

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC-SDNY  
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MONTEFIORE MEDICAL CENTER,

Plaintiff,

v.

LOCAL 272 WELFARE FUND, *et al.*,

Defendants.

No. 09-CV-3096 (RA)(SN)

ORDER ADOPTING REPORT AND  
RECOMMENDATION

MONTEFIORE MEDICAL CENTER,

Plaintiff,

v.

LOCAL 272 WELFARE FUND, *et al.*,

Defendants.

No. 14-CV-10229 (RA)(SN)

ORDER ADOPTING REPORT AND  
RECOMMENDATION

RONNIE ABRAMS, United States District Judge:

Plaintiff Montefiore Medical Center brought two actions, in 2009 (the “First Action”) and 2014 (the “Second Action”), against Defendants the Local 272 Welfare Fund and its manager, Mark Goodman, demanding payment based on medical treatments that Montefiore provided to Fund beneficiaries.\* The Court assumes the parties’ familiarity with the facts, these cases’ lengthy procedural history, and the prior decisions reached in these actions. On May 3, 2018, Magistrate Judge Netburn directed the parties to file consolidated briefing for all the outstanding issues in

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\* Plaintiff subsequently filed a third action against Defendants, *see* 17-CV-10213 (RA)(SN), which raises separate legal claims from the prior two actions.

these two matters. *See* 09-CV-3096, Dkt. 116; 14-CV-10229, Dkt. 80. On June 18, 2018, Montefiore filed a consolidated motion for judgment. *See* 09-CV-3096, Dkt. 124; 14-CV-10229, Dkt. 87.

Now before the Court is Judge Netburn's January 25, 2019 Report and Recommendation (the "Report"), (09-cv-03096, Dkt. 140; 14-cv-10229, Dkt. 103) which recommends granting in part and denying in part Montefiore's consolidated motion. The parties have not filed any objections to the Report.

"When the parties make no objections to the Report, the Court may adopt the Report if there is no clear error on the face of the record." *Galeana v. Leomongrass on Broadway Corp.*, 120 F. Supp. 3d 306, 310 (S.D.N.Y. 2014). Having reviewed the record for clear error, and found none, the Court adopts Judge Netburn's thorough and well-reasoned Report in its entirety. Accordingly, it is hereby ORDERED that:

- (1) Montefiore shall not be reimbursed for the ERISA claims of patients O.M., O.N., and F.P.;
- (2) Montefiore shall be reimbursed for the ERISA claims of patients M.S. and J.B. with respect to any medical costs arising from emergency room treatment that these patients received, but not with respect to any treatment that these patients received after being admitted to the hospital;
- (3) Montefiore shall be reimbursed for the ERISA claim of patient B-11 with respect to any medical costs arising from emergency room treatment that this patient received, but not with respect to any treatment that this patient received after being admitted to the hospital;

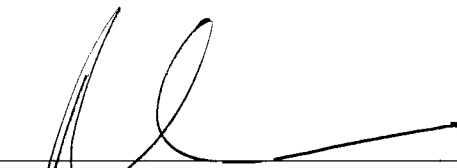
- (4) Montefiore shall be awarded pre-judgment interest at the federal prime rate with respect to its post-MagnaCare ERISA claims from the First and Second Actions, and shall submit its proposed calculations of the proper amount of this interest to Judge Netburn for approval; and
- (5) Montefiore shall be awarded pre-judgment interest in the amount of \$475,185 arising from its successful breach of contract claims in the First Action.

As the parties were previously advised, the choice not to file written objections waives appellate review of this decision. *See United States v. James*, 712 F.3d 79, 105 (2d Cir. 2013).

The Clerk of Court is respectfully directed to terminate the motion pending at Dkt. 124 in case 09-CV-3096 and at Dkt. 87 in case 14-cv-10229. The cases shall remain open so that Montefiore may renew its application for attorney's fees incurred in litigating its ERISA claims in these actions.

SO ORDERED.

Dated: February 12, 2019  
New York, New York



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Ronnie Abrams  
United States District Judge