

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. CACE18028483 DIVISION 03 JUDGE Nicholas Lopane

Tiffany Aguero

Plaintiff(s) / Petitioner(s)

v.

Nova Southeastern University Inc

Defendant(s) / Respondent(s)

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AGREED ORDER

This cause came before this Court pursuant to Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Motion"). Upon careful review and consideration of the Motion, and after hearing argument from counsel at the October 6, 2020 hearing on the Motion, and otherwise being duly advised in the premises, the Court hereby grants the Motion and FINDS, ORDERS and ADJUDGES as follows:

1. The Parties reached a resolution of this class action and seek, through the Motion, and in accordance with Fla. R. Civ. P. 1.220(1) preliminary approval of that resolution on behalf of the class certified by the Court (the class members are referred to herein as "the Settlement Class" or "Settlement Class Member(s)"). The Court makes the following findings and conclusions in connection with the Motion.

2. The Court is satisfied that the settlement terms described in the Motion and further addressed at the October 6, 2020 hearing, ("the Settlement") was the product of serious, informed and arms-length negotiations, is free of obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class members and falls within the range of possible approval. The Court agrees that the instant case was hardly without its risks to both sides, as noted in the Motion, and involves complex substantive and procedural issues which could take years of litigation to resolve.

3. The Court preliminarily approves the Settlement as fair, adequate, and reasonable, subject to further consideration after notice and a final fairness hearing. The Court's preliminary approval of the settlement is based, among other things, on the following considerations:
 - a. The manner, form and substance of the Proposed Class Notice for notifying the Settlement

Class Members of the Settlement, meets the requirements of Fla. R. Civ. P. 1.220 and due process, constitutes the best notice that is practicable under the circumstances, and therefore, constitutes due and sufficient notice to all persons entitled to notice. The Court is satisfied with the representations of the Parties at the October 6, 2020 hearing that said Proposed Class Notice meets and complies with these requirements;

- b. The Settlement and Proposed Class Notice shall provide that any Settlement Class Member who desires to be excluded from the Settlement Class may opt out by sending a timely written request for exclusion to the Parties (in the manner set forth in the Proposed Class Notice) and that any Settlement Class Member who submits a valid and timely request for exclusion shall not be bound by any portion of the Settlement. Any such request for exclusion must be received within forty-five (45) days from the date the Settlement and Proposed Class Notice is sent;
- c. The Settlement and Proposed Class Notice shall provide that any Settlement Class Member who does not opt out, but who instead wishes to object to the Settlement may do so by timely filing with the Court and serving on the Parties a notice of his or her intention to objection, which (as shall be more fully set forth in the Proposed Class Notice) shall, among other things, include their name, the case name and case number, and set forth each objection and the basis therefore. Any such objection must be received by the Court within forty-five (45) days from the date the Settlement and Proposed Class Notice is sent.
- d. The Settlement and the Proposed Class Notice will further provide the deadline by which Defendant shall fund the Settlement with the claims administrator, which shall be considered the common fund created as a result of the Settlement, the terms and conditions governing the Settlement Fund Reserve Account including its administration by the claims administrator (under the auspices of the Court) in accordance with the terms of the Settlement;
- e. The Settlement and the Proposed Class Notice will further provide that the Settlement is conditioned upon no more than 20% of Settlement Class Members "opting out," i.e., specifically asking to be excluded from the Settlement pursuant to the process set forth in the Proposed Class Notice;
- f. The Settlement and Proposed Class Notice will further provide that any Settlement Class Members that do not request exclusion from this Settlement will be releasing Defendant as part of the Settlement as follows:

The Representative Plaintiff and all Class Members, including their respective current and former officers, directors, employees, attorneys, heirs, executors, administrators, agents, legal representatives, professional corporations, partnerships, assigns and successors, but only to the extent their claims are derived from the claims of Class Members (collectively, the "Releasing Parties"), shall forever release and discharge all claims, including any and all claims, rights, and liabilities of any nature, including but not limited to, actions, claims, demands, causes of action, obligations, damages, debts, charges, attorneys' fees, costs, arbitrations, forfeitures, judgments, indebtedness, liens and losses of any whatever kind, source or character

whether arising out of federal or state law, whether known or unknown, whether asserted or unasserted, whether asserted by any Releasing Party on its own behalf or on behalf of any other person or entity, arising on or before the Effective Date, whether in contract, express or implied, tort, at law or in equity or arising under or by virtue of any statute or regulation, by reason of, arising out of, or in any way related to any of the facts, acts, events, transactions, occurrences, courses of conduct, business practices, representations, omissions, circumstances or other matters related in any way to the Lawsuit, or addressed in this Agreement, whether any such claim was or could have been asserted by any Releasing Party on its own behalf or on behalf of other Persons (the "Released Claims"), against Defendant and any of its former, present, and future assigns, predecessors, successors, affiliates, parent companies, subsidiaries, controlled companies, insurers, employees, officers, directors, principals and agents (collectively, the "Released Parties").

The Releasing Parties and each of them agree and covenant to the maximum extent permitted by law not to sue or cooperate in the filing or prosecution of any suit or proceeding, in any forum based upon or related to any Released Claims against any Released Party.

The Parties intend that this Agreement eliminate all further risk and liability of the Released Parties relating to the Released Claims, and accordingly agree that the Court shall include in the Final Order and Judgment a Bar Order Provision as follows:

Except as compelled by a Court of competent jurisdiction, the Releasing Parties are permanently enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding or order in any jurisdiction based on any or all Released Claims against one or more Released Parties; (ii) instituting, organizing class members in, joining with class members in, amending a pleading in or soliciting the participation of class members in, any action or arbitration, including but not limited to a purported class action, in any jurisdiction against one or more Released Parties based on, involving, or incorporating, directly or indirectly, any or all Released Claims; and (iii) filing, commencing, prosecuting, intervening in, participating in or receiving any benefits from any lawsuit, arbitration, administrative or regulatory proceeding or order in any jurisdiction based on an allegation that an action of the Released Parties, which is in compliance with the provisions of the Agreement, violates any right of any Class Member.

All Persons who are, have been, could be, or could have been alleged to be joint tortfeasors, co-tortfeasors, co-conspirators, or co-obligors with any or all of the Released Parties respecting any or all of the Released Claims, are hereby, to the maximum extent permitted by law and except as compelled by a Court of competent jurisdiction, barred and permanently enjoined from making, instituting, commencing, prosecuting, participating in or continuing any claim, claim-over, cross-claim, action, or proceeding, however denominated, regardless of the allegations, facts, law, theories or principles on which they are based, in this Court or in any other court or tribunal, against any or all of the Released Parties with respect to any or all of the Released Claims, including without limitation equitable, partial, comparative, or complete contribution, set-off, indemnity, or otherwise, whether by contract, common law or statute, arising out of or relating in any way to the Released Claims. All such claims are hereby fully and finally barred, released, extinguished, discharged, satisfied and made unenforceable to the maximum extent permitted by law, and no such claim may be commenced, maintained, or prosecuted against any Released Party.

Defendant reserves the right to pursue any debts allegedly owed by Class Members to Defendant for payment due and owing to Defendant, only to the extent that such debts accrued after the date that Class Members received the Notice Letter associated with the underlying claims. Class Members retain any and all defenses they may have concerning the alleged debts stated herein, except that they may not assert a defense or Counterclaim based upon the Released Claims. The aforesaid alleged debts are not part of this Agreement.

Furthermore, Defendant acknowledges and affirms that any and all debts accrued or incurred by Class Members through November 2018 have been voluntarily waived by Defendant, and Defendant releases Class Members from any obligations related to those debts accrued or incurred through November 2018.

4. Class Counsel's application for attorneys' fees and reimbursement of costs and expenses from the Settlement Fund in the amount of \$1.8 million was preliminarily approved by the Court at the October 6, 2020 hearing. The Court finds Class Counsel's application for attorneys' fees and reimbursement of costs to be fair and reasonable, and is subject to final approval at the Final Fairness Hearing. If so finally approved at the Final Fairness Hearing, the claims administrator shall pay Class Counsel's attorneys' fees and costs from the Settlement Fund within 30 days of the Court's Final Approval Order following the Final Fairness Hearing.
5. The Court acknowledges and approves the dismissal of any consortium claim initially raised in the Class Action Complaint.
6. The Parties acknowledged, and the Court agrees and finds that the named Plaintiff and Class Counsel are appropriate and adequate class representatives and counsel, pursuant to the Rule 1.220(a) of the Fla.R.Civ.P.
7. The Court accepts the Parties' agreement as to the definition of the Class, as set forth herein, for purposes of this Preliminary Approval of the Settlement and for the Proposed Class Notice. The Class is hereby certified, pursuant to and as required under Fla.R.Civ.P. 1.220. The class is defined as follows:

All 1,152 patients who received a letter from Linda Niessen, Dean and Professor of Nova Southeastern University's College of Dental Medicine, informing them that they may have been exposed to inconsistencies in prescribed sterilization protocols while a patient at NSU's Post-Graduate Orthodontic Clinic located at 3200 South University Drive in Davie, Florida, between July

2015 to February 2018, and offering a screening blood test, and who obtained a screening blood test the results of which were negative for any viral disease from such exposure.

8. The Class Administrator, to be chosen by Nova Southeastern University, shall print and cause to be mailed by First-Class Mail, postage prepaid, the Proposed Class Notice to Settlement Class Members, at their last known address of record as determined by the Class Administrator. Additionally,

- a. Any mailings returned with a forwarding address will be sent to the forwarding address. The claims administrator will perform a skip trace on any mail returned as undeliverable to identify the appropriate address of the class member.
- b. Class Members shall have ninety days from the date the Claim Administrator mails out the Final Approval Order and Claim Form to submit their claim in order to receive their portion of the Settlement Fund.

9. THE COURT SHALL CONDUCT A FINAL FAIRNESS HEARING ON A DATE AND TIME TO BE DETERMINED BY THE COURT IN ORDER TO REVIEW AND RULE UPON THE FOLLOWING ISSUES:

- a. Whether the Settlement should be formally and finally approved as fair, reasonable and adequate;
- b. Whether this action should be dismissed on the merits and with prejudice pursuant to the terms of the Settlement;
- c. Whether Settlement Class Members who did not submit timely requests for exclusion should be bound by the release contemplated by the Settlement;
- d. Whether Class Counsel's application for an award of attorneys' fees and expenses should be finally approved;
- e. Whether the named Plaintiff's and Consolidated Plaintiffs' application for an additional award should be approved; and
- f. Any other matters the Court may deem necessary to approve the Settlement as fair, reasonable and adequate.

10. The Court further orders as follows:

- a. The Motion shall not be construed or used as an admission, concession, declaration or finding by or against the Parties that their claims or defenses lack merit or that the relief requested in their pleadings is inappropriate, improper or unavailable, or as a waiver by any party of any defenses or claims he, she or it may have and, as such, other than for purposes to enforce the Settlement, if finally approved, by the Court. Neither this Motion nor the settlement (or any communications or proceedings in connection there with) shall be offered or received in evidence in this action or any other action or proceeding, or be used or asserted in any way as an admission, concession or evidence of any matter whatsoever; and
- b. This Order shall be null and void if any of the following occur:
- i. The Settlement is terminated or any specified material condition to the Settlement is not satisfied and the satisfaction of such condition is not waived in writing by the Parties;
 - ii. The Court rejects any material component of the Settlement, including any amendment thereto that may be approved by the Parties, and the Parties do not consent to the Court's rejection; or
 - iii. The Court approves the Settlement Agreement, including any amendment thereto approved by the Parties, but such approval is challenged by an objector and the final order approving the Settlement is reversed on appeal.

DONE and **ORDERED** in Chambers, at Broward County, Florida on 10-13-2020.

~~CACE18028483 10-13-2020 9:26 AM~~

CACE18028483 10-13-2020 9:26 AM

Hon. Nicholas Lopane

CIRCUIT JUDGE

Electronically Signed by Nicholas Lopane

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