Class Representatives, the Settlement Class and Settlement Class Counsel:

Anthony Diaz
Bruce Sypniewski _____
Daisy Gmitter

By: /s/Marco A. Allocca
Ernest F. Teitell
Marco A. Allocca
Silver Golub & Teitell LLP

Griffin Health Services Corporation
Griffin Hospital

By: /s/Theodore Tucci
Theodore Tucci
Robinson & Cole