

OCT 26 2018

By: A. TAYLOR

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

D'ANGELO SANTANA, SASHA SAMI  
SHAMON, and ALEXANDRIA N. VANDEN  
HEUVEL, on behalf of themselves and all others  
similarly situated,

Plaintiffs,

vs.

RADY CHILDREN'S HOSPITAL-SAN  
DIEGO, a California Corporation; and DOES 1  
through 100, inclusive,

Defendants.

) CASE NO. 37-2014-00022411-CU-MT-CTL  
) ASSIGNED FOR ALL PURPOSES TO:  
) The Honorable Joel R. Wohlfeil  
) Department 73

) **CONSOLIDATED CLASS ACTION**

) **~~[PROPOSED]~~ ORDER GRANTING  
) PRELIMINARY APPROVAL OF  
) CLASS ACTION SETTLEMENT**

) Date: October 26, 2018  
) Time: 9:00 a.m.  
) Dept.: C-73  
) Judge: Hon. Joel R. Wohlfeil

) Complaint filed: July 8, 2014  
) Trial date: September 28, 2018

ESTATE OF ABIGAIL MARCELENO, by and  
through her successor in interest CYNTHIA  
MARCELENO,

Plaintiff,

vs.

RADY CHILDREN'S HOSPITAL - SAN  
DIEGO, a California Corporation; RADY  
CHILDREN'S HEALTH SERVICES - SAN  
DIEGO, a California Corporation; RADY  
CHILDREN'S HOSPITAL AND HEALTH  
CENTER, a California Corporation; DOES 1  
through 100, inclusive,

Defendants.

) CASE NO. 37-2014-00022652-CU-MC-CTL

) Complaint filed: July 9, 2014  
) Trial date: None set

1 Before the Court is Plaintiffs D'ANGELO SANTANA, SASHA SAMI SHAMON, and  
2 ALEXANDRIA N. VANDEN HEUVEL (collectively as "Plaintiffs") unopposed Motion for  
3 Preliminary Approval of the proposed Class Action Settlement between Defendant RADY  
4 CHILDREN'S HOSPITAL – SAN DIEGO ("Defendant" or "Rady") and the previously certified  
5 Class defined as "*all patients (or their parents or guardians) of Defendant Rady Children's*  
6 *Hospital - San Diego who were admitted in-patient to one of Defendant's hospital, satellite or*  
7 *urgent care locations between July 1, 2012 and June 30, 2013.*" (the "Class" or the "Settlement  
8 Class"). The parties to the Settlement respectfully request that the Court enter an order finding:

- 9 1) Preliminarily Approval of the Settlement Agreement, finding that the Settlement is fair,  
10 reasonable, adequate, and the product of investigation, litigation and arm's length  
11 negotiation;
- 12 2) Appointing ILYM Group, Inc. as the Settlement Administrator;
- 13 3) Approving the proposed Notice of Settlement to the Class, including the proposed opt-  
14 out and objection procedures, as provided for in the Settlement Agreement;
- 15 4) Ordering Defendant to provide the Settlement Administrator the list of Class Members  
16 containing date of birth information for members of the Class as provided for in the  
17 Settlement Agreement;
- 18 5) Directing the Settlement Administrator to disseminate Notice of the Settlement to the  
19 Class as provided for in the Settlement Agreement within thirty (30) days of the Court's  
20 Order granting Preliminary Approval;
- 21 6) Setting a Final Approval Hearing on JANUARY<sup>25</sup>, 2019 at 9:00 ~~a.m.~~<sup>p.m.</sup> in  
22 Department C-73 of the Superior Court of the State of California, County of San Diego,  
23 before the Honorable Joel R. Wohlfeil.

24 Having reviewed and considered the parties' proposed Settlement Agreement and the  
25 unopposed Motion for Preliminary Approval of the Class Action Settlement and having heard and  
26 considered the oral argument of counsel, the Court makes the findings and grants the relief set forth  
27 below, preliminarily approving the settlement outlined in the Settlement Agreement upon the terms  
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1 and conditions set forth in this Order. All terms and phrases in this Order shall have the same  
2 meaning as they are defined in the Settlement Agreement.

3 NOW, THEREFORE, IT IS HEREBY ORDERED:

- 4 1. The Court preliminarily approves the settlement terms set forth in the Settlement  
5 Agreement as fair, reasonable, adequate, and the product of adequate investigation, hard-  
6 fought litigation, and arm's length negotiation, falling within the range of possible final  
7 approval, and as meriting submission to the Settlement Class for its consideration.
- 8 2. subject to final approval at the Final Approval Hearing provided for below.
- 9 3. The Court appoints ILYM Group, Inc. ("ILYM") as the Settlement Administrator;
- 10 4. Defendant is ordered to provide the Settlement Administrator the list of Class Members  
11 containing date of birth information for members of the Class as provided for in the  
12 Settlement Agreement;
- 13 5. The Class Notice of Settlement attached to the Settlement Agreement as Exhibit 1 shall  
14 be disseminated by ILYM in the manner and form approved by this Court within ten  
15 (10) days of this Order granting Preliminary Approval. The Court finds the Notice  
16 described in the Settlement Agreement constitutes the best notice practicable under the  
17 circumstances and shall constitute due and sufficient notice to the Settlement Class of  
18 the proposed Settlement Agreement and the Final Approval Hearing, and complies fully  
19 with the requirements of the California Rules of Court, the California Code of Civil  
20 Procedure, the United States Constitution, and any other applicable law.
- 21 6. A hearing (the "Final Approval Hearing") shall be scheduled to be held before this Court  
22 on JANUARY 25, 2019 at 9:00 (a.m.) p.m. in Department C-73 of  
23 the above-captioned Court to determine:
  - 24 a) Whether the terms set forth in the Settlement Agreement are fair, reasonable,  
25 adequate, and in the best interests of the Settlement Class;
  - 26 b) Whether the Final Approval Order, as provided for in the Settlement Agreement,  
27 should be entered granting final approval of the Settlement; and  
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1 c) The amount of attorneys' fees, costs and expenses, and Plaintiffs' incentive  
2 awards should be distributed from the Common Fund to Class Counsel and the  
3 Class Representatives/Plaintiffs.

4 The Court may adjourn, vacate, or continue the Final Approval Hearing without further  
5 notice to the Settlement Class Members;

- 6 7. Any member of the Settlement Class who desires to be excluded from the Settlement  
7 Class, and therefore not bound by the terms of the Settlement Agreement, may request  
8 exclusion from the settlement in this Action by first class mail, personally signed, and  
9 stating unequivocally that he/she wishes to be excluded from this class action settlement.  
10 Any request for exclusion must be mailed to Class Counsel, Defendant's Counsel, or the  
11 Settlement Administrator and postmarked on or before forty-five (45) days after the  
12 Order granting Preliminary Approval. Any member of the Settlement Class who chooses  
13 to be excluded and who provides the required information will not be bound by any  
14 judgment entered in connection with this Settlement. A list of persons who requested  
15 exclusion shall be filed with the Court before the date of the Final Approval Hearing.
- 16 8. Any member of the Settlement Class who elects to be excluded shall not be entitled to  
17 receive any of the benefits of the Settlement Agreement, shall not be bound by the  
18 release of any claims pursuant to the Settlement Agreement, and shall not be entitled to  
19 object to the Settlement Agreement or appear at the Final Approval Hearing. The names  
20 of all persons timely submitting valid Requests for Exclusion shall be provided to the  
21 Court.
- 22 9. Any member of the Settlement Class who desires to object to the Settlement must file  
23 any objections and all papers in support of such objections with the Court in the time set  
24 forth in the Notice, which shall be no later than forty-five (45) days after the Court's  
25 Order granting Preliminary Approval. All such written objections shall be served on  
26 Class Counsel. The filing of any objection will not extend the time within which a  
27 member of the Settlement Class may file a request or exclusion from the Settlement. To  
28 state a valid objection to the Settlement, an objecting Class Member must provide to the

1 Settlement Administrator the following information in his or her written objection: (i)  
2 full name, current address, and current telephone number; (ii) documentation sufficient  
3 to establish membership in the Class; (iii) a statement of the position(s) the objector  
4 wishes to assert, including the factual and legal grounds for the position; (iv) provide  
5 copies of any other documents that the objector wishes to submit in support of his/her/its  
6 position; (v) the name and contact information for all counsel representing the objector;  
7 and (vi) the objector's signature under the penalty of perjury.

8 10. Any objection not submitted as described in Section IX of the Settlement Agreement, or  
9 any objection otherwise not properly or timely filed, will be invalid and the objector will  
10 be deemed to have waived any objections, will be foreclosed from making subsequent  
11 objections, and the objector shall be bound by the final determination of the  
12 Court.

13 11. Service of all papers on counsel for the parties shall be made as follows:

14 **To Class Counsel:**

15 Timothy D. Cohelan, Esq.  
16 J. Jason Hill, Esq.  
COHELAN KHOURY & SINGER  
17 605 C Street, Suite 200  
San Diego, California 92101

18 Patrick N. Keegan, Esq.  
19 KEEGAN & BAKER, LLP  
20 2292 Faraday Avenue, Suite 100  
Carlsbad, California 92008

21 E. Elliot Adler, Esq.  
22 ADLER LAW GROUP, APLC  
23 402 West Broadway, Suite 860  
San Diego, California 92101

24 Abbas Kazerounian, Esq.  
25 Mona Amini, Esq.  
KAZEROUNI LAW GROUP, APC  
26 245 Fischer Avenue, Suite D1  
27 Costa Mesa, CA 92626

28 Joshua B. Swigart, Esq.  
HYDE & SWIGART

1 2221 Camino Del Rio South, Suite 101  
2 San Diego, CA 92108-3551

3 **To Defendant's Counsel:**

4 Jon Kardassakis, Esq.  
5 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6 633 West 5<sup>th</sup> Street, Suite 4000  
7 San Diego, CA 90071

- 8 12. Only Settlement Class Members who have filed and served valid and timely notices of  
9 intention to appear, together with supporting papers, shall be entitled to be heard at the  
10 Final Approval Hearing.
- 11 13. Any Settlement Class Member who does not make an objection in the time and manner  
12 provided shall be deemed to have waived such objection and forever shall be foreclosed  
13 from making any objection, and the objector shall be bound by the final  
14 determination of the Court regarding the fairness or adequacy of the proposed Settlement  
15 as incorporated in the Settlement Agreement, adequacy of notice, the payment of  
16 attorneys' fees and costs, the payment of incentive award, and/or the Final Approval  
17 Order and Judgment.
- 18 14. In the event that the proposed Settlement is not approved by the Court, or in the event  
19 that the Settlement Agreement becomes null and void pursuant to its terms, this Order  
20 and all orders entered in connection therewith shall become null and void, shall be of no  
21 further force and effect, and shall not be used or referred to for any purposes whatsoever  
22 in this civil action or in any other case or controversy; in such even the Settlement  
23 Agreement and all negotiations and proceedings directly related thereto shall be deemed  
24 to be without prejudice as of the date and time immediately preceding the execution of  
25 the Settlement Agreement.
- 26 15. The Court may, for good cause, extend any of the deadlines set forth in this Order  
27 without further notice to the Settlement Class Members. The Final Approval Hearing  
28 may, from time to time and without further notice to the Settlement Class, be continued  
by order of the Court.

1 16. The Court retains continuing and exclusive jurisdiction over the action to consider all  
2 further matters arising out of or connected with the Settlement, including the  
3 administration and enforcement of the Settlement Agreement.

4 17. Nothing in the Settlement Agreement, nor any of the negotiations or proceedings relating  
5 to it, shall be construed in this or any lawsuit as an admission or concession by  
6 Defendant of any liability, fault, or wrongdoing of any kind, or by the named Plaintiffs  
7 or any other Class Members of the merit of any defense or lack of merit of any claim.

8 18. The case shall proceed pursuant to the following schedule:

<b>Event</b>	<b>Days After Order Granting Preliminary Approval</b>	<b>Date</b>
Last day for Settlement Administrator to mail Settlement Notice to Class Members	10 days after preliminary approval	November 5, 2018
Last day for Class Counsel to file motion for final approval of settlement and application for attorneys' fees and costs, class representative's incentive award, and settlement administration expenses	30 days after preliminary approval	November 26, 2018
Last day for Class Members to file objections to settlement or to opt-out of the Class	45 days after preliminary approval	December 10, 2018
Last day for the Parties to reply to any objections filed by Class Members	60 days after preliminary approval	December 26, 2018
Hearing on motion for final approval of settlement and application for attorneys' fees and costs, Class Representatives' service payment, and claims administration expenses	At least 75 days after preliminary approval (or as scheduled by the Court)	
Last day for Defendant to deposit payment of \$5,000,000 with the Settlement Administrator to fund the Settlement Fund	30 days after the Effective Date	

1 IT IS SO ORDERED.

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3 Dated: OCT 26 2018 2018

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JOEL R. WOHLFEIL

By: \_\_\_\_\_

Hon. Joel R. Wohlfeil  
Superior Court Judge