

BROWARD COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

Case No.:CACE-18-028483

TIFFANY AGUERO, individually, and
on behalf of her minor child, L.H., and on
behalf of all others similarly situated,

Plaintiff,

“CLASS
REPRESENTATION”

v.

NOVA SOUTHEASTERN
UNIVERSITY, INC.,

Defendant.

_____ /

JOINT MOTION TO APPROVE CLASS ACTION NOTICE FORM

THE PARTIES, after having conferred and together drafted a Class Action Notice Form to be mailed to all 1,152 members of the Class, hereby move this Court for entry of an Order approving the proposed Class Action Notice Form, attached hereto as Exhibit “A”, and finding that it meets the requirements of Fla. R. Civ. P. 1.220 and all other requirements set forth in this Court’s Order Preliminarily Approving Class Action Settlement Including Provision of Proper and Sufficient Notice to Settlement Class Members entered on October 13, 2020 .

WHEREFORE, in accordance with Fla. R. Civ. P. 1.220, the Parties respectfully request that the Court enter an Order approving the proposed Class Action Notice Form to be mailed to Settlement Class Members, and grant such other relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was electronically filed with the Clerk of the Court by using the Florida Court's E-Filing Portal which will send a notice of electronic filing on this 27th day of October of 2020, to: Evan Marowitz, Esquire, Cole, Scott & Kissane, P.A., 110 SE 6th Street, Suite 2700, Fort Lauderdale, FL 33301; evan.marowitz@csklegal.com; Alyssa.tornberg@csklegal.com and James White, Esquire, Bobo Ciotoli, White & Russell, P.A., 11641 Kew Gardens Avenue, Suite 101, Palm Beach Gardens, FL 33410; white@bobolaw.com, dunham@bobolaw.com.

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By: /s/ Jay Cohen
JAY COHEN
Florida Bar No.:292192

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

*The 17th Judicial Circuit in and for Broward County, Florida has authorized this Notice.
It is not a solicitation from a lawyer.*

TO: 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.

IF YOU ARE THE NAMED RECIPIENT OF THIS NOTICE, YOU HAVE BEEN IDENTIFIED AS A MEMBER OF A CLASS OF INDIVIDUALS FOR WHOM A SETTLEMENT HAS BEEN REACHED IN THE TIFFANY AGUERO, ET AL. V. NOVA SOUTHEASTERN UNIVERSITY, INC., CASE NO.: CACE-18-028483 (FLA. 17TH JUD. CIR.). PLEASE READ THIS NOTICE VERY CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS WILL BE AFFECTED BY THE CLASS SETTLEMENT OF THE LAWSUIT WHETHER YOU ACT OR DO NOT ACT.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT OR ANY PARTY AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY EITHER SIDE IN THIS LITIGATION. THE SOLE PURPOSE OF THIS NOTICE IS TO INFORM YOU OF THE LAWSUIT SO THAT YOU CAN MAKE AN INFORMED DECISION TO REMAIN IN OR OPT-OUT OF THIS CLASS ACTION SETTLEMENT AND IT’S MONETARY RAMIFICATIONS.

YOUR LEGAL RIGHTS AND OPTIONS

1. Do Nothing	You will automatically be part of this lawsuit if you are a member of the Class. You will also be giving up your right to sue in a different case on the same subject matter. Following Final Approval of the Class Settlement by the Court, you will need to submit a claim form in order to receive money from the settlement. If you choose this option, you do not need to do anything and will be automatically included in the Settlement Class.
2. Object To The Settlement	You will be automatically a part of the Settlement Class. You will also be giving up your right to sue in a different case on

	<p>the same subject matter. But you will be objecting to the terms of the settlement. If you choose this option, you do not need to do anything to be included in the settlement class, as you will automatically be included in the settlement class. However, if you want to object to the terms of the settlement, you or your own counsel will need to submit a written objection.</p>
<p>3. Exclude Yourself (Opt-Out)</p>	<p>Exclude yourself from the settlement class and give up your right to seek money from the class settlement but keep your right to sue in a different case about the same subject matter. If you choose this option, you will need to prepare and submit a written request to be excluded from the settlement class.</p>

NOTICE OF PENDENCY OF A PROPOSED CLASS ACTION LAWSUIT: Please be advised that your rights may be affected by a lawsuit entitled *Tiffany Aguero, individually, and on behalf of her minor child, L.H., and on behalf of all others similarly situated v. Nova Southeastern University, Inc.*, (case number CACE-18-028483) pending in the 17th Judicial Circuit in and for Broward County, Florida (the lawsuit) if you 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.

NOTICE OF SETTLEMENT: Please be advised that the Plaintiffs in the lawsuit, Tiffany Aguero and L.H. (“Plaintiffs” or “Class Representatives”), on behalf of themselves and all of the other Settlement Class Members (as defined below), have reached a proposed settlement with Nova Southeastern University (“NSU” and/or “Defendant”) on the terms and conditions set forth in the AGREED ORDER issued by the Court dated October 13, 2020. A settlement fund will be available for distribution to each Settlement Class member who timely submits a complete claim form, only if the settlement is approved by the Court and the approval is upheld following any appeals.

The following provides a detailed description about the proposed class settlement and the rights you have if you are a Settlement Class Member, the benefits available under

the settlement and how you can get the benefits, including the relevant deadlines and requirements.

BASIC INFORMATION

WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs bring this proposed class action on behalf of the 1,152 individuals who received a letter from Linda Niessen, Dean and Professor of NSU'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. Plaintiffs allege that the letter and its contents caused them emotional distress until which time as they received a negative blood test result for which they are entitled to monetary damages. NSU denies that it has liability or caused any emotional distress damages. This settlement is not an admission of any wrongdoing by NSU.

The Parties have agreed to settle the lawsuit on the terms and conditions explained in this notice.

WHY IS THIS A CLASS ACTION?

In a class action, one or more people called class representatives (in this case, Tiffany Agüero, individually and on behalf of her minor child, L. H.) sue on behalf of people who have similar claims. All of these people are called a Class or Class Members. One court resolves the issues for all Class Members, except for those who choose to exclude themselves from the Class.

Judge Nicholas Lopane, Circuit Judge for the 17th Judicial Circuit in and for Broward County, Florida, is in charge of this proposed class action.

WHY IS THERE A SETTLEMENT?

The Court has not decided in favor of Plaintiffs or NSU. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and settlement benefits go to the Settlement Class Members who submit a timely and complete claim form. The Class Representatives and the attorneys think the settlement is in the best interest of the Settlement Class Members taking into account the benefits of the proposed settlement, the risks of continued litigation, and the delay in obtaining relief for the Class if the lawsuit continues.

WHO IS IN THE SETTLEMENT CLASS?

You are a Settlement Class Member if you are one of the 1,152 individuals 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.

To be eligible for benefits under the settlement, you must be a Settlement Class Member.

THE SETTLEMENT BENEFITS

CASH PAYMENTS UPON RECEIPT OF CLAIM FORM

Under the terms of the settlement, NSU has agreed to provide a total settlement fund of \$5,295,800 (the “Fund”) in full settlement of the claims of the Settlement Class. The Fund will be used to pay for class notice and payment distribution administration expenses (estimated at no more than \$100,000), as well as Class Counsel’s attorneys’ fees in the amount of \$1,855,000, Class Counsel’s costs in the amount of \$30,000, and service awards of \$12,000 to the Class Representative and \$2000 each to the “Consolidated Plaintiffs.” The remaining \$2,456,000 (“Net Settlement Fund”) will be used to make cash payments of \$3,000 to each Settlement Class Member who timely submits a full and complete claim form following final approval by the Court. The settlement distribution process will be administered by an independent settlement administrator, RG2 Claims Administration, LLC (the “Settlement Administrator”), approved by the Court. **The settlement amount and the distributions outlined above are contingent on final approval by the Court.**

AMOUNT OF CASH PAYMENT

The cash payment amounts to each of the Settlement Class Members who submit a timely and complete claim form will be \$3,000. Any amounts left in the Fund and not paid or from uncashed checks, if any, will be paid to a Cy Pres in amount up to \$350,000. Any amount in excess of the \$350,000 will revert back to NSU.

HOW CAN I GET A CASH PAYMENT?

If you are a Settlement Class Member and the address above is correct, you do not need to take any action at this time. Following the Final Fairness Hearing, the Settlement Administrator will send you the Final Approval Order along with instructions on how to submit a claim for your cash payment. You will have ninety (90) days from the date that the Settlement Administrator sends you the Final Approval Order and instructions on how to submit a claim for your cash payment to submit your claim form. If your address has changed, you must provide your new address to the Settlement Administrator. To contact the Settlement Administrator, visit **[insert website]** or call **[insert]**.

WHEN WILL I RECEIVED MY SETTLEMENT AWARD?

The Court will hold a Final Fairness Hearing on March 2, 2021 at 9:30 a.m. at the Courtroom of the Honorable Nicholas Lopane at the Broward County Courthouse, 201 S.E. 6th Street, Room 14129, WW14155, Fort Lauderdale, Florida 33301, to decide whether to approve the settlement. **The date, time, place or manner of the final approval hearing may be changed by**

the Court without notice to the Settlement Class, and you should check the Settlement Website at [insert web address] or the public court records on file in this lawsuit for any updates; the public court records can also be accessed at www.browardclerk.org. If the Court approves the settlement, there may be appeals, which could extend the process by several months or more.

IN RETURN FOR THESE SETTLEMENT BENEFITS, WHAT AM I GIVING UP?

If the Court approves the proposed settlement and you do not request to be excluded from the Settlement Class, you must release (meaning, give up) all legal claims against NSU 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 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. Class Members retain any and all defenses they may have concerning the alleged debts, 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 from any obligations related to those debts accrued or incurred through November 2018 have been voluntarily waived by NSU, and NSU releases class members from those obligations.

This release includes any other lawsuit or proceeding already in progress.

The judgment and orders entered in this case, whether favorable or unfavorable, will bind all Settlement Class Members who do not request to be excluded, regardless of whether a Settlement Class Member submits a claim form. The full terms of the Release are stated above and are also available on the Settlement Website at [**web address**], or at the public court records on file in this lawsuit.

THE LAWYERS REPRESENTING YOU

DO I HAVE A LAWYER IN THIS CASE?

All Settlement Class Members are represented by Plaintiffs' Counsel, who have been preliminarily approved by the Court to serve as Class Counsel representing the Settlement Class for purposes of the settlement. If you want to be represented by your own lawyer, you may hire one at your own expense and enter an appearance through your own counsel.

HOW WILL THE LAWYERS BE PAID?

The Court has preliminarily approved Class Counsel's attorneys' fees in the amount of \$1,855,000 and Class Counsel's costs in the amount of \$30,000 to be paid out of the total Settlement Fund. The actual award of attorneys' fees and litigation expenses will be decided by the Court at the Final Fairness Hearing.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, but you want to keep the right to sue or continue to sue NSU on your own about the legal issue in this case, then you must take steps to be excluded from the settlement. This is called excluding your self – or is sometimes referred to as opting out of the Settlement Class.

HOW DO I GET OUT OF THE SETTLEMENT?

If you do not wish to be included in the Settlement Class and receive a cash payment, you must send a letter stating that you want to be excluded from the Settlement Class in *Tiffany Aguero, individually, and on behalf of her minor child, L.H., and on behalf of all others similarly situated v. Nova Southeastern University, Inc.*, Case number CACE-18-028483 17th Judicial Circuit in and for Broward County, Florida.

Be sure to include your name, your current address and telephone number, your signature (or that of the legal representative), and a statement that you wish to be excluded from the Settlement Class.

You must mail your letter requesting exclusion by first class United States mail postmarked no later than **[date 45 days after Notice]** to: **[insert Administrator address]**

You cannot exclude yourself via telephone, fax, or email.

WHAT HAPPENS IF I EXCLUDE MYSELF FROM THE SETTLEMENT?

If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. However, you will not be legally bound by anything that happens in this lawsuit and you will keep your right to separately pursue claims against NSU relating to the subject matter of this lawsuit.

IF I DON'T EXCLUDE MYSELF, CAN I SUE DEFENDANTS FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up the right to sue NSU for the claims that this settlement resolves. You must exclude yourself from *this* case and the Settlement Class to pursue your own lawsuit. Remember, your letter requesting exclusion must be postmarked on or before **[date]**.

IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THIS SETTLEMENT?

No. If you exclude yourself, you will not receive any money from the settlement. But, you will not lose any right you may have to sue (or continue to sue) in a different lawsuit against NSU about the legal issues or claims in this case. If you choose to initiate a new lawsuit, your claim will be subject to time limitations, so you must act promptly.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not like the settlement or some part of it.

HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?

If you are a Settlement Class Member, you can object to the settlement if you do not like any part of it, and the Court will consider your views. To object, you must file a letter with the Court and serve a copy to Class Counsel and NSU's Counsel saying that you object to the settlement in *Tiffany Aguero, individually, and on behalf of her minor child, L.H., and on behalf of all others similarly situated v. Nova Southeastern University, Inc.*, Case number CACE-18-028483 17th Judicial Circuit in and for Broward County, Florida.

Be sure to include a heading which refers to the name of this case, your name, your address, your telephone number, your signature, a statement that you received a letter from Linda Niessen, Dean and Professor of Nova Southeastern University's College of Dental Medicine, informing you that you may have been exposed to inconsistencies in prescribed sterilization protocols while a patient at NSU's Post-Graduate Orthodontic Clinic, that you obtained a blood test, and that your blood test was negative, a statement whether you intend to appear at the Final Fairness Hearing, and the reasons and facts for why you object to the settlement. You must also affirm under penalty of perjury that you are a Settlement Class Member. If you are represented by counsel, be sure to include the name, address, and telephone number of that lawyer.

Your objection ***must be received by*** these three different places no later than **[date 45 days after notice is sent]**:

Clerk of the Court for Honorable Nicholas Lopane
Broward County Courthouse
201 S.E. 6th Street, Room 14129, WW14155
Fort Lauderdale, FL 33301

Class Counsel

Jay Cohen
COHEN, BLOSTEIN & AYALA PA
100 SE 3rd Avenue, Suite 1100
Fort Lauderdale, FL 33394

NSU Counsel

Evan Marowitz
COLE, SCOTT & KISSANE
110 Tower
110 S.E. 6th Street, Suite 2700
Ft. Lauderdale, FL 33301

WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

Objecting is telling the Court that you do not like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class or the lawsuit. You cannot request exclusion **and** object to the settlement. If you exclude yourself, you have no basis to object because the lawsuit and settlement no longer affect you.

THE FINAL FAIRNESS HEARING

The Court will hold a Final Fairness Hearing to decide whether to approve the settlement. You may attend, and you may ask to speak at the hearing, but you are not required to do either.

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a Final Fairness Hearing on March 2, 2021 at 9:30 a.m. at the Courtroom of the Honorable Nicholas Lopane at the Broward County Courthouse, 201 S.E. 6th Street, Room 14129, WW14155, Fort Lauderdale, Florida 33301. **The hearing date, time, or manner (ie, by way of video or telephone conference in lieu of live hearing) may be changed by the Court without notice to the Settlement Class, and you should check the Settlement Website at [web address] or the public court records on file in this lawsuit for any updates.** At the Final Fairness 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. After the hearing, the Court will decide whether to approve the settlement. The Court will also finalize the award to Class Counsel of attorneys' fees and litigation expenses. We do not know how long this decision will take.

DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come to the hearing at your own expense. If you submit an objection, you do not have to

attend the hearing. As long as you filed and delivered your written objection on time, signed it and provided all of the required information, the Court will consider it. You may also pay your own lawyer to attend the hearing, but it is not necessary.

MAY I SPEAK AT THE HEARING?

If you are a Settlement Class Member, you may speak at the Final Fairness Hearing, subject to any limitations made by the judge presiding over the hearing. You cannot speak at the hearing if you exclude yourself from the Settlement Class.

IF YOU DO NOTHING

WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing, you will be part of the Settlement Class. You will receive in the mail from the Settlement Administrator a copy of the Final Fairness Order along with instructions on how to submit a claim form to receive your cash payment from the settlement. You will have ninety (90) days from the date the Settlement Administrator sends you the Final Fairness Order and instructions on how to submit a claim form to submit the claim form. **If you do not file a timely and complete claim form, you will not receive your cash payment.** Regardless of whether you submit a claim form, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against NSU about the claims and issues in this case.

GETTING MORE INFORMATION

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The Stipulation of Settlement contains the complete terms of the parties' agreement. You can get a copy at **[Settlement Website]**, or by reviewing the records on file in the Court's civil case records ("DomainWeb") at <http://www.browardclerk.org>.

The pleadings and other documents in this lawsuit may also be examined during regular business hours at the Office of the Clerk, Broward County Courthouse, 201 S.E. 6th Street, Room 14129, WW14155, Fort Lauderdale, Florida 33301.

If you have additional questions, you may call the Settlement Administrator at **[insert]**.

DO NOT CONTACT THE COURT OR COURT CLERK'S OFFICE REGARDING THIS NOTICE. ALL INQUIRIES SHOULD BE DIRECTED TO THE SETTLEMENT ADMINISTRATOR