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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CHAD HUMPHREY, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

SWEDISH HEALTH SERVICES, a
Washington Corporation, doing
business as SWEDISH MEDICAL
CENTER; and DOES 1 through 25,
inclusive,

Defendants.

No. 12-2-25691-8 SEA

Findings of Fact, Conclusions of Law,
and Order Granting Plaintiff's Motion
for Class Certification

THIS MATTER having come before the Court on Plaintiff's Motion for Class Certification pursuant to CR 23(a), (b)(2) and (b)(3), Defendant Swedish Health Services having responded, and the Court having considered the pleadings on file, the arguments of counsel at the hearing on this motion on June 21, 2013, and the following submissions:

1. Plaintiff's Motion for Class Certification;
2. Declarations of Adam J. Berger and Barry Kramer in Support of Plaintiff's Motion for Class Certification with exhibits attached thereto;



- 1 3. Defendant Swedish Health Services' Opposition to Class Certification;
- 2 4. Declarations of Ryan Gist, Agata Czernik, Dayna Glisson, Daniel
- 3 Harris, Trenton Manchester, Iris Mireau, and Elise Myers in Support of
- 4 Swedish's Opposition to Class Certification with exhibits attached
- 5 thereto;
- 6 5. Reply in Support of Plaintiff's Motion for Class Certification; and
- 7 6. Second Declaration of Adam J. Berger in Support of Motion for Class
- 8 Certification with exhibits attached thereto.
- 9

10 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11 The Court hereby finds, concludes, and orders as follows:

12 1. Certification of class actions is governed by Civil Rule 23. At the class

13 certification stage, doubts are resolved in favor of class certification. *Smith v. Behr*

14 *Process Corp.*, 113 Wn. App. 306, 318-19, 54 P.3d 665 (2002). As the Court of

15 Appeals has noted, "courts generally assume that the allegations in the pleadings

16 are true and will not attempt to resolve material factual disputes or make any inquiry

17 into the merits of the claim." *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 820, 64

18 P.3d 49 (2003)(citations omitted). "Courts may, however, go beyond the pleadings

19 and examine the parties' evidence to the extent necessary to determine whether the

20 requirements of CR 23 have been met." *Miller*, 115 Wn. App. at 820 (*citing Oda v.*

21 *State*, 111 Wn. App. 79, 94, 44 P.3d 8 (2002)). Because class actions are a

22 specialized proceeding available in limited circumstances, the trial court must

23 conduct a "rigorous analysis" of the CR 23 requirements to determine whether a

24 class action is appropriate in a particular case. *Oda*, 111 Wn. App. at 93 (quoting

25

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1 *General Tel. Co. v. Falcon*, 457 U.S. 147, 160-61, 102 S. Ct. 2364, 72 L. Ed. 2d 740
2 (1982)).

3 2. The class proposed by plaintiff in this case consists of all individuals
4 (or their guardians or representatives) who, from July 31, 2006 to the date of class
5 certification, (a) received medical treatment through a Swedish Health Services
6 emergency department in Washington State; (b) were not covered by insurance or
7 government healthcare programs at the time of treatment; and (c) did not receive a
8 discount or waiver of their charges from Swedish.
9

10 3. In this case, plaintiff has satisfied the CR 23(a) elements of
11 numerosity, commonality, typicality, and adequacy of representation, as follows:

12 (A) CR 23(a)(1) - Numerosity: A class should only be certified
13 where a plaintiff demonstrates that the proposed class "is so numerous that joinder
14 of all members is impracticable." *Miller*, 115 Wn. App. at 821. This criterion is
15 sometimes satisfied by sheer numbers alone, and courts have found a presumption
16 of impracticability when the class numbers 40 or more. *See Pierce v. Novastar*, 238
17 F.R.D. 624, 630 (W.D. Wash 2006) (numerosity satisfied when at least 60 persons in
18 class); *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 64 P.3d 49, 53 (2003) (federal
19 courts have recognized a rebuttable presumption that joinder is impracticable where
20 a class contains at least 40 members; the *Miller* class ultimately included 29
21 potential members). A plaintiff need not, however, prove the exact number of
22 members in a putative class in order to obtain class certification.
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25 There is insufficient evidence in the record to identify specifically how many
26 uninsured patients treated at Swedish during the class period did not have their

1 hospital bills discounted or waived. However, the record does reflect that over
2 11,000 uninsured patients were treated in Swedish emergency departments during
3 2012 alone. Plaintiff and the Court may rely on common sense assumptions and
4 reasonable inferences in determining whether the requirements of CR 23(a)(1) are
5 met. Given the tens of thousands of uninsured patients seen in the Swedish
6 emergency departments during the proposed class period, the Court finds that that
7 the numerosity requirement is met.
8

9 (B) CR 23(a)(2) - Commonality: To satisfy this requirement,
10 plaintiffs' allegations must derive from a "common course of conduct" with respect to
11 the class. *Miller*, 115 Wn. App. at 824. "The commonality test is qualitative rather
12 than quantitative, that is, there need be only a single issue common to all members
13 of the class." *Smith*, 113 Wn. App. at 323. Here, there are common questions of law
14 and fact. All class members signed a Conditions of Admission form with the same
15 financial responsibility provision. Plaintiff and Defendant disagree as to whether this
16 provision obligates class members to pay only reasonable charges for the treatment
17 received or the Defendant's Chargemaster amounts. Construction of the terms of the
18 financial responsibility provision signed by class members poses a common question
19 sufficient to satisfy CR 23(a)(2).
20

21 (C) CR 23(a)(3) - Typicality: The claim of the proposed class
22 representative must be typical of the claims of other class members. A
23 representative plaintiff's claim is typical if it arises out of the same course of conduct
24 and is based on the same legal theory as all class members' claims. *Weston v.*
25 *Emerald City Pizza, L.L.C.*, 137 Wn. App. 164, 170, 151 P.3d 1090 (2007). Here,
26

1 plaintiff signed the same agreement as other class members, had his charges set by
2 Swedish in the same way, and did not receive a discount or waiver of his bill. Thus,
3 CR 23(a)(3) is satisfied.

4 (D) CR 23(a)(4) - Adequacy of Representation: Under this element,
5 there must not be any adversity of interest between the class representative and
6 other class members, and the attorneys for the class representative must be
7 qualified to conduct the proposed litigation.
8

9 Based on the evidence submitted, proposed counsel are qualified and there
10 are no conflicts of interest between the named class representative and the class.
11 Accordingly, the proposed class satisfies CR 23(a)(4).

12 4. Plaintiff also must satisfy at least one of the subdivisions of CR 23(b).
13 Here, plaintiff seeks certification under both CR 23(b)(2) and CR 23(b)(3).
14

15 5. Plaintiff has satisfied the elements of CR 23(b)(2), which requires that
16 "[t]he party opposing the class has acted or refused to act on grounds generally
17 applicable to the class, thereby making appropriate final injunctive relief or
18 corresponding declaratory relief with respect to the class as a whole." Here,
19 Defendant has acted in a common way toward the class in setting their payment
20 obligations, the entire class would benefit from knowing the extent of their payment
21 obligations, and therefore injunctive or declaratory relief defining the payment
22 obligations of the class as a whole is appropriate.
23

24 6. Plaintiff also has satisfied the elements of CR 23(b)(3). CR 23(b)(3)
25 requires the Court to find that "questions of law or fact common to the members of
26 the class predominate over any questions affecting only individual members, and

1 that a class action is superior to other available methods for the fair and efficient
2 adjudication of the controversy.” The rule requires the Court to consider the
3 following factors in making this assessment: “(a) the interest of members of the
4 class in individually controlling the prosecution or defense of separate actions; (b)
5 the extent and nature of any litigation concerning the controversy already
6 commenced by or against members of the class; (c) the desirability or undesirability
7 of concentrating the litigation of the claims in the particular forum; and (d) the
8 difficulties likely to be encountered in the management of a class action.” The
9 purpose of the predominance and superiority requirements is to ensure that class
10 treatment will promote economy of time, effort, and expense, and a uniformity of
11 decisions to persons similarly situated.
12

13
14 (A) Predominance: The CR 23(b)(3) predominance requirement is
15 “somewhat more stringent than the CR 23(a)(2) commonality requirement but
16 involves a similar inquiry....” *Sitton v. State Farm*, 116 Wn. App. 245, 255, 63 P.3d
17 198 (2003). This requirement “is not a rigid test,” but is a pragmatic inquiry that
18 focuses on judicial economy and looks to “whether there is a common nucleus of
19 operative facts to each class member’s claims.” *Id.* In this case, the predominant
20 issue that must be resolved is the measure of the legal payment obligation of
21 uninsured patients for medical goods and services provided in the Swedish
22 emergency departments.
23

24 (B) Superiority: Moreover, a class action is a superior approach to
25 resolving the payment liability of uninsured patients for emergency medical
26 treatment. The Court is not aware of any other lawsuits of this type against Swedish

1 and therefore no indication that individual class members wish to individually control
2 the litigation. It would serve the interests of judicial efficiency, economy, and
3 uniformity of decision to have the central payment liability issue concentrated and
4 adjudicated in this forum. Finally, to the extent that individual determinations of
5 damages may ultimately prove necessary, Washington's appellate courts have
6 explained that this does not necessarily preclude class certification under CR
7 23(b)(3). *Smith*, 113 Wn. App. at 323; *Moeller v. Farmers Insurance Co. of*
8 *Washington*, 173 Wn.2d 264, 280, 267 P.3d 998 (2011).

9
10 Accordingly, plaintiffs have satisfied CR 23(b)(3).

11
12 **ORDER**

13
14 For the foregoing reasons,

15 IT IS ORDERED that a class be certified under CR 23(a), (b)(2), and (b)(3)
16 and defined as follows:

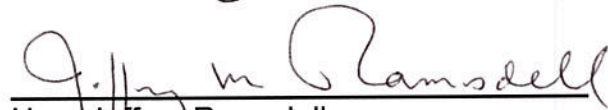
17 All individuals (or their guardians or representatives) who, from July 31,
18 2006 to the date of class certification, (a) received emergency medical
19 treatment through a Swedish Health Services emergency department
20 in Washington State; (b) were not covered by insurance or government
healthcare programs at the time of treatment; and (c) did not receive a
discount or waiver of their charges from Swedish.

21 IT IS FURTHER ORDERED that Adam J. Berger of Schroeter Goldmark &
22 Bender, and Barry L. Kramer of the Barry L. Kramer Law Office shall be designated
23 as Class Counsel, and that Chad Humphrey shall be designated as the class
24 representative;

25 IT IS FURTHER ORDERED that Class Counsel and Counsel for the
26 Defendant shall confer regarding Notice to the CR 23(b)(3) class and submit either

1 an agreed Notice or competing Notices to the Court within 30 days of the date of this
2 Order.

3 IT IS SO ORDERED this 2nd day of July, 2013.
4

5
6 
7 Hon. Jeffrey Ramsdell
King County Superior Court

8 PRESENTED BY:

9 SCHROETER, GOLDMARK & BENDER

10 s/ Adam J. Berger

11 ADAM J. BERGER, WSBA #20714
12 Sims Weymuller, WSBA #33026

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