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Health Care Newsletter

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Caution Advised When Billing and Collecting from Uninsured Emergency Patients

By: [Olivia M. Goetsch](#)

Last month, a California appellate decision partially reversed an order denying class certification in *Sarun v. Dignity Health*—a lawsuit, which essentially seeks to limit uninsured patient liability for emergency medical services. The decision, referred to here as “*Sarun II*,”ⁱ further directed the trial court to certify on remand an issue class to decide a contract interpretation question.

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In March 2012, Plaintiff Tony Sarun received emergency medical care for which he had no insurance. Consistent with the standard admission form he had signed while at the hospital, he later received an invoice showing a “balance due” amount produced by subtracting an “uninsured discount” amount from the hospital’s “full charges.” Upon receiving this invoice, Mr. Sarun brought a putative class action against, Dignity Health (“Dignity”), which then owned and operated the relevant emergency department.

Mr. Sarun eventually moved for class certification as to his cause of action for declaratory relief. Through this cause of action, Mr. Sarun asked the court to declare that the rates Dignity charged self-pay patients were “unfair, unconscionable, or unreasonable.” In the alternative, he asked for a declaration that, as applied to self-pay patients, Dignity’s standard admission form contained a so-called “open price term.” Put differently, he asked the court to find that the rates Dignity charged self-pay patients could not be determined from the admission agreement itself, such that, under Civil Code section 1611, Dignity could only charge self-pay patients a “reasonable” amount.ⁱⁱ The trial court denied Mr. Sarun’s motion. It determined that class certification would not be proper because Mr. Sarun’s proposed class was not ascertainable, and because individual inquiries would predominate over common issues, meaning that a class action would not be a manageable—let alone the superior—method for litigating the dispute. The Court of Appeal affirmed in part and reversed in part.

Regarding the first requested declaration—concerning whether Dignity’s rates were unconscionable or unreasonable as applied to self-pay patients, the court affirmed. It began by noting that, in light of the California Supreme Court’s intervening decision in *Noel v. Thrifty Payless, Inc.*,ⁱⁱⁱ the trial court had incorrectly concluded that Mr. Sarun’s proposed class was not ascertainable. Still, the Court of Appeal affirmed the denial of class certification because it agreed that predominating individual inquiries precluded class adjudication as to whether Dignity’s rates were reasonable or not.

But regarding Mr. Sarun’s alternative request for declaratory relief—concerning whether Dignity’s admission form contained an open price term as applied to self-pay patients, the appellate court reversed. After exercising its inherent authority to narrow the proposed class definition to self-pay patients who received emergency care at the same hospital as Mr. Sarun during the class period, the court remanded with directions to certify a limited class, as modified, for the purpose of deciding the open price term question. The court noted that, where all class members had signed identical, standard admission forms, as the record

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suggested was the case in *Sarun*, resolving the open price term issue would not involve any individualized inquiries but only require deciding between competing contract interpretation theories. Further, while the trial court had apparently suggested that deciding the open price term question would serve little to no purpose, the Court of Appeal disagreed. It summarized the stakes at issue essentially as follows:

- A declaration that Dignity's admission form **does not contain** an open price term would mean that, "as to all class members bound by the judgment," Dignity could enforce the rates provided in its admission form—except to the extent individual class members could meet their burden of proving that these rates were unconscionable as applied to them.
- A declaration that Dignity's admission form **contains** an open price term would mean that Dignity could not assert that self-pay patients are contractually bound to pay the rates described in its admission form "without regard to whether those rates are reasonable." Notably, though, the appellate court expressly declined to decide what impact such a declaration would have regarding "the burden of proving reasonableness in a contested collection action."

Now, the trial court will have to make a substantive decision between these outcomes in the first instance.



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ⁱ*Sarun v. Dignity Health*, --- Cal.App.5th --- (Ct. App. Nov. 12, 2019) (No. B288062) 2019 WL 5883550, 2019 Cal. App. LEXIS 1121. The first appellate decision in this matter was reported as *Sarun v. Dignity Health*, 232 Cal. App. 4th 1159 (2014).

ⁱⁱ Civil Code section 1611 provides, in full: "When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth."

ⁱⁱⁱ *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955 (2019).