IN THE LAW COURT FOR SULLIVAN COUNTY
AT KINGSPORT, TENNESSEE

FILED
6-1-21 4:40
Bobby L. Russell
CIRCUIT COURT CLERK
SULLIVAN COUNTY, TN

HIGHLANDS PHYSICIANS, INC., a Delaware corporation, for itself and as representative of a class of itself and its members, Plaintiff, v. WELLMONT HEALTH SYSTEM, Defendant.	)	Case No.: c41368(C)

JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Highlands Physicians, Inc. ("HPI"), for itself and as representative of the class certified by this Court, and Wellmont Health System ("Wellmont") have reached a settlement of the above-captioned class action lawsuit and have executed a Settlement Agreement and Release (the "Agreement" or the "Settlement") that provides a variety of benefits to the class. The Settlement is attached as ***Exhibit 1.***

Pursuant to Tennessee Rule of Civil Procedure 23.05, and for the reasons set forth in the contemporaneously filed Memorandum, the parties jointly move this Court to (i) preliminarily approve the terms of the Settlement as fair, adequate, and reasonable; (ii) approve the form and content of the Notice to Class Members of Proposed Settlement of Class Action, attached as ***Exhibit 2***, as well as the proposed method of disseminating notice to the class; and (iii) schedule a final approval hearing for approximately sixty (60) days from entry of the preliminary approval order.

A proposed Preliminary Approval Order is attached hereto as ***Exhibit 3***.

Dated: June 1, 2021.

Respectfully submitted,

HIGHLANDS PHYSICIANS, INC.

Matthew C. Wolfe w/ permission

One of Its Attorneys

Emily L. Herman-Thompson (021518)
James G. O'Kane (005703)
BAKER, O'KANE, ATKINS & THOMPSON, PLLP
2607 Kingston Pike, Ste. 200
Knoxville, TN 37919
(865) 637-5600
ethompson@boatlf.com
jokane@boatlf.com

Gary M. Elden
Matthew C. Wolfe
Peter O'Neill
SHOOK, HARDY & BACON L.L.P.
111 South Wacker Drive, Suite 4700
Chicago, Illinois 60606
(312) 704-7700
gelden@shb.com
mwolfe@shb.com
pfoneill@shb.com

Richard E. Ladd, Jr. (011564)
PENNSTUART
804 Anderson Street
Bristol, TN 37620
(423) 793-4800
rladd@pennstuart.com

Attorneys for Plaintiff Highland Physicians, Inc.

Respectfully submitted,

WELLMONT HEALTH SYSTEM

One of Its Attorneys

W. Brantley Phillips, Jr. (18844)
David R. Esquivel (21459)
Matthew J. Sinback (23891)
BASS, BERRY & SIMS PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
(615) 742-6200
bphillips@bassberry.com
desquivel@bassberry.com
msinback@bassberry.com

W. Kyle Carpenter (5332)
J. Ford Little (13870)
WOOLF, McCLANE, BRIGHT ALLEN & CARPENTER, PLLC
P.O. Box 900
Knoxville, TN 37901-0900
(865) 215-1000
flittle@wmbac.com
kcarpenter@wmbac.com

Attorneys for Defendant Wellmont Health System

CERTIFICATE OF SERVICE

I hereby certify that on **June 1, 2021**, I caused a true and correct copy of the foregoing **JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT** to be served in this action via email and first-class mail, postage prepaid upon the following:

Emily L. Herman-Thompson (021518)
James G. O'Kane (005703)
BAKER, O'KANE, ATKINS & THOMPSON, PLLP
2607 Kingston Pike, Ste. 200
Knoxville, TN 37919
(865) 637-5600
ethompson@boatlf.com
jokane@boatlf.com

Gary M. Elden
Matthew C. Wolfe
Peter O'Neill
SHOOK, HARDY & BACON L.L.P.
111 South Wacker Drive, Suite 4700
Chicago, Illinois 60606
(312) 704-7700
gelden@shb.com
mwolfe@shb.com
pfoneill@shb.com

Richard E. Ladd, Jr. (011564)
PENNSTUART
804 Anderson Street
Bristol, TN 37620
(423) 793-4800
rladd@pennstuart.com

IN THE LAW COURT FOR SULLIVAN COUNTY
AT KINGSPORT, TENNESSEE

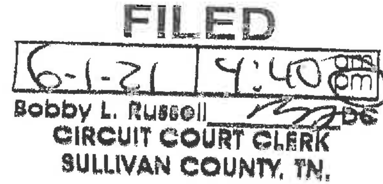
HIGHLANDS PHYSICIANS, INC.,
a Delaware corporation,
for itself and as representative
of a class of itself and its members,

Plaintiff,

v.

WELLMONT HEALTH SYSTEM,

Defendant.



Case No.: c41368(C)

MEMORANDUM IN SUPPORT OF
JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Emily L. Herman-Thompson (021518)
James G. O'Kane, (005703)
BAKER, O'KANE, ATKINS & THOMPSON, PLLP
2607 Kingston Pike, Ste. 200
Knoxville, TN 37919
(865) 637-5600
ethompson@boatlf.com
jokane@boatlf.com

Gary M. Elden
Matthew C. Wolfe
Peter O'Neill
SHOOK, HARDY & BACON L.L.P.
111 South Wacker Drive, Suite 4700
Chicago, Illinois 60606
(312) 704-7700
gelden@shb.com
mwolfe@shb.com
pfoneill@shb.com

Richard E. Ladd, Jr. (011564)
PENNSTUART
804 Anderson Street
Bristol, TN 37620
(423) 793-4800
rladd@pennstuart.com

Attorneys for Plaintiff Highland Physicians, Inc.

W. Brantley Phillips, Jr. (18844)
David R. Esquivel (21459)
Matthew J. Sinback (23891)
BASS, BERRY & SIMS PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
(615) 742-6200
bphillips@bassberry.com
desquivel@bassberry.com
msinback@bassberry.com

W. Kyle Carpenter (5332)
J. Ford Little (13870)
WOOLF, McCLANE, BRIGHT ALLEN & CARPENTER, PLLC
P.O. Box 900
Knoxville, TN 37901-0900
(865) 215-1000
flittle@wmbac.com
kcarpenter@wmbac.com

Attorneys for Defendant Wellmont Health System

TABLE OF CONTENTS

INTRODUCTION 1

BACKGROUND, PROCEDURAL HISTORY, AND SETTLEMENT NEGOTIATIONS 4

I. Case Background and History of Settlement Discussions. 4

II. Recent Settlement Negotiations. 6

ARGUMENT 7

I. The Settlement Is Fair, Adequate, and Reasonable. 9

A. The Agreement Is the Product of Non-Collusive, Arm's Length Negotiations That Occurred After Extensive Litigation, Class Certification, Trial, and Appeal. 9

B. The Settlement Was Recommended by Experienced Class Counsel and Approved by Both Parties' Boards. 9

C. The Settlement Is Plainly Within the Range of Reasonable Outcomes. 10

D. The Settlement Promotes the Best Interests of the Class and the Community by Restructuring and Revitalizing HWHN. 10

II. The Court Should Approve the Form and Method of Class Notice 12

III. The Court Should Set the Final Approval Hearing 12

CONCLUSION 13

INTRODUCTION

The parties to this long-running dispute have reached a settlement of the litigation and have executed a Settlement Agreement and Release (the "Agreement" or the "Settlement") that provides a variety of benefits to Plaintiff and its members.[1] The Settlement is attached as ***Exhibit 1*** to the Joint Motion for Preliminary Approval of Class Settlement ("Joint Motion"). The Settlement awards Highlands Physicians, Inc. ("HPI") and HPI's individual members (the "Class") (collectively, "Class Members") tens of millions of dollars in compensation. It provides for the exit of Wellmont Health System ("Wellmont") from Wellmont and HPI's joint venture, the Highlands Wellmont Health Network ("HWHN" or the "Network"), which the parties are optimistic will lead to lasting peace between HPI and Wellmont. And, it provides financing and lays the groundwork for the transition to a new network, wholly owned by HPI for the benefit of its members, that will continue to serve important healthcare needs in the Tri-Cities and surrounding communities.

The key terms of the settlement are:

- Wellmont will pay $67,086,667 in full and final resolution of the Court's January 22, 2019 judgment ("Judgment").
- Wellmont will pay an additional approximately $16 million to resolve remaining issues, including HPI's claim for shifting fees and costs to Wellmont; HPI's claim for unpaid "tithes" owed by Wellmont for the period after trial; to obtain a release of other known potential claims that HPI may have against Wellmont; and to ensure an orderly exit by Wellmont from HWHN.

[1] Capitalized terms not defined herein have the meaning given them in the Agreement.

- About $52 million will be distributed to the Class consistent with HPI's theory of liability and damages at trial pursuant to a distribution plan that HPI will file with the Court no later than 30 days before the final approval hearing.
- HPI anticipates requesting about $2 million in litigation-related costs as part of the Distribution Plan.
- Approximately $1 million will be paid to HPI for unpaid tithes that HPI alleges have accrued since the entry of the Judgment.
- HPI will become the sole owner of HWHN. Connected with this benefit to the Class, $3 million will be paid into escrow to be used to indemnify Wellmont against any claims or issues asserted after HPI assumes full ownership of HWHN. And, before Wellmont transfers ownership, Wellmont will deposit $6.7 million into HWHN to assist with capitalizing HWHN going forward. Further, to provide a steady stream of income to HWHN, Wellmont will continue to participate in the Network's existing payor contracts during a "Limited Participation Period," as defined in Section 3 of the Agreement.
- In addition, Wellmont is cancelling an obligation of more than $2 million it claims is owed by HWHN, and HPI is getting whatever benefit there may be in more than $2 million of tax loss carry-forwards.
- Class Counsel—Shook, Hardy & Bacon L.L.P. ("Shook")—will request a fee of $18 million pursuant to its contingency agreement with HPI. This amount is millions of dollars *less* than Class Counsel could be entitled to under its fee agreement with HPI, but Class Counsel agreed to cap its fee at $18 million to facilitate settlement.

- This Court's injunction barring Wellmont from retaliating against HPI employees, directors, and officers will be revised in a way that benefits the class by reducing the likelihood of future litigation and shifting certain dispute resolution costs to Wellmont.
- Mutual releases of all litigation-related claims.

As discussed below, the Settlement is fair, reasonable, and was negotiated at arm's length by experienced, competent counsel in consultation with a preeminent mediator at a leading ADR firm. It resolves not just the litigation, but also numerous business issues at the heart of the litigation. By resolving these issues, the Settlement ensures Wellmont's orderly transition out of HWHN while also providing HWHN the resources needed to serve the Class and the larger community. The parties therefore request that the Court grant the Joint Motion and preliminarily approve the terms of the Settlement as fair, adequate, and reasonable.

The parties also request that this Court approve the method and form of class notice. The proposed Notice to Class Members of Proposed Settlement of Class Action ("Settlement Notice"), attached as ***Exhibit 2*** to the Joint Motion, fairly apprises Class Members of the proposed settlement. And, the proposed method of disseminating the Settlement Notice, which is set forth in Section 28 of the Agreement, substantially mirrors the method previously approved by this Court in an Order dated May 4, 2021.

Finally, the parties request that this Court schedule the final approval hearing for approximately 60 days from the date that it enters the proposed Preliminary Approval Order, attached as ***Exhibit 3*** to the Joint Motion.

BACKGROUND, PROCEDURAL HISTORY, AND SETTLEMENT NEGOTIATIONS

I. Case Background and History of Settlement Discussions.

The parties have engaged in many years of negotiation to resolve their disputes. In fact, efforts to reach a settlement date back to 2012 before the commencement of litigation. These early efforts were unsuccessful, and, in 2015, HPI retained Shook's Gary Elden ("Elden"). After Shook was retained, HPI and Wellmont agreed to a standstill agreement and renewed efforts to reach a negotiated resolution. When those settlement discussions failed, HPI filed a complaint and motion for class certification on February 2, 2016.

Nevertheless, the parties continued to negotiate. At the conclusion of an August 31, 2016 hearing on class certification, the Court ordered the parties to mediation. This was the first of several court-ordered mediations that lasted several months, and included numerous meetings between the parties to work on resolving their legal and business issues.

On July 24, 2017, the Court granted HPI's Motion for Class Certification. When it certified the Class, the Court found that Shook was adequate class counsel. Shook has more than 500 lawyers, including a 50-lawyer class action group, and primarily handles complex litigation, trying dozens of cases a year all over the United States. Lead counsel Elden has over 50 years of experience as a litigator representing both plaintiffs and defendants; specializes in trying large complex cases over very large sums of money; has been involved in more than 50 class actions, seven of which he tried; and has given numerous continuing legal education presentations on class actions.

Wellmont appealed the Court's certification of the class. The Court of Appeals and the Tennessee Supreme Court affirmed this Court in large part in December 2017 and March 2018, respectively. The litigation then continued in earnest through 2018, with dozens of depositions

taken in numerous cities, thorough briefing on numerous summary judgment and other motions, and the review of hundreds of thousands of pages of documents.

During 2018, the Court again ordered the parties to mediate on several occasions. At least three in-person mediation sessions took place, one during trial. None resulted in settlement.

The case was tried to a jury in November and December 2018. On December 18, 2018, the jury reached a verdict and awarded HPI and the Class a combined $57,959,053.00 under various theories of liability. On January 22, 2019, the Court entered the Judgment in that amount. Later, on March 29, 2019, the Court issued an injunction that says, in part: "The Court ... **ENJOINS** Wellmont from retaliating against HPI, its members, and the witnesses in this lawsuit (i) for participation in this lawsuit; (ii) for testimony given in this lawsuit; or (iv) [sic] in general, for advancing the interest of the Network or HPI in this lawsuit."

After trial, HPI moved for a ruling shifting its attorneys' fees and costs to Wellmont and requested it be awarded $13,143,789.30 in fees and $1,416,375.19 in costs. On March 28, 2019, the Court ruled that HPI could shift its reasonable fees and costs to Wellmont. On June 24, 2019, the Court ruled that those "reasonable fees and costs" totaled $4,185,567.20.

On March 28, 2019 Wellmont filed its notice of appeal. The appeal was briefed in the spring of 2020 and argued on June 11, 2020. On September 25, 2020, the Court of Appeals affirmed in most respects but vacated the Court's ruling on attorneys' fees and remanded for a jury trial on the amount of fees that could be shifted to Wellmont. *See Highlands Physicians, Inc. v. Wellmont Health Sys.*, No. E201900554COAR3CV, 2020 WL 5754574 (Tenn. Ct. App. Sept. 25, 2020), appeal denied (Mar. 17, 2021). Subsequently, Wellmont filed an Application for Permission to Appeal to the Tennessee Supreme Court. On March 17, 2021, the Tennessee Supreme Court denied Wellmont's application.

II. Recent Settlement Negotiations.

As noted above, the parties discussed settlement throughout the litigation. But, little progress was made on settlement until after the appeal had been fully briefed and argued. At that time, Wellmont counsel at Bass, Berry & Sims PLC ("Bass Berry") recommended hiring Gregory P. Lindstrom ("Lindstrom"), an experienced and highly respected California-based mediator with the Phillips ADR firm, to assist with discussions. Lindstrom's qualifications are available at: http://www.phillipsadr.com/dnld/bio/PhillipsADR-GregoryLindstrom.pdf. After HPI interviewed Lindstrom, the parties agreed to retain him to assist with negotiations through a customized, ongoing mediation process, in which Lindstrom would, as needed, facilitate discussions both between the parties and internal to the parties. Lindstrom remained involved in this manner through the final resolution of the case, spending dozens of hours on the case, hearing detailed presentations from both sides, and interfacing directly with decisionmakers on both sides. He also provided a "mediator's proposal" at the conclusion of negotiations, which led to the final settlement, as discussed below.

From August 2020 through May 2021, the parties had extensive, complex, arm's length discussions, both with and without Lindstrom, involving at least two firms on Wellmont's side (Bass Berry; and Woolf, McClane, Bright, Allen & Carpenter, PLLC ("Woolf McClane")) and at least four firms on HPI's side (Shook; Baker, O'Kane, Atkins & Thompson, PLLP ("Baker O'Kane"); Perkins Coie LLP ("Perkins Coie"); and The Elden Law Firm). The parties exchanged at least a half dozen drafts of the Agreement and exchanged hundreds of phone calls and emails to resolve many complex issues, including significant non-monetary issues, such as the provision against retaliation and the future operations of HWHN.

By early May 2021, the parties had agreed on most issues, with just a few non-monetary issues remaining. Through extensive discussions, the parties agreed on the non-monetary issues,

and Lindstrom supplied a final "mediator's recommendation" to bridge a remaining gap on the monetary term. Both sides accepted Lindstrom's mediator's recommendation that Wellmont pay approximately $16 million above the Judgment amount of $67 million (a total of $83 million) to resolve all issues.

Each side's set of lawyers and businesspeople responsible for settlement negotiations then recommended settlement to HPI's Special Litigation Committee ("SLC") and Wellmont's Boards of Directors, respectively, which authorized the settlement. In the opinion of Class Counsel, the final settlement is fair and reasonable to the Class and HPI, and it is unlikely that the Class and HPI could obtain a materially better outcome for the class by continuing negotiations or litigation.

ARGUMENT

"A certified class action shall not be voluntarily dismissed or compromised without approval of the court." Tenn. R. Civ. P. 23.05. In evaluating a class action settlement, the Court must "bear in mind that 'the law favors the settlement of disputes.'" *In re Pacer Int'l*, No. M2015-00356-COA-R3-CV, 2017 WL 2829856, at *7 (Tenn. Ct. App. 2017) (quoting *First Nat'l Bank v. Union Ry. Co.*, 284 S.W. 363, 364 (Tenn. 1926)). "The court must determine, not whether the settlement represents the best outcome, but whether it falls within the 'range of reasonableness.'" *Id.* Put more simply, the Court evaluates the fairness of the settlement. *Id.*; *see also Denver Area Meat Cutters and Employers Pension Plan v. Clayton*, 209 S.W.3d 584, 590 (Tenn. Ct. App. 2006).

Although the Court need not follow them, *see In re Pacer Int'l*, 2017 WL 2829856, at *6, the factors used by Tennessee federal courts in evaluating fairness are instructive: (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the

opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest. *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 276–77 (6th Cir. 2016).

Moreover, at the preliminary approval stage, the Court need not evaluate the ultimate fairness of the Settlement. Rather, the question for the Court to resolve is "simply whether the settlement is fair enough that it is worthwhile to expend the effort and costs associated with sending potential class members notice and processing opts-outs and objections." *Hillson v. Kelly Servs.*, Case No. 2:15-cv-10803, 2017 WL 279814, at *6 (E.D. Mich. Jan. 23, 2017). Accordingly, at the preliminary approval stage, "the bar to meet the 'fair, reasonable, and adequate' standard is lowered[.]" *In re Regions Morgan Keegan Secs.*, No. 08-cv-2260, 2015 WL 11145134, at *3 (W.D. Tenn. Nov. 30, 2015) (quoting *In re National Football League Players' Concussion Injury Litigation*, 961 F. Supp. 2d 708, 714 (E.D. Penn. 2014)); *Johnson v. W2007 Grace Acquisition I, Inc.*, No. 13-2777, 2015 WL 12001268, at *4 (W.D. Tenn. Apr. 30, 2015) (same).

The "general rule" is that the Court should grant preliminary approval "where the proposed settlement was 'neither illegal nor collusive and is within the range of possible approval.'" 4 NEWBERG ON CLASS ACTIONS § 13:10 (5th ed.); *see also* 2 MCLAUGHLIN ON CLASS ACTIONS § 6:7 (17th ed.) ("Generally, a proposed settlement will be preliminarily approved unless there are obvious defects in the notice or other technical flaws, or the settlement is outside the range of reasonableness or appears to be the product of collusion, rather than arms-length negotiation.") If so, notice should be provided to the Class to allow members the opportunity to review the Settlement. The parties are requesting that the Court allow exactly this

procedure here and schedule a final approval hearing for approximately sixty (60) days from entry of a preliminary approval order.

I. The Settlement Is Fair, Adequate, and Reasonable.

A. The Agreement Is the Product of Non-Collusive, Arm's Length Negotiations That Occurred After Extensive Litigation, Class Certification, Trial, and Appeal.

The parties have engaged in efforts to resolve this dispute for nearly a decade. Throughout that time, negotiations have been challenging, hard-fought, and sometimes contentious. That includes the parties' negotiations while the case was on appeal and during the months following the Tennessee Supreme Court's March 18 mandate. During this period, the parties' negotiations were actively assisted by an experienced mediator from one of the country's top alternative dispute resolution firms. The parties' extensive, arm's length negotiations, described above, conducted with a highly qualified mediator, clearly demonstrate that the Agreement was not procured through fraud or collusion. *See, e.g.*, *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 351 (6th Cir. 2009) (overruling objector's claim that settlement was product of collusion where the settlement was achieved following "months of supervised negotiations [and] two facilitated mediations"); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (noting that the involvement of a mediator "helps to ensure that the proceedings were free of collusion and undue pressure"); 2 MCLAUGHLIN ON CLASS ACTIONS § 6:7 (17th ed.) ("A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion.").

B. The Settlement Was Recommended by Experienced Class Counsel and Approved by Both Parties' Boards.

The fact that the Settlement was recommended by Class Counsel and approved by both HPI's SLC and Board of Directors, and also approved by Wellmont's Board of Directors,

provides an additional reason to preliminarily approve the Settlement. "Tennessee courts are loathe 'to substitute their judgment for that of a corporation's board of directors.'" *In re Pacer Int'l*, 2017 WL 2829856, at *7 (quoting *Lewis ex rel. Sav. Bank & Trust Co. v. Boyd*, 838 S.W.2d 215, 220 (Tenn. Ct. App. 1992)). They "'presume that a corporation's directors, when making a business decision, acted on an informed basis, in good faith, and with the honest belief that their decision was in the corporation's best interests.'" *Id.* (quoting *Lewis ex rel. Sav. Bank & Trust Co. v. Boyd*, 838 S.W.2d 215, 220–21 (Tenn. Ct. App. 1992)). Both sides have studied solutions extensively and want to constructively resolve this dispute. There is no basis to question the informed, reasoned judgment of the parties and Class Counsel.

C. The Settlement Is Plainly Within the Range of Reasonable Outcomes.

While this Court need not evaluate the ultimate fairness of the Settlement at the preliminary approval stage, the Settlement is more than fair, adequate, and reasonable for the Class. Simply put, the Settlement is well within the range of reasonable outcomes given the ***$83 million*** in monetary and various non-monetary benefits obtained for the Class. *See* NEWBERG ON CLASS ACTIONS § 13:10 (5th ed.); 2 MCLAUGHLIN ON CLASS ACTIONS § 6:7 (17th ed.).

D. The Settlement Promotes the Best Interests of the Class and the Community by Restructuring and Revitalizing HWHN.

The Settlement also provides a tremendous benefit to the Class and the community at large. During settlement negotiations, the parties considered how to move forward in a manner that is constructive and that protects their interests, as well as the interests of HPI's members and the community. In short, both HPI and Wellmont gave consideration to whether these interests would be best served by restructuring the operations of HWHN to exclude Wellmont. As the parties' negotiations became more promising in the past few months, HPI began exploring, in great detail, options for a new network to succeed HWHN that would be wholly owned by HPI.

In fact, over the last six years, the HPI SLC, which consists of three directors chosen by the Board of Directors to conduct the litigation, has had dozens of meetings and reviewed hundreds of pages of legal advice from Shook, and has participated in planning the new HPI network. HPI's Board of Directors—the people who have led HPI over the past decade or more and are most familiar with its business, challenges, and needs—received extensive, detailed expert advice, discussed that advice for four hours at a May 26, 2021 meeting, and then unanimously approved the Agreement and all its terms. Section 3 of the Agreement reflects the independent, considered advice of numerous healthcare industry and legal experts retained by HPI, as adopted by the Board of Directors of HPI. HPI will make presentations and reports provided by these experts to the HPI Board of Directors available for *in camera* review by the Court upon request.

Based on this expert advice, HPI decisionmakers concluded that HPI needs additional capital of more than $14 million for the new network and to otherwise ensure the ongoing survival and prosperity of HPI. Of this amount, HPI can supply $4-5 million out of its share of the Settlement. The remaining $10 million will come from Wellmont depositing $6.7 million into HWHN pursuant to Section 3 of the Agreement while it remains half-owned by Wellmont, then conveying its stock to HPI; and from $3 million paid to an escrow that secures potential claims arising from HWHN, and, to the extent not so used, paid to HPI. Based on the independent, detailed, advice they received, the HPI Board of Directors and SLC decided that this $10 million is appropriately allocated for future use by HWHN (which will be renamed and become a new network).

The parties also acknowledge that the new network may take 3-4 years to build; in other words, to generate enough income to sustain itself and to be able to compete effectively for all

potential business. In the meantime, the network needs income, and so Wellmont and HPI have agreed that 29 contracts currently in place at HWHN will remain in place for about three years. *See* Agreement § 3(g). The complex provisions at Sections 3 and 4 of the Agreement are designed to implement the above transformation of HWHN. This arrangement delivers a tremendous benefit to the majority of the Class that remain HPI members and, more importantly, to the community.

II. The Court Should Approve the Form and Method of Class Notice

Tennessee Rule of Civil Procedure 23.05 requires that "notice of [a] proposed dismissal or compromise … be given to all members of the class in such manner as the court directs." Tenn. R. Civ. P. 23.05. The Settlement Notice that the parties propose to provide to the Class, attached as ***Exhibit 2*** to the Joint Motion, should be approved. It fully and accurately informs the Class of all material elements of the Settlement, and it advises members of the Class of their right to assert an objection. The method of disseminating the Settlement Notice to the Class should also be approved. Indeed, the proposed method is substantively identical to the method previously approved by this Court in an order dated May 4, 2021.

III. The Court Should Set the Final Approval Hearing

The parties request that the Court set the Final Approval Hearing for approximately sixty days from entry of the preliminary approval order. When this Court enters the preliminary approval order, the previously approved class action administrator, CPT Group, Inc., will promptly commence disseminating the Settlement Notice. Holding a final approval hearing approximately 60 days from entry of the preliminary approval order will provide Class members ample time to receive and consider the Settlement Notice, consult with counsel, and submit objections.

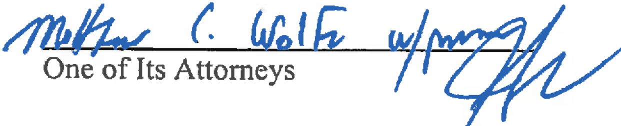
CONCLUSION

For the foregoing reasons, the parties request that the Court preliminarily approve the terms of the Settlement as fair, adequate, and reasonable; approve the form and content of the Settlement Notice attached to the Joint Motion as ***Exhibit 2***, as well as the proposed method of disseminating notice to the class; and schedule a final approval hearing for approximately sixty days from entry of the preliminary approval order.

Dated: June 1, 2021.

Respectfully submitted,

HIGHLANDS PHYSICIANS, INC.



One of Its Attorneys

Emily L. Herman-Thompson (021518)
James G. O'Kane (005703)
BAKER, O'KANE, ATKINS & THOMPSON, PLLP
2607 Kingston Pike, Ste. 200
Knoxville, TN 37919
(865) 637-5600
ethompson@boatlf.com
jokane@boatlf.com

Gary M. Elden
Matthew C. Wolfe
Peter O'Neill
SHOOK, HARDY & BACON L.L.P.
111 South Wacker Drive, Suite 4700
Chicago, Illinois 60606
(312) 704-7700
gelden@shb.com
mwolfe@shb.com
pfoneill@shb.com

Richard E. Ladd, Jr. (011564)
PENNSTUART
804 Anderson Street
Bristol, TN 37620
(423) 793-4800
rladd@pennstuart.com

Attorneys for Plaintiff
Highland Physicians, Inc.

Respectfully submitted,

WELLMONT HEALTH SYSTEM

One of Its Attorneys

W. Brantley Phillips, Jr. (18844)
David R. Esquivel (21459)
Matthew J. Sinback (23891)
BASS, BERRY & SIMS PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
(615) 742-6200
bphillips@bassberry.com
desquivel@bassberry.com
msinback@bassberry.com

W. Kyle Carpenter (5332)
J. Ford Little (13870)
WOOLF, McCLANE, BRIGHT ALLEN & CARPENTER, PLLC
P.O. Box 900
Knoxville, TN 37901-0900
(865) 215-1000
flittle@wmbac.com
kcarpenter@wmbac.com

Attorneys for Defendant
Wellmont Health System

CERTIFICATE OF SERVICE

I hereby certify that on **June 1, 2021**, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT** to be served in this action via email and first-class mail, postage prepaid upon the following:

Emily L. Herman-Thompson (021518)
James G. O'Kane (005703)
BAKER, O'KANE, ATKINS & THOMPSON, PLLP
2607 Kingston Pike, Ste. 200
Knoxville, TN 37919
(865) 637-5600
ethompson@boatlf.com
jokane@boatlf.com

Gary M. Elden
Matthew C. Wolfe
Peter O'Neill
SHOOK, HARDY & BACON L.L.P.
111 South Wacker Drive, Suite 4700
Chicago, Illinois 60606
(312) 704-7700
gelden@shb.com
mwolfe@shb.com
pfoneill@shb.com

Richard E. Ladd, Jr. (011564)
PENNSTUART
804 Anderson Street
Bristol, TN 37620
(423) 793-4800
rladd@pennstuart.com