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

DAVID M. SORIA, M.D., on behalf of himself and all others similarly situated,

Plaintiffs,

vs.

INPHYNET CONTRACTING SERVICES, INC., AND TEAM HEALTH, INC.,

Defendants.
_____/

CASE NO.: CACE 06-021050 CACE (07)

CLASS REPRESENTATION

ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION ON CONDITIONS

THIS CAUSE is before the court upon plaintiff David M. Soria's Motion for Class Certification. The court, having reviewed the record, having conducted hearings, and otherwise being duly advised in the premises, finds and decides as follows:

I. FACTUAL BACKGROUND

Defendant, Inphynet Contracting Services, Inc. ("Inphynet") and its parent, defendant, Team Health, Inc. ("Team Health"), are providers of hospital-based clinical outsourcing services, which contract with hospitals and other medical facilities to provide emergency room staffing services at 15 locations in Florida, including Wellington Regional Medical Center ("Wellington"). Plaintiff, David M. Soria, M.D. ("Dr. Soria") was formally employed by Inphynet and was assigned to Wellington where he served as the Medical Director of its emergency department.

This action initially arose from a separate lawsuit brought by Inphynet and Team Health against Dr. Soria in case number 05-03961 (hereinafter "*Soria I*") relating to Dr. Soria's employment as well as Inphynet and Team Health's subsequent loss of its management contract

11/10

of the Wellington facility. In *Soria I*, Inphynet and Team Health brought claims against Dr. Soria for violation of a non-compete provision, breach of fiduciary duty to Inphynet, conspiracy entered into by Dr. Soria (and other defendants) to move the Wellington contract to a competitor of Inphynet , and tortious interference with Inphynet's business relationship with Wellington.

Dr. Soria initiated a counterclaim in *Soria I* based upon Inphynet and Team Health's alleged violation of a "physician incentive plan"(hereinafter "PIP"), a physician bonus plan offered by Inphynet to certain employee physicians, including Dr. Soria. On November 20, 2006, this court's predecessor granted Inphynet and Team Health's motion to sever the counterclaim.

Dr. Soria subsequently filed the instant class action raising the same claims. He, however, continued to maintain the counterclaim in *Soria I* against Inphynet and Team Health solely in his individual capacity. In his second amended counterclaim, filed on September 11, 2007 in *Soria I*, he asserted claims for: (1) breach of contract and breach of implied covenant of good faith and fair dealing, (2) violation of the Florida Deceptive and Unfair Trade Practice Act, (3) breach of fiduciary duty and constructive fraud, (4) unjust enrichment, and (5) conversion. In the instant case (hereinafter "*Soria II*"), Dr. Soria is bringing virtually identical claims on behalf of himself and other putative class members against the class defendants Inphynet and Team Health. Both cases were eventually transferred to this division.

Plaintiff's amended motion for class certification alleges that Dr. Soria and other putative class members participated, as part of an employment package, in PIP plans, which provided that Dr. Soria and other putative class members were entitled to receive, as incentive compensation, a percentage of the profits from revenue generated from the defendants' contracts with the respective facilities. The additional compensation was due and payable on a quarterly basis based upon certain specified written criteria.

The claims of Dr. Soria and the other putative class members center on the defendants' alleged practice of deceptively deducting unsubstantiated and non-existent expenses for "Other Physician Benefits" from the revenues generated at each of its facilities where the PIP plan (or similar bonus program) was maintained. The typical effect of the defendants' practice was to reduce the amount of net profits from which each of the class members were entitled to a *pro rata* share, determined by applying the PIP plan's criteria.

Dr. Soria proposes in the motion for class certification the class should be, initially, certified as those physicians previously or currently employed by Team Health, Inc. and/or Inphynet Contracting Services, Inc., or their affiliates, in the State of Florida who were, or are, participants in a Physician Incentive Plan (or substantially similar incentive bonus or compensation plan) administered by the defendants in and from September 2001, to the current date.

II. CLASS CERTIFICATION STANDARD

"The purpose of class action is to provide litigants who share common questions of law and fact with an economically viable means of addressing their needs in court." *Johnson v. Plantation General Hospital Ltd. Partnership*, 641 So. 2d 58 (Fla. 1994). In order to maintain a class action, the proponent of the proposed class bears the burden of satisfying all the requirements of Florida Rule of Civil Procedure 1.220. Those requirements are generally referred to as: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy.

The party seeking the class action has the burden of pleading and proving each and every element required by Rule 1.220. *See Execu-Tech business Systems, Inc. v. Appleton Papers, Inc.*, 743 So. 2d 19, 21 (Fla. 4th DCA 1999). In that regard, the court held a hearing on the class certification and conducted a thorough review and a rigorous analysis of whether plaintiff has met the requirements for class certification pursuant to Florida Rule of Civil Procedure 1.220.

III. ANALYSIS

A. *Numerosity*

Numerosity requires the court to find that the number of class members is so numerous that separate joinder is impractical. The record demonstrates that there are numerous members of the proposed class. Inphynet has verified through discovery that it maintained PIP for its physicians assigned, at a minimum, to the following 15 facilities throughout the State of Florida from January 1, 2003 through November 2007: All Children's Hospital; Cedars Medical Center; Brandon Regional Hospital; Delray Medical Center; Jackson South Community Hospital; Kendal Regional Medical Center; Martin Memorial Center; Palm Beach Gardens Medical Center; Parrish Medical Center; Seven Rivers Community Hospital; South Bay Hospital; St. Petersburg General Hospital; Tampa General Hospital; Wellington Regional Medical Center; and Westside Regional Medical Center. From these facilities, defendants have identified at least at least one hundred and twenty (120) physicians who participated, or were eligible to participate, in the defendants' PIP plan.

This court finds that this number of proposed class members is sufficient to comply with the numerosity requirement and, similarly, to demonstrate that a separate joinder of each potential class member in a traditional lawsuit would impracticable, particularly since the class members are located throughout the State of Florida, and not just in the immediate locale. *See Smith v. Glen Cove Apartments Condominiums Master Association, Inc.*, 847 So.2d 1107, 1109 (Fla. 4th DCA 2003) (finding approximately 100 class members satisfied numerosity requirement and supported finding that separate joinder would be impracticable).

B. *Commonality*

The next inquiry is whether "the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of

each member of the class." Fla. R. Civ. P. 1.220(a)(2). "The primary concern in determining commonality is whether the representative members' claims arise from the same course of conduct that gave rise to the other claims, and whether the claims are based on the same legal theory." *Smith,* 847 So. 2d. at 1111.

In the instant case, Dr. Soria and the other putative class members entered into substantially similar PIP agreements with the defendants. The claims arise from the same course of conduct on the part of the defendants. Specifically, all of the putative class members' claims concern or relate to defendants' use of the allegedly illegitimate expense category, "Other Physician Benefits," in their income statements, thereby reducing the amount of incentive benefits each physician received. The court, therefore, concludes that plaintiff has met the requirements of Rule 1.220(a)(2).

C. *Typicality*

Rule 1.220(a)(3) requires that the claim or defense of the representative party must be typical of the claim of each member of the potential class. This inquiry focuses on the relationship of Dr. Soria's claims to the claims of the class members. This court finds that Dr. Soria's claims are typical of the claims of the other class members. These claims center on the defendants' alleged practice of deceptively deducting unsubstantiated and non-existent expenses for "Other Physician Benefits" from the revenues generated at each of its facilities where PIP plans or similar bonus programs were maintained. Each of the class members seeks the same remedy through the same causes of action.

Defendants assert that Dr. Soria has "unique defenses" that are atypical to the putative class, specifically that Dr. Soria's alleged breach of *his* employment agreement and breach of *his* fiduciary duties. Defendants further argue that if Dr. Soria is the named class representative, the trial would be consumed with these unique defenses which would preclude a fair and adequate

trial for the unnamed class members. "Typicality, however, is not defeated by specific defenses or counterclaims to the named plaintiff's claim. *See Hammett v. American Bankers Insurance Co. of Florida*, 203 F.R.D. 690, 695 (S.D. Fla. 2001)(internal citations omitted). Therefore, this court finds that the "unique defenses" to which Dr. Soria may be subject to does not undermine the class "typicality" which he has otherwise established.

D. ***Adequacy***

Pursuant to Rule 1.220(a)(4) the party seeking certification must show "the representative party can fairly and adequately protect and represent the interests of each member of the class." "The adequacy of representation requirement is met if the named representatives have interests in common with the proposed class members and the representatives and their qualified attorneys will properly prosecute the action." *Broin v. Philip Morris Cos.*, 641 So. 2d 888 (Fla. 3d DCA 1994).

During the May 5, 2008 hearing, this court determined that Dr. Soria's counsel possesses the competence to undertake this litigation if certified to proceed on a class representation basis.[1] However, this court finds that Dr. Soria has interests which are seemingly antagonistic to the class. Dr. Soria is currently a counter-plaintiff in a separate lawsuit against the class defendants (*Soria I*) in which he is asserting claims for: (1) breach of contract and breach of implied covenant of good faith and fair dealing, (2) violation of the Florida Deceptive and Unfair Trade Practice Act, (3) breach of fiduciary duty and constructive fraud, (4) unjust enrichment, and (5) conversion. Dr. Soria is also asserting the same claims in this class action claim on behalf of himself and other putative class members against the same defendants.

Thus, there could be an inherent conflict of interest between Dr. Soria and the putative class members because Dr. Soria is seeking to recover damages on virtually identical claims in

[1]During the hearing, defendants' counsel stipulated to this finding and conclusion.

both *Soria I*, in his individual capacity, and the instant class action (*Soria II*), on behalf of himself and others similarly situated. Specifically, as a counter-plaintiff in *Soria I*, Dr. Soria could possibly compromise the best interests of the class as a whole for a favorable result in his own personal lawsuit. *Compare The Cricket Club Condominium, Inc. v. Stevens*, 695 So. 2d 826 (Fla. 3d DCA 1997). A class representative's sole concern must be the best interest of the class as a whole.

The situation, however, is correctable if action is taken by Dr. Soria. Plaintiff states in the motion for class certification "if certification is granted there likely would be no need for Dr. Soria to maintain an identical counterclaim against Inphynet and those counterclaims would like [sic] be voluntarily dismissed." At this point, however, Dr. Soria fails to meet the adequacy requirement of Fla. R. Civ. P. 1.220(a)(4) based upon his potential conflict of interest with the other class members. Should Dr. Soria dismiss or suitably abate the counterclaim in *Soria I,* the conflict would be resolved. If, however, he fails to take corrective action, the potential conflict would remain.

Rule 1.220(b) Requirements

In addition to satisfying the requirements of Rule 1.200(a), plaintiff also has the burden of proving this action is maintainable under Section 1.220(b)(1); (b)(2); or (b)(3). Plaintiff asserts the class action claims are maintainable under both 1.220(b)(1) and (b)(3).

A claim or defense is maintainable under Rule 1.220(b)(1), if the prosecution of separate claims by individual members of the class would create a risk of either:

> (A) inconsistent or varying adjudications concerning individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
>
> (B) adjudications concerning individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudications, or substantially impair or impede the ability of

> other members of the class who are not parties to the adjudications to protect their interests;

See Fla. R. Civ. P. 1.220(b)(1)

Plaintiff, however, failed to support the contention that the class could be maintained under 1.220(b)(1)(A). Plaintiff also failed to provide support for the claim that adverse adjudications concerning individual members of the class would be dispositive of the interests of other members of the class. Accordingly, this court finds that plaintiff has not demonstrated the class could be maintained under 1.220(b)(1)(A) or (B).

This court finds that plaintiff's claims are maintainable under 1.220(b)(3). To qualify for 1.220(b)(3) certification, the class must meet a two-prong test: (a) the common questions must predominate over any questions affecting only individual members; and (b) the class resolution must be superior to other available methods for the fair and efficient adjudication of the controversy. *See Terry L. Braun, P.A. v. Campbell*, 827 So. 2d 261, 269 (Fla. 5th DCA 2002).

In this case, defendants' alleged use of an unsupported category of expense ("Other Physician Benefits") in order to reduce the profitability at each facility where its physicians were employed, if true, presents common questions of law or fact which predominate over individual questions relating to the eligibility and/or amount of additional incentive benefits owed to any individual member of the class.

The common questions of law and fact lead to the conclusion that class action is a superior method for the fair and efficient adjudication of class members' claims. A determination of the defendants' potential liability for its alleged actions in one proceeding is a superior method of adjudication than by proceeding in individual suits by each member of the class. *See Smith*, 847 So. 2d, at 1112. The court, therefore, concludes that class claims could be maintained based upon Rule 1.220(b)(3).

However, since this court determined that class certification is conditioned on actions needed to be taken by Dr. Soria, it is hereby

ORDERED AND ADJUDGED: Plaintiff's Motion for Class Certification is **GRANTED conditionally** with the needed acts to be performed within twenty-one (21) days from the rendition date of this order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida on this _____ day of November 2008.

ROBERT A. ROSENBERG

NOV 10 2008

A TRUE COPY

ROBERT A. ROSENBERG
CIRCUIT COURT JUDGE

Copies furnished to:

Counsel of Record