

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONONDAGA

MICHAEL FARRUGGIO, as Executor of the Estate of THERESA FARRUGGIO, and SUSAN KARPEN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

918 JAMES RECEIVER, LLC; RIVER MEADOWS, LLC; JAMES SQUARE NURSING HOME, INC.; CLINTON SQUARE OPERATIONS, LLC; LIBERTY SENIOR HOLDINGS, LLC; EXCELERATE HEALTHCARE SERVICES, LLC; JUDY KUSHNER; ABRAHAM GUTNICKI; ELIEZER FRIEDMAN; AND DOES 1-25,

Defendants.

Index No. 003831/2017

**AFFIRMATION OF  
JEREMIAH FREI-PEARSON  
IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL  
OF CLASS ACTION  
SETTLEMENT**

JEREMIAH FREI-PEARSON, ESQ., an attorney admitted to the practice of law in the State of New York, affirms the following under the penalty of perjury:

1. I am a partner in the law firm of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP (“FBFG”), attorneys for Plaintiffs Michael Farruggio, as executor of the Estate of Theresa Farruggio, and Susan Karpen (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated in the certified class (the “Class”) in the above-captioned action against Defendants Excelerate Healthcare Services, LLC (“Excelerate”), Judy Kushner (“Kushner”), Abraham Gutnicki (“Gutnicki”), Liberty Senior Holdings, LLC (“Liberty”), River Meadows, LLC (“River Meadows”), and Eliezer Friedman (“Friedman”) (collectively, “Defendants”). In such capacity, I am familiar with all of the facts and prior proceedings had herein based upon my review of the file that is maintained in connection with this matter.

2. I submit this affirmation in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of the Class Action Settlement.

3. After an additional year of litigation, and extensive arm's-length negotiations before Mediator Jed Melnick, the remaining Parties reached a class settlement of \$5,500,00.00 (the "Settlement"). This is the highest PHL § 2801 class settlement ever agreed to.

4. Prior to filing the present lawsuit, attorneys FBFG conducted a thorough investigation into the merits of the class claims and the likelihood of class certification.

5. On October 20, 2017, Plaintiffs served discovery requests.

6. On November 13, 2017, River Meadows served its First Request for Discovery and Inspection, Demand for Verified Bill of Particulars to Mr. Farruggio, Demand for Verified Bill of Particulars to Mrs. Karpen, Demand for Income Tax Returns, CPLR 3017 Demand, and Medicare/Medicaid Demand.

7. On November 28, 2018, Plaintiffs duly served their response to River Meadows's CPLR 3017 Demand and on January 5, 2018, Plaintiffs served their responses to River Meadows's First Request for Discovery and Inspection, Demand for Verified Bill of Particulars to Mr. Farruggio, Demand for Verified Bill of Particulars to Mrs. Karpen, Demand for Income Tax Returns, and Medicare/Medicaid Demand.

8. On January 8, 2018, River Meadows served its responses and objections to Plaintiffs' discovery requests but did not produce any documents as it required a Protective Order be entered before any confidential documents would be disclosed.

9. On January 18, 2018, the Parties appeared before this Court on the motion for leave to file a second amended class action complaint and for a preliminary conference. Thereafter, this Court entered an Order dated January 19, 2018, granting Plaintiffs' motion for leave to file a second amended class action complaint and scheduling another preliminary conference for February 28, 2018.

10. On February 28, 2018, the Parties appeared before the Court for a preliminary conference, at which the Parties agreed to a Preliminary Conference Stipulation and Order which the Court so-ordered on March 2, 2018, and entered on March 13, 2018.

11. On March 1, 2018, Plaintiffs served document requests and expert demands on 918 James Receiver, James Square Nursing Home (“JSNH”), and Clinton Square. On that same date, Defendants began to produce insurance policies.

12. On March 26, 2018, JSNH served its responses to Plaintiffs discovery requests. The Parties also conferred regarding an Electronically-Stored Information (“ESI”) protocol.

13. On April 2, 2018, Plaintiffs served demands for verified bills of particulars on all Defendants.

14. On April 30, 2018, Clinton Square served its responses to Plaintiffs discovery requests with an accompanying production of documents.

15. On May 11, 2018, River Meadows sought an adjournment of the pending motions to sever and for class certification; on May 16, 2018, Plaintiffs opposed; on May 21, JSNH joined in River Meadows’s request for an adjournment; and on May 22, 2018, this Court denied River Meadows and JSNH’s request.

16. On June 4, 2018, Plaintiffs provided all Defendants with HIPAA-compliant authorizations for Plaintiffs. On June 11, 2018, JSNH served its Response to Plaintiffs’ Demand for Verified Bill of Particulars.

17. On June 13, 2018, the Parties appeared before this Court for a hearing on the class certification motion and motions to sever, which was ultimately denied as moot. By order dated August 21, 2018, this Court denied Clinton Square’s motion to sever as moot, denied River Meadows’s motion to sever without prejudice, denied without prejudice class certification of Plaintiffs’ negligence claims, and granted class certification of Plaintiffs’ PHL § 2801-d claims.

River Meadows appealed the Court's Order certifying a class to the Fourth Department, filing it's brief on May 24, 2019. Plaintiffs filed their response on August 28, 2019.

18. Plaintiffs and Clinton Square entered productive settlement discussions soon after Clinton Square's appearance in the action subsequent to its take-over of the Facility on December 15, 2017.

19. In the instant action, early in this litigation before the additional individual defendants were added as defendants, Plaintiffs and River Meadows held a mediation before Judge Lunn, on September 18, 2018. However, despite good faith efforts, this mediation was unsuccessful. After this unsuccessful mediation, the Parties informally discussed settlement while continuing to litigate.

20. After this Court denied Defendants' motions to dismiss, the informal settlement discussions became more serious: In August of 2019, the Parties agreed to stay the litigation pending mediation before Jed Melnick, a highly experienced mediator. The Parties agreed to discuss a global settlement that would encompass: (1) this case; (2) the bankruptcy proceedings; and (3) the individual actions by Class Members against Defendant River Meadows pending before this Court.

21. Prior to mediation, the Parties had several separate calls with Mediator Jed Melnick and his team and also provided detailed pre-mediation statements to Mediator Melnick in all actions. The Parties mediated in Syracuse with Mediator Melnick over two days -- September 11 and 12, 2019.

22. In the evening of September 12, 2019, the Parties reached a verbal agreement in principle concerning the settlement terms. With Mediator Melnick's assistance, Class Counsel subsequently negotiated with counsel for plaintiffs in the consolidated individual actions

concerning settlement terms. Class Counsel and Defendants' Counsel then negotiated the terms of the Settlement agreement, which were finally agreed to on March 27, 2020.

23. The Parties recognize and acknowledge the benefits of settling this case:

Although Plaintiffs believe strongly that the claims asserted in this action have merit and that the evidence developed to date supports their claims. Defendants strongly disagree and, absent settlement, would continue to mount an aggressive defense against Plaintiffs' claims.

24. Plaintiffs recognize and acknowledge the length of time litigating this matter would take, and the risk of being able to collect a larger settlement, particularly in light of the fact that River Meadows has filed for bankruptcy and River Meadows, Excelerate and Liberty Senior Holdings are covered by an eroding insurance policy. Had the Parties not settled now, River Meadows' insurance policy would have been spent in litigation and the Class would likely have recovered zero or a *de minimus* amount from River Meadows, Excelerate, and Liberty Senior Holdings instead of the \$2.1 million made available.

25. Moreover, a risk that the other Defendants may have prevailed on appeal or avoided paying a judgment existed. Accordingly, Class Counsel has determined that the Settlement agreed to by the Parties is fair, reasonable, and adequate. The Settlement confers substantial benefits upon and is in the best interests of the Class in light of costs and continued litigation. Even if this case were to proceed to trial, Class Counsel recognize that the apparent strengths of Plaintiffs' claims are no guarantee against a complete or partial defense verdict. *Id.* Moreover, it would take a long time to get to trial, and due to the eroding nature of the insurance policy, there is a good chance the Class would have recovered less than the settlement amount no matter how large a verdict Plaintiffs obtained at trial.

26. Defendants maintain that they have a number of meritorious defenses to the claims asserted in this action and denies any and all liability. They also maintain that at all times

they were not negligent, and deny that they failed to satisfy their obligations pursuant to PHL § 2801-d.

27. Notwithstanding their contentions, Defendants recognize the risks and uncertainties inherent in litigation, the significant expense associated with defending class actions, the costs of any appeals, and the disruption to its business operations. Defendants also recognize that a trial on class-wide claims would pose litigation risk. Correspondingly, Defendants believe that the settlement set forth in the Settlement Agreement is likewise in its best interests.

28. The proposed Settlement Agreement resolves all disputes between Plaintiffs, class members, and Defendants -- including, but not limited to, those in the State Court Actions, the Bankruptcy Case, and as otherwise set forth below -- to avoid the expense, effort, uncertainty, and inconvenience entailed in continuing the State Courts Actions and the Bankruptcy Case.

29. The Settlement Agreement provides that any Class Member who does not validly submit an Opt-Out Statement pursuant to the Settlement Agreement will be deemed to have accepted the terms of the Settlement Agreement, and will be bound by the Final Approval Order, and will have all Released Claims released and forever discharged as to the Released Parties in accordance with the Settlement Agreement. The Released claims include any and all possible claims, demands, rights, actions, and causes of action of every kind and nature whatsoever, known or unknown, foreseen or unforeseen, direct, indirect, or consequential, matured or unmatured, accrued or unaccrued, at law or in equity, that each of the Plaintiff Releasing Parties now has, claims to have, or has had at any time from the beginning of time, to and including the date hereof, against the Defendant Released Parties. The Attorney General's Medicaid Fraud Control Unit ("MFCU") contacted the Parties to confirm that no party will take the position that the release operates to hold Class Members and individual plaintiffs liable or financially

responsible for any Medicaid damages Defendants may owe to the State of New York. A majority of parties have provided confirmation, with the exception of Eliezer Friedman and Liberty Senior Holdings, LLC, and Plaintiffs are optimistic that all Parties will provide confirmation in short order. In the event that all parties do not provide confirmation, the MFCU intends to raise this issue with the Court.

30. The proposed Settlement should be preliminarily approved – it is the product of extensive, arm's-length negotiations and contains no obvious deficiencies. The Parties' vigorously-negotiated settlement discussions were guided by expert analysis. Further, Jed Melnick, a highly experienced Mediator with experience resolving nursing home class actions, presided over the mediation. The negotiations were even more substantial than those in the First Settlement with Clinton Square.

31. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 1.

32. A true and correct copy of the proposed Notice of Class Action Settlement is attached hereto as Exhibit 2.

33. A true and correct copy of the River Meadows Appellant Brief is attached hereto as Exhibit 3.

34. A true and correct copy of the September 17, 2019 Letter drafted by Lisa M. Robinson to the Clerk of Case regarding Resolution of the Case is attached hereto as Exhibit 4.

35. A true and correct copy of the September 17, 2019 Fourth Department Letter to Lisa M. Robinson is attached hereto as Exhibit 5.

36. A true and correct copy of the Claim Form is attached hereto as Exhibit 6.

Dated: October 1, 2020  
White Plains, New York

/s/Jeremiah Frei-Pearson

Jeremiah Frei-Pearson  
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# **Exhibit 1**

**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release (“Agreement”) is made by and among: Michael Farruggio and Susan Karpen, as Administrators of the Estate of Theresa Farruggio, individually and on behalf of others similarly situated (the “Class Action Plaintiffs” or “Named Plaintiffs”) and the additional individual plaintiffs identified in the Recitals to this Agreement (“Individual Plaintiffs,” and with the Class Action Plaintiffs, “Plaintiffs”) on the one hand; and, on the other hand, Excelerate Healthcare Services, LLC (“Excelerate”), Judy Kushner (“Kushner”), Abraham Gutnicki (“Gutnicki”), Liberty Senior Holdings, LLC (“Liberty”), River Meadows, LLC (“River Meadows”), Eliezer Friedman (“Friedman,” and with Excelerate, Kushner, Liberty, River Meadows, and Gutnicki, “Defendants”), and William J. Leberman, Esq., as Chapter 7 Trustee for River Meadows ( “Trustee”) (all collectively, the “Parties”; individually, a “Party”).

**RECITALS**

**WHEREAS**, the Class Action Plaintiffs have brought suit in a civil action styled as *Michael Farruggio Farruggio et al. v. 918 James Receiver, LLC et al.*, pending in the New York State Supreme Court, Onondaga County, Index No. 003831/2017, against Excelerate, Liberty, Liberty’s member Eliezer Friedman, River Meadows, River Meadows’ members Kushner and Gutnicki, and others alleging claims arising out of the care provided to residents at the skilled nursing facility known until December 2017 as James Square Nursing and Rehabilitation Centre (the “Facility”), and the action has been certified as a class action (the “Class Action”);

**WHEREAS**, Individual Plaintiffs have brought suit, in actions separate and apart from the aforementioned Class Action, alleging claims arising out of the care provided to residents at the Facility (the “Individual Plaintiff Actions,” and with the Class Action, the “State Court Actions”),

which actions have been reassigned to Justice Paris of the New York Supreme Court, Onondaga County, and some of which name Liberty, Excelerate, Friedman, Gutnicki, and/or Kushner as defendants, as follows:

- A. *Valerie Austin and Amanda Dillon, as co-administrators of the Estate of Larry C. Austin, Deceased v. River Meadows, LLC d/b/a James Square Nursing and Rehabilitation Center and Liberty Senior Holdings, LLC* (Index No. 004038/2017);
- B. *Warren J. Dunbar, Individually and as Executor/Fiduciary of the Estate of Judy H. Dunbar v. River Meadows, LLC, James Square Nursing and Rehab Centre, James Square Nursing Home, Inc. d/b/a James Square Health and Rehabilitation Center, James Square Health and Rehabilitation Center* (Index No. 001472/2018);
- C. *Warren J. Dunbar, Individually and as Executor/Fiduciary of the Estate of Judy H. Dunbar v. Liberty Senior Holdings, Eliezer Friedman, Excelerate Healthcare Services, LLC, Judy Kushner and Abraham Gutnicki* (Index No. 004202/2019);
- D. *Teresa M. Ferraro, Deceased, by and through, Irene Rotella, as Administratrix of the Estate of Teresa M. Ferraro, Deceased v. River Meadows, LLC d/b/a James Square Nursing and Rehabilitation Centre, Liberty Senior Holdings, LLC, Abraham Gutnicki, Judy Kushner and Excelerate Health Care* (Index No. 011628/2018);
- E. *Marion Foertch, as Administratrix of the Estate of Ronald A. Foertch, deceased v. River Meadows, LLC, James Square Nursing Home, Inc., 918 James Receiver, LLC, Liberty Senior Holdings, LLC, Clinton Square Operations, LLC and Vestracare, LLC* (Index No. 005775/2018);
- F. *Charles A. Greco, Individually and as Administrator of the Estate of Joanne M. Shafer v. River Meadows, LLC, James Square Nursing and Rehab Centre, James Square Nursing Home, Inc. d/b/a James Square Health and Rehabilitation Centre and James Square Health and Rehabilitation Centre* (Index No. 001473/2018);
- G. *Charles A. Greco, Individually and as Administrator of the Estate of Joanne M. Shafer v. Liberty Senior Holdings, LLC, Eliezer Freidman, Excelerate Healthcare Services, LLC, Judy Kushner, Abraham Gutnicki* (Index No. 002005/2019);
- H. *Theodora LaDuke, Deceased, by and through, Shirley Caolo, as Administratrix of the Estate of Theodora LaDuke v. River Meadows, LLC, River Meadows, LLC d/b/a James Square Nursing and Rehabilitation Centre, Liberty Senior Holdings, LLC, Abraham Gutnicki and Judy Kushner* (Index No. 002069/2018);
- I. *Edith M. Sheldon a/k/a Edith Mary Sheldon, Deceased by and through, James P. Sheldon, as Executor of the Estate of Edith M. Sheldon a/k/a Edith Mary Sheldon v. Excelerate Health Care, Liberty Senior Holdings, LLC, Bottom Line Management, LLC, Eliezer Friedman, Abraham Gutnicki and Judy Kushner* (Index No. 003800/2019);

- J. *Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased, by and through Anthony John Tangredi and Barbara Ann Calkins, as Co-Administrators of the Estate of Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased v. River Meadows, LLC d/b/a James Square Nursing and Rehabilitation Centre, Liberty Senior Holdings, LLC, Abraham Gutnicki and Judy Kushner* (Index No. 008684/2018);
- K. *Louise M. Testone a/k/a Louise Testone, Deceased, by and through, John A. Testone, as Executor of the Estate of Louise M. Testone a/k/a Louise Testone v. Excelerate Health Care, Liberty Senior Holdings, LLC, Bottom Line Management LLC, Eliezer Friedman, Abraham Gutnicki and Judy Kushner* (Index No. 003819/2019);
- L. *William Strack, by and through his Power of attorney, Mary Strack v. River Meadows, LLC, James Square Nursing And Rehabilitation Centre, James Square Nursing Home, Inc., Clinton Square Operations, LLC, (No Suggestions), LLC, 918 James Receiver, LLC and Liberty Senior Holdings, LLC* (Index No. 009403/2018);
- M. *Penny Wilcox, by Nancy Wilcox, as her Attorney -in-fact v. River Meadows, LLC d/b/a James Square Nursing and Rehabilitation Centre, Abraham Gutnicki and Judy Kushner* (Index No. 008909/2018);
- N. *Barbara I. Faraino a/k/a Barbara J. Faraino, Deceased by and through Michele M. Ponillo, as Executor of the Estate of Barbara I. Faraino a/k/a Barbara J. Faraino v. River Meadows, LLC d/b/a James Square Nursing & Rehabilitation Centre, Excelerate Health Care, Abraham Gutnicki and Judy Kushner* (Index No. 011672/2018);
- O. *Russell G. Heater, by Michelle Heater, as his Attorney -in Fact v. Upstate Service Group, LLC, VDRNC, LLC, Van Duyn Center for Rehabilitation and Nursing, James Square Health and Rehabilitation Centre, James Square Nursing Home, Inc. and River Meadows, LLC* (Index No. 006254/2017);
- P. *Barbara Brown v. River Meadows, Lilac d/b/a James Square Nursing and Rehab Centre, James Square Nursing and Rehab Centre, James Square Nursing Home, Inc. d/b/a James Square Health and Rehabilitation Centre and James Square Health and Rehabilitation Centre* (Index No. 001471/2018);
- Q. *James A. Makal, Individually and as Administrator of the Estate of Andrew E. Makal v. River Meadows, LLC d/b/a James Square Nursing and Rehab Centre, River Meadows, LLC, James Square Nursing and Rehab Centre, James Square Nursing Home, Inc. d/b/a James Square Health and Rehabilitation Centre and James Square Health and Rehabilitation Centre* (Index No. 004633/2017);
- R. *Thomas V. Carioti, Individually and as Executor of the Estate of Caroline M. Carioti v. River Meadows, LLC d/b/a James Square Nursing and Rehab Centre, James Square Nursing and Rehab Centre, James Square Nursing Home, Inc. d/b/a James Square Health*

*and Rehabilitation Centre and James Square Health and Rehabilitation Centre (Index No. 008403/2018);*

S. *Elizabeth Scott, Deceased, by and through, Sharon W. Barr, as Administrator of the Estate of Elizabeth Scott v. Liberty Senior Holdings, LLC, Excelerate Health care, Abraham Gutnicki, Judy Kushner and Eliezer Friedman (Index No. 008035/2019);*

**WHEREAS**, contemporaneously with the execution of this Agreement, the parties to the State Court Actions will move to consolidate the Individual Plaintiff Actions and the Class Action into one case before Judge Paris and to seek the New York Supreme Court's approval of this Agreement and dismissal with prejudice of the State Court Actions in their entirety;

**WHEREAS**, on January 11, 2019, River Meadows filed for protection under Chapter 7 of Title 11 of the United State Code (the "Bankruptcy Case") in the United States Bankruptcy Court for the Northern District of New York (the "Bankruptcy Court"); the Bankruptcy Case is filed under the case number 19-30022;

**WHEREAS**, on January 11, 2019, William J. Leberman, Esq., was appointed as Chapter 7 trustee in the Bankruptcy Case;

**WHEREAS**, certain of the individuals and entities named as defendants in the State Court Actions have requested a defense and/or indemnification under Policy No. SB-LTCA-01554-17 (the "PL/GL Insurance Policy"), a long term care professional liability and general liability insurance policy issued to River Meadows, LLC d/b/a James Square Nursing & Rehabilitation Centre. The insurers that subscribe to the PL/GL Insurance Policy dispute whether certain of the individuals and entities named as defendants in the State Court Actions are entitled to a defense and/or indemnification under the PL/GL Insurance Policy and whether the claims alleged in the State Court Actions are covered under the PL/GL Insurance Policy.

**WHEREAS**, the Parties have agreed to compromise all disputes -- including, but not limited to, those in the State Court Actions, the Bankruptcy Case, and as otherwise set forth below

-- to avoid the expense, effort, uncertainty, and inconvenience entailed in continuing the State Courts Actions and the Bankruptcy Case, and the Parties agree that there has been no finding, admission, or inference of liability or wrongdoing of any kind by the Defendants and that this Agreement may not be deemed to create any such inference of liability;

**WHEREAS**, Liberty, Excelerate, River Meadows, and the Trustee have reached a separate agreement to resolve their outstanding issues, which is documented and set forth in that certain agreement dated as of April 28, 2020 (the "Trustee Settlement Agreement"), and is contingent upon, among other things, this Agreement;

**NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED**, by and between the Parties, in consideration of the terms set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties affirm that the foregoing paragraph and "Whereas" clauses are true and correct, and are incorporated into this Agreement and made binding by this reference.

2. **Definitions.** The defined terms set forth in this Settlement Agreement have the meanings ascribed to them below:

**"Bankruptcy Court Order"** means the Order entered by the Bankruptcy Court approving the terms and conditions of this Settlement Agreement and the Trustee Settlement Agreement in the form attached hereto as Exhibit B.

**"Catastrophic Injury Fund"** means the portion of the settlement distributed to Class Members who suffered catastrophic injuries, as determined by the Settlement Master.

**"Claims Administrator"** means Postlethwaite & Netterville.

**"Claim Period"** means the time in which Class Members may choose to participate in the settlement, opt out of the Settlement, or object to the Settlement Agreement, which shall run ninety (90) days from the date the Claims Administrator sends the Notice Forms.

**"Claim Form"** means the form that Class Members must fill out to participate in the settlement.

**“Class Counsel’s Attorneys’ Fees”** means the amount of attorneys’ fees, costs, and expenses petitioned for by Class Counsel in the Motions for Preliminary and Final Approval for reimbursement of their litigation fees, costs, and expenses.

**“Class Counsel”** means Jeremiah Frei-Pearson, John Sardesai-Grant, and W. Scott Terrell III of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP.

**“Class List”** means a list of Class Members and the following information for each Class Member: name, last known mailing address, last known email address, and date(s) of residence, as that information exists on file with or is available to Defendants. In the event that the Claims Administrator has difficulty identifying the address of a particular Class Member on the Class List, the Parties agree to meet and confer in good faith and that Defendants shall provide all information reasonably requested by the Claims Administrator for that Class Member.

**“Class Member Payment Settlement Fund”** means the total amount distributed to Class Members, net of the Claims Administrator fees and costs.

**“Class Member”** means any individual falling within the Class.

**“Class”** means all persons who reside, or resided, at the Facility during the Settlement Class Period.

**“Court”** means the Commercial Division of the Supreme Court, State of New York, County of Onondaga.

**“Days”** means business days if the specified number is less than ten (10) and calendar days if the specified number is ten (10) or greater.

**“Defense Counsel”** means counsel of record for the named defendants in the Class Action and/or the Individual Plaintiff Actions.

**“Facility”** means the nursing and rehabilitation home located at 918 James Street in Syracuse, New York and known as James Square Nursing and Rehabilitation Centre until December 2017, when it was renamed the Bishop Rehabilitation and Nursing Center.

**“Fairness Hearing”** means the hearing before the Court relating to the Motion for Final Approval.

**“Fees”** means the total amount distributed to Class Counsel.

**“Final Approval Order”** means the Order entered by the Court after the Fairness Hearing approving the terms and conditions of this Settlement Agreement in the form attached hereto as Exhibit A.

**“Named Plaintiffs’ Enhancement Award” or “Enhancement Award”** means the monetary amount awarded by the Court in recognition of the assistance provided by plaintiffs Susan Karpen

and Michael Farruggio in the prosecution of the Class Action, not to exceed the amount of twenty-five thousand dollars (\$25,000.00), each subject to Court approval.

**“Notice Form”** means the Court-approved Notice of Proposed Settlement of Class Action Lawsuit to be sent to Class Members to notify them of the Settlement and their rights and obligations under this Settlement Agreement.

**“Objector”** means an individual who files an objection to this Settlement Agreement, but does not include any individual who opts out of the Settlement.

**“Opt-Out Statement”** means a written and signed statement that a Class Member has decided to opt out of the Settlement.

**“Preliminary Approval Order”** means the Order entered by the Court preliminarily approving the terms and conditions of this Settlement Agreement, and directing the manner and timing of providing the Notice Form to Class Members.

**“Qualified Settlement Fund” or “QSF”** means the account established by the Claims Administrator into which Defendants will deposit the Settlement Payment necessary to pay the Class Member Payment Settlement Fund, the Catastrophic Injury Fund, the Individual Plaintiff Actions Fund, and the Fees, Costs, and Enhancements Settlement Fund.

**“Settlement Payment”** means the Plaintiffs’ Fund, as defined in the Trustee Settlement Agreement, which shall be deposited by the Trustee into the Qualified Settlement Fund.

**“Settlement Agreement” or “Agreement”** means this Joint Stipulation and Settlement Agreement.

**“Settlement Checks”** means the checks sent to Class Members.

**“Settlement Class Period”** means August 15, 2014, through December 14, 2017.

**“Settlement Master”** means Jed Melnick, Esq. and anyone with whom Mr. Melnick associates to evaluate how the Catastrophic Injury Fund should be distributed.

**“Settlement”** means the terms described in this Settlement Agreement.

2. Within fourteen (14) days of the Effective Date (defined below), the Trustee, on behalf of River Meadows, will make a payment in the total amount of all monies received by the Trustee for the collective “Plaintiffs’ Fund,” as defined in the Trustee Settlement Agreement, to the Claims Administrator to be distributed in accordance with Paragraph 20.

3. Prior to the Fairness Hearing, the parties to the State Court Actions will submit a Stipulation of Discontinuance of all matters with Prejudice to Judge Paris and take any and all actions necessary to effectuate the dismissal with prejudice of the State Court Actions in their entirety and as to all defendants.

4. Except with respect to the terms of this Agreement, each of the Plaintiffs and any other person or entity that were or could have been a member of the class created by the Class Action or could bring any of the claims asserted in or related to the State Court Actions, on behalf of each of themselves and on behalf of each of their past and present parents, subsidiaries, affiliates and related companies of any kind or nature, partners, members, shareholders, officers, directors, employees, legal successors, predecessors, agents, heirs, personal representatives, attorneys, insurers, trustees, and assigns (the "Plaintiff Releasing Parties"), hereby releases, remises, waives, and fully and forever discharges Defendants, Lloyd's of London, every insurer that subscribes to Policy No. SB-LTCA-01554-17, Sedgwick Claims Management Services, Inc., Bottom Line Management LLC, the Trustee, and each of their respective past and present parents, subsidiaries, affiliates and related companies of any kind or nature, shareholders, officers, directors, employees, legal successors, predecessors, agents, heirs, personal representatives, attorneys, insurers, trustees, and assigns (the "Defendant Released Parties") from any and all possible claims, demands, rights, actions, and causes of action of every kind and nature whatsoever, known or unknown, foreseen or unforeseen, direct, indirect, or consequential, matured or unmatured, accrued or unaccrued, at law or in equity, that each of the Plaintiff Releasing Parties now has, claims to have, or has had at any time from the beginning of time, to and including the date hereof, against the Defendant Released Parties (the "Plaintiff Released Claims"), provided, however, the Plaintiff Releasing Parties shall not release any claim to distributions from the Plaintiffs' Fund. In addition, Plaintiffs

expressly acknowledge that they are waiving any and all claims arising out of or relating to the Facility and/or the State Court Actions as to any and all of the Parties. For the avoidance of doubt, nothing set forth in this release is meant or intended to release or affect the claims made against parties who are not released parties in the separate action pending in Supreme Court Onondaga County, captioned: *Valeri Austin and Amanda Dillon as representatives of the estate of Larry C. Austin, deceased, vs. Pawan K. Rao, M.D., Brian Changlai, M.D., Jeanne Bishop, M.D. and Ovid Neulander, M.D.*, Index Number 007476/2018.

5. Except with respect to the terms of this Agreement, each of the Defendants releases, remises, waives, and fully and forever discharges each of the Plaintiffs and each of their respective past and present parents, subsidiaries, affiliates and related companies of any kind or nature, shareholders, officers, directors, employees, legal successors, predecessors, agents, heirs, personal representatives, attorneys, insurers, trustees and assigns (the "Plaintiff Released Parties") from any and possible claims, demands, rights, actions and causes of action of every kind and nature whatsoever, known or unknown, foreseen or unforeseen, direct, indirect or consequential, matured or unmatured, accrued or unaccrued, at law or in equity, that each of them now has, claims to have, or has had, at any time from the beginning of time against the Plaintiff Released Parties arising out of or related to the State Court Actions. Not notwithstanding the foregoing, Plaintiff Releasing Parties agree to satisfy from the proceeds of this settlement and be solely responsible for any and all liens, rights of subrogation, defense claims, losses, liability, actions, damages, causes of action, judgments, costs and expenses, including attorney fees, whatsoever asserted by, allegedly by or on behalf of, sustained by or arising from any person, corporation, partnership, state or federal government, governmental agency, hospital, or any other medical provider, health care provider, disability or insurance benefits provider, workers compensation carrier, Medicare, Medicaid, or

any other entity, any and all claims arising in whole or in part, or in any way connected to the Facility and/or the State Court Actions as to any and all Parties.

6. In exchange for the payment of the Insurance Proceeds Settlement as defined in the Trustee Settlement Agreement, Plaintiffs, Defendants, and the Trustee (on behalf of themselves and on behalf of each of their past and present parents, subsidiaries, affiliates and related companies of any kind or nature, partners, members, shareholders, officers, directors, employees, legal successors, predecessors, agents, heirs, representatives, attorneys, insurers, trustees, and assigns) release, acquit, and fully and forever discharge Lloyd's of London, every insurer that subscribes to the PL/GL Insurance Policy, and Sedgwick Claims Management Services, Inc. (and each of their respective past and present parents, subsidiaries, affiliates and related companies of any kind or nature, shareholders, officers, directors, employees, legal successors, predecessors, agents, heirs, personal representatives, attorneys, insurers, and assigns) from any and all possible claims, demands, rights, actions, and causes of action of every kind and nature whatsoever, known or unknown, foreseen or unforeseen, direct, indirect or consequential, matured or unmatured, accrued or unaccrued, at law or in equity, that relate to or arise from or involve the PL/GL Insurance Policy. Plaintiffs, Defendants, and the Trustee agree that the funds contributed from the PL/GL Insurance Policy to the Settlement Payment exhaust fully the limits of liability of the PL/GL Insurance Policy. Plaintiffs, Defendants, and the Trustee agree that, once the Effective Date has passed and the insurers that subscribe to the PL/GL Insurance Policy have paid to the Trustee the Insurance Proceeds Settlement, the PL/GL Insurance Policy shall be deemed abandoned as an asset of the bankruptcy case, the limits of liability of the PL/GL Insurance Policy are exhausted fully, and the insurers that subscribe to the PL/GL Insurance Policy have no further duties or obligations with respect to the State Court Actions and/or any other matter, regardless of whether

claims are made or continue to be prosecuted against Defendants and/or any other individual or entity (including but not limited to claims by individuals who opt out of the Settlement).

7. The Parties have fully considered and protected the respective interests of Medicare and Medicaid as secondary payers in this settlement for any incurred bills paid by Medicare and Medicaid. The Parties also acknowledge the interests of both Medicare and Medicaid in reimbursement for any incurred medical expenses that have been paid by Medicare and/or Medicaid. The Parties acknowledge that the reimbursement for any incurred medical expenses that have been paid by Medicare and/or Medicaid have either already been satisfied, and Medicare and Medicaid has respectively acknowledged such satisfaction, or will be satisfied from the settlement proceeds payable under this Agreement, and Medicare and Medicaid will respectively acknowledge such satisfaction. As additional consideration for this Agreement, the Parties stipulate that satisfaction of any and all of the interests of both Medicare and Medicaid shall be the sole and exclusive responsibility of Plaintiffs and/or respective counsel for the Plaintiffs, and Plaintiffs and/or respective counsel for the Plaintiffs agree to provide proof of such satisfaction of all liens to the Parties upon request. Plaintiffs and respective counsel for Plaintiffs agree that the duties stated in this paragraph are non-delegable and failure to perform such duties shall provide the Settling Released Parties with a right to recover any monies paid caused by the failure to satisfy the respective interests of Medicare and Medicaid including any additional expenses incurred and attorney fees.

8. The Parties acknowledge and understand that one or more of the Defendant Released Parties are required to report any payment to a Medicare beneficiary in settlement of a claim under a liability insurance policy or self-insurance to Medicare (CMS). Settlement proceeds payable under this Agreement shall be reported to Medicare (CMS).

9. The Parties acknowledge and understand that one or more of the Defendant Released Parties may be required to report any payment to a Medicaid beneficiary in settlement of a claim under a liability insurance policy or self-insurance to Medicaid (HMS). Settlement proceeds payable under this Agreement shall be reported to Medicaid (HMS).

10. Plaintiffs waive any claims for damages and agree to defend, indemnify, protect, and hold the Defendant Released Parties harmless from any causes of action of any kind or nature, including but not limited to a private cause of action provided in the Medicare Secondary Payer (MSP) Act, 42 U.S.C. Section 1395y(b)(3)(A), should Medicare deny coverage for any reason, including the failure to allocate adequate money for future Medicare covered medical expenses in this settlement or to otherwise protect Medicare's interest.

11. Plaintiffs waive any claims for damages and agree to defend, indemnify, protect, and hold the Defendant Released Parties harmless from any causes of action of any kind or nature, including but not limited to a private cause of action provided in the Medicaid Secondary Payer program, 42 U.S.C. 1396k(a)(1) and 1396a(a)(25), should Medicaid deny coverage for any reason, including the failure to allocate adequate money for future Medicaid covered medical expenses in this settlement or to otherwise protect Medicaid's interest.

12. Contemporaneously with the execution of this Agreement, on behalf of the Class Action, Class Counsel will file a joint motion to approve the Class Notice Form, using substantially the same procedures used as to the previously dismissed defendant Clinton Square Operators, LLC. Plaintiffs' counsel will also file a joint motion to approve this Agreement and request entry of the Final Approval Order in the form attached hereto as Exhibit A: (i) approving the settlement as set forth in this Agreement and finding it to have been a good faith settlement of the claims, (ii) barring and enjoining any and all of the Plaintiff Released Claims by any of the Plaintiff Releasing Parties,

and (iii) dismissing the State Court Actions with prejudice upon the date of final approval.

13. The Parties recognize that the Attorney General of the State of New York (“AG”) has been conducting an investigation into the Facility. In exchange for the consideration set forth in this Agreement, counsel for the Trustee and Plaintiffs have agreed that they will jointly communicate to the AG that the State Court Actions have been resolved amicably and that the settlement contained herein provides reasonable and fair compensation and restitution to the Plaintiffs and former residents of the facility.

14. This Agreement shall become effective (the “Effective Date”) upon the latest of the following: (i) the Agreement’s execution by the Parties hereto, (ii) the expiration of the notice period to opt out without any of the Class Action Plaintiffs having done so or without Defendants having exercised their right to withdraw from the Agreement in the event of opt-outs; (iii) entry by the Bankruptcy Court of the Bankruptcy Court Order, in the form attached hereto as Exhibit B, and (iv) the entry by the New York Supreme Court of the Final Approval Order, on a final and non-appealable basis, in the form attached hereto as Exhibit A. Defendants shall be given written notice of any opt-outs and at least seven (7) days to provide notice of withdrawal.

15. The provisions of this Agreement do not and shall not be construed to prohibit any truthful statements required to be made by a Party to any court or government agency, or in response to any subpoena, court order, or other legal process. If any Party receives lawful process compelling an appearance or statement, such that it can be reasonably expected that the other Party may become a topic of testimony, such Party shall notify the other Party of the process, and either Party may, at his, her, or its expense, oppose, challenge, and/or object to the process. If any Party challenges such process, the other Party shall reasonably cooperate in opposing, challenging, and/or objecting to the fullest extent legally permissible, at the expense of the challenging Party.

16. In the event that either (i) the Bankruptcy Court or the New York State Supreme Court declines to approve this Agreement or the Trustee Settlement Agreement, or (ii) any other condition to the Effective Date is unmet, then this Agreement shall be null and void and the Parties may resume the various actions and claims. In the event that any of the Class Action members choose to opt out of this Agreement, then any Defendant may elect to withdraw from this Agreement. In the event that any Defendant elects to withdraw from the Agreement or fails to fund its agreed contribution to the Plaintiffs Fund, then the remaining Defendants shall have the option to continue with the Agreement and perform the obligations of the withdrawing Defendant(s), with the understanding that funding by Lloyd's of London, as insurer for River Meadows, of the Insurance Proceeds Settlement shall exhaust any remaining obligations of the insurers, and that no additional funds will be made available by the insurers to cover any potential award of opt out plaintiff or defense costs for any remaining Defendants. In the event that any Defendant withdraws from this Agreement, and one or more remaining Defendants perform the withdrawing Defendant's obligations, Plaintiffs agree to assign their claims in this action against the withdrawing Defendant to the Defendant(s) who undertake the withdrawing Defendant(s)' obligations. Should the remaining Defendants not opt to continue with the Agreement, this Agreement shall be null and void and the Parties may resume the various actions and claims. The fact that a Party may have signed this Agreement shall not be construed as consent to the jurisdiction of any court which did not otherwise have jurisdiction against such Party and shall not be deemed a waiver or admission of any sort.

17. Plaintiffs' counsel shall, upon demand, provide the Trustee with all tax identification numbers or forms necessary to carry out the purposes of this Agreement. The Plaintiffs' Fund will be tendered without withholding or deduction for any taxes. Payment of all

taxes, interest, and penalties, if any, with respect to the Settlement Payment shall be the responsibility solely of Plaintiffs.

18. **Claims Administrator.** Class Counsel will retain a Claims Administrator, who shall serve as the administrator of the Settlement and perform the services described in this Settlement Agreement. The Claims Administrator will be responsible for locating Class Members through reasonable efforts; mailing of Notice Forms to Class Members in accordance with the Court's Preliminary Approval Order; responding to Class Member inquiries; resolving disputes relating to Class Members' settlement share amounts; reporting on the state of the Settlement to the Parties; distributing Enhancement Awards to the Named Plaintiffs; calculating the Settlement Checks in accordance with the Court's Final Approval Order; distributing Settlement Checks to Class Members; coordinating with the Settlement Master; preparing a declaration regarding its due diligence in the claims administration process; providing counsel for the Parties with any information related to the administration of the Settlement upon request; and performing such other duties as the Parties may jointly direct or as are specified herein. The Parties, through their counsel, will cooperate in good faith to resolve any disputes regarding the Claims Administrator's ability or need to perform certain duties under the Settlement Agreement, and any unresolved disputes shall be referred to the Court.

19. **Process for Approval of Settlement.** After receipt of the complete and fully executed Settlement Agreement, the Parties shall submit to the Court and Bankruptcy Court all papers necessary to obtain approval of this Settlement.

a. **Preliminary Approval Motion.**

i. Within seven (7) days after the execution of this Settlement Agreement, Class Counsel will submit to Defendants a draft Motion for an Order

Preliminarily Approving the Class Action Settlement (“Preliminary Approval Motion”), and a draft Notice Form. Defendants will review and make any comments and/or suggestions with respect to the Preliminary Approval Motion and related documents within seven (7) days after receipt of these documents. Class Counsel will file the final Preliminary Approval Motion.

- ii. The Proposed Preliminary Approval Order will include the findings required by Article 9 of the C.P.L.R., and set the Claim Period, which shall be sixty (60) days from the mailing of the Notice Forms to the Class Members.
- iii. In the Preliminary Approval Motion, Class Counsel will inform the Court of the intended process to obtain a “Final Approval Order” and a “Judgment of Dismissal” that will, among other things: (1) approve the Settlement as fair, adequate, and reasonable; (2) incorporate the terms of the Release of Claims, as described in Paragraph 5; (3) dismiss the Class Action with prejudice as against each Defendant; and (4) award Class Counsel attorneys’ fees and costs. Defendants will not oppose the Preliminary Approval Motion, provided that Defendants’ counsel has had the opportunity to communicate all of their comments and suggestions on the motion as set forth herein.
- iv. If the Court denies the Preliminary Approval Motion, the Parties shall seek reconsideration and/or appeal of the ruling or attempt to renegotiate the settlement and seek Court approval of a renegotiated settlement. If those

efforts are unsuccessful, the Class Action will resume as if no settlement had been attempted. Defendants retain any and all available rights and defenses including, but not limited to, the right to contest the merits of the claims being asserted in the Class Action.

- v. The parties will work together, diligently and in good faith, to obtain expeditiously a Preliminary Approval Order, Final Approval Order, and Final Judgment and Dismissal.

b. Notice to Class Members.

- i. Within seven (7) days of receipt of the Preliminary Approval Order, the Claims Administrator will mail to all Class Members, via United States Mail, postage prepaid, the Notice Form and the Claim Form. The Claims Administrator will also email the Notice Form to all Class Members for whom Defendants have an email address. The Notice Form shall inform the Class Members of their approximate settlement amount.
- ii. The Claim Form will provide Class Members with the opportunity to (1) recover their share of the QSF; (2) provide further information to the Settlement Master for his consideration; (3) opt out of the settlement; or (4) object to the settlement.
- iii. The Claims Administrator will take reasonable and customary steps to obtain the correct address of any Class Members for whom a Notice Form is returned by the Post Office as undeliverable and shall attempt re-mailings. These steps shall include, at a minimum, confirmation and updating of addresses by the National Change of Address system and skip tracing. The

Claims Administrator will notify Class Counsel and Defendants' Counsel of any Notice Form sent to a Class Member that is returned undeliverable after the first mailing, as well as any such Notice Form returned as undeliverable after any subsequent mailing(s) as set forth in this Settlement Agreement.

iv. Fourteen (14) days before the end of the Claim Period, the Claims Administrator will send a postcard and, if email addresses are identified, email reminder notice and Claim Form to Class Members.

v. The Claims Administrator will set up a settlement website which will also have a long form notice and other appropriate Court documents, as well as other useful features of settlement websites, including the ability for Class Members to submit a Claim Form and update their addresses.

c. Eligible and Participating Class Members. All Class Members who do not submit a valid Opt-Out Statement will participate in the Settlement. Only Class Members who timely submit a Claim Form will receive a Settlement Check. To be timely, a Claim Form must be postmarked or submitted within the Claim Period.

d. Opting Out of the Settlement.

i. Class Members who choose to opt out of the Settlement as set forth in this Settlement Agreement must mail, via First-Class United States Mail, postage prepaid, an Opt-Out Statement, which is a written, signed statement to the Claims Administrator that includes his or her name, address, and telephone number and words to the effect that he or she wishes to opt out of the Class Action. To be effective, an Opt-Out Statement must be post-

marked within the Claim Period. An Opt-Out Statement that does not fully comply with this provision will be invalid. In addition, an Opt-Out Statement will not be deemed valid if the Class Member submits a Claim Form. Named Plaintiffs and Individual Plaintiffs cannot opt out of the Settlement.

- ii. The Claims Administrator shall keep accurate records of the dates on which it sends Notices to Class Members.
- iii. The Claims Administrator will stamp the postmark date on the original of each Opt-Out Statement that it receives and shall serve copies of each Opt-Out Statement on Class Counsel, Defendant's Counsel, and counsel for Lloyds of London and Sedgwick Claims Management Services, Inc., not later than three (3) days after receipt thereof. The Claims Administrator will also, within five (5) days of the end of the Opt-Out Period, file with the Clerk of Court, stamped copies of any Opt-Out Statements. The Claims Administrator will, 48 hours prior to the end of the Opt-Out Period, send a final list of all Opt-Out Statements to Class Counsel Defendant's Counsel by email. The Claims Administrator will retain the stamped originals of all Opt-Out Statements and originals of all envelopes accompanying Opt-Out Statements in its files until such time as the Claims Administrator is relieved of its duties and responsibilities under this Agreement.
- iv. Class Counsel shall contact any Opt-Outs in order to encourage them to remain in the Class Action.

- v. If Opt-Outs remain at the end of the Notice Period, then Defendants may exercise their right to terminate the settlement by notifying Class Counsel, in writing, within seven days of written notice of any Opt-Outs.
- vi. Any Class Member who does not validly submit an Opt-Out Statement pursuant to this Settlement Agreement will be deemed to have accepted the terms of this Settlement Agreement, will be bound by the Final Approval Order, and will have all Released Claims released and forever discharged as to the Released Parties in accordance with Paragraph 5 of this Settlement Agreement.

e. Objections to Settlement.

- i. Class Members may object to the Settlement by following the instructions in the Notice Form. In order to be valid, an objection must be postmarked or otherwise returned (via, for example, facsimile or e-mail) to the Claims Administrator within the Claim Period. Within five (5) days from the end of the Claim Period, the Claims Administrator shall send to Class Counsel, Defendant's Counsel, and counsel for Lloyds of London and Sedgwick Claims Management Services, Inc., copies of all objections.
- ii. A Class Member who files objections to the settlement ("Objector") also has the right to appear at the Fairness Hearing either in person or through counsel hired by the Objector. An Objector who wishes to appear or speak at the Fairness Hearing must state his or her intention to do so in writing as to his or her written objections at the time he or she submits his or her written objections by including a statement to the effect that he or she

intends to appear and speak at the Fairness Hearing in his or her written objection. If an Objector does not fully comply with this provision, the Objector may not appear and speak at the Fairness Hearing. An Objector may withdraw his or her objections at any time. No Class Member may appear at the Fairness Hearing unless he or she has filed a valid objection that complies with all procedures provided in this Paragraph and the previous Paragraph. No Class Member may present an objection at the Fairness Hearing based on a reason not stated in his or her written objections. A Class Member who has opted out of the Settlement may not submit objections to the Settlement. Named Plaintiffs and Individual Plaintiffs may not submit objections to the Settlement.

- iii. The parties may file with the Court written responses to any filed objections no later than three (3) days before the Fairness Hearing.
- iv. If the Court overrules the Class Member's filed objections, they are considered a participating Class Member.

- f. Motion for Judgment and Final Approval. Not later than seven (7) days before the Fairness Hearing, Class Counsel will submit a Motion for Judgment and Final Approval to Defendants. Defendants will review and make any comments and/or suggestions with respect to the Motion for Judgment and Final Approval within seven (7) days after receipt of the draft Motion for Judgment and Final Approval from Class Counsel. The Motion for Judgment and Final Approval from Class Counsel will request that the Court, among other things, (a) enter Judgment in accordance with this Settlement Agreement; (b) approve the Settlement and

Settlement Agreement as final, fair, reasonable, adequate, and binding on all Class Members who have not validly opted out of the Settlement; and (c) dismiss the Class Action with prejudice as against Defendants.

g. Effect of Failure to Grant Final Approval. If the Court fails to enter the Final Approval Order approving the Settlement (failure by the Court or an appellate court to award or sustain the full amount of Class Counsel's attorneys' fees and expenses or the full amount of Enhancement Awards to the Named Plaintiffs will not constitute failure to approve the Settlement or a material modification of the Settlement), then the Parties shall (a) seek reconsideration and/or appellate review of the decision denying entry of judgment; or (b) attempt to renegotiate the settlement and seek Court approval of the renegotiated settlement. If the Parties jointly determine that no Court is likely to approve the settlement, then the Settlement and this Settlement Agreement will become void *ab initio*. In the event the Settlement and this Settlement Agreement become null and void:

- i. The Class Action will proceed as if no settlement had been attempted, Defendants will have no payment obligations whatsoever and Defendants will have no obligation to fund the QSF. In that event, Defendants retain any and all rights and defenses including, but not limited to, the right to contest the merits of the claims being asserted by Named Plaintiffs or Individual Plaintiffs.
- ii. Notice will be provided to Class Members that the Settlement Agreement did not receive final approval and that, as a result, no payments will be made to Class Members under the Settlement Agreement. Such notice shall be

mailed by the Claims Administrator via First-Class United States Mail, postage prepaid, to the addresses used by the Claims Administrator in the mailing of the Notice Form.

iii. This Settlement Agreement will not be used for any purpose in connection with the Class Action, any future litigation, or any other lawsuit, administrative or other legal proceeding, claim, investigation, or complaint, expect that the non-disclosure obligations in Paragraph 11 below will remain in effect.

20. **Payment of Settlement Proceeds.**

- a. Settlement Payment. The Settlement Payment will be funded in accordance with the Trustee Settlement Agreement and shall fully resolve and satisfy all of the lawsuits and their associated costs.
- b. Portion of Plaintiffs' Fund Payable as Attorneys' Fees and Costs. In the Motions for Preliminary and Final Approval, Class Counsel will petition the Court for an award of attorneys' fees of no more than \$1,833,330 ("Class Counsel's Attorneys' Fees"), for reimbursement of their actual litigation costs and expenses up to \$75,000.00 ("Class Counsel's Expenses"), and approval of claims administration expenses to be paid from the Settlement Payment. Defendants will not oppose this application. The substance of Class Counsel's application for their Attorneys' Fees is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Class Action. The outcome of any proceeding related to Class Counsel's application for their Attorneys' Fees shall not terminate this Settlement Agreement or otherwise affect

the Court's ruling on the Motion for Final Approval. In addition to the moneys paid as Class Counsel's Attorneys' Fees, counsel for the Individual Plaintiffs will also be paid attorneys' fees by their clients pursuant to their contractual agreements.

- c. Portion of Settlement Payment Allocated to Plaintiffs in the Individual Actions
  - i. Class Counsel shall move for Court approval of distribution of fifty-thousand (\$50,000) to each Individual Plaintiff in recognition of their lawsuits. Defendants shall not oppose this application.
- d. Portion of Settlement Payment Allocated as Payments to Michael Farruggio and Susan Karpen (Enhancement Award).
  - i. Class Counsel shall move for Court approval of an Enhancement Award to Michael Farruggio and Susan Karpen in recognition of the assistance they provided in the Lawsuit in the amount of twenty-five thousand dollars (\$25,000.00) each, for a total of fifty-thousand (\$50,000). Defendants shall not oppose this application.
  - ii. Such Enhancement Award shall be at the sole discretion of the Court, and the application for such Enhancement Award is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Class Action. The outcome of the Court's ruling on the application for the Enhancement Award will not terminate this Settlement Agreement or otherwise affect the Court's ruling on the Motion for Final Approval or for Final Judgment and Dismissal.

- e. Allocation of QSF to Participating Class Members. Class Members' individual payments will be determined by the Settlement Claims Administrator pursuant to the following formula:

Class Members' Settlement Check = total money available after deducting cost of administration, payment to the Trustee, payment to the Individual Plaintiffs, Payment of Enhancement Awards, and Class Counsel's Attorneys' Fees and Costs, multiplied by total number of days the Class Member resided at the Facility in the Settlement Class Period, divided by the total number of days all Class Members resided at the Facility in the Settlement Class Period.

f. Settlement Payments.

i. The \$5,300,000.00 Plaintiff's Fund shall be submitted by the Trustee to the Claims Administrator for deposit into the QSF within fourteen days of the Effective Date. By no later than ten (10) days thereafter, the Claims Administrator will mail: (1) the Settlement Checks to participating Class Members; (2) a check (or wire, at Class Counsel's discretion) to Class Counsel for Class Counsel's Attorneys' Fees, as approved by the Court; and (3) checks to the Individual Plaintiffs and Named Plaintiffs for resolution of the Individual Actions and the Enhancement Award.

ii. Absent other instructions, the Settlement Checks will be mailed by the Claims Administrator to each Class Member at the address listed on the Class Member's Notice Form. If a participating Class Member's settlement check is returned with a forwarding address, the Claims Administrator shall promptly re-mail the Settlement Check to the forwarding address. If a participating Class Member's settlement check is returned without a forwarding address, the Claims Administrator will take reasonable and

customary steps to obtain the correct address of any Class Member for whom a Settlement Check is returned by the Post Office as undeliverable and shall attempt re-mailings.

- iii. If a participating Class Member reports that his/her Settlement Check was lost, stolen, or undelivered, the Claims Administrator shall promptly issue a stop payment order on the original check and issue new checks to such participating Class Member.
- iv. Any participating Class Member who does not cash his/her Settlement Check will still be bound by all terms and conditions of this Agreement, including the releases contained in Paragraph 5, and will still be deemed not to have opted out of the Settlement.
- v. The Claims Administrator shall report to Class Counsel and Defendants' Counsel all checks mailed and cashed, and the dates thereof.
- vi. Class Members will have ninety (90) days from the date of mailing to cash or deposit their Settlement Checks (the "Acceptance Period"). Class Members will be informed of the Acceptance Period in the Notice Form and on the Settlement Checks.
- vii. Any unclaimed funds and un-negotiated Settlement Checks to Class Members that remain uncashed ninety (90) days after the date of mailing shall revert to the Catastrophic Injury Fund.

g. Catastrophic Injury Fund

- i. The Catastrophic Injury Fund shall be funded with the value of all unclaimed funds in the QSF after the claims period expires.

- ii. Class Members participating in the Catastrophic Injury Fund (which may include Individual Plaintiffs and the Named Plaintiffs) shall provide any documentation requested to the Settlement Master.
- iii. The Settlement Master shall, using his expertise and acting at his sole discretion, determine how the funds in the Catastrophic Injury Fund should be distributed. He shall share this determination with the Claims Administrator, who shall distribute the funds in the Catastrophic Injury Fund in accordance with the Settlement Master's determination. All moneys in the Catastrophic Injury Fund, minus any costs of administration or money that Individual Plaintiffs privately contract to pay to their counsel, shall be distributed to Class Members participating in the Catastrophic Injury Fund (which may include Individual Plaintiffs and the Named Plaintiffs) as determined by the Settlement Master.
- iv. All Money in the Catastrophic Injury Fund shall be entirely distributed within nine (9) months of the Effective Date.

h. Tax Characterization.

- i. The Claims Administrator will issue all relevant taxation documents, including W-2 and 1099 forms.

21. **Mutual Cooperation.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts (i) to effectuate this Settlement Agreement, including during any appeals, (ii) to obtain the Court's approval of this Settlement Agreement and all of its terms, and (iii) to defend this Agreement and the Settlement from any legal challenge. Each party to this Agreement, upon the request of any other party to this Agreement, agrees to perform such further

acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Settlement Agreement. The Parties will fully cooperate with each other and with the Claims Administrator to accomplish, implement, and effectuate the terms of this Settlement Agreement, including but not limited to the preparation and execution of documents necessary to implement this Settlement Agreement.

22. This Agreement constitutes the entire agreement and understanding between the Parties pertaining to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, representations, and understandings of the Parties concerning the subject matter hereof.

23. This Agreement may not be terminated, amended, or modified in any way except by written instrument signed by all Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

24. Each Party shall execute and deliver any document or instrument reasonably requested by the other Party after the date of this Agreement to effectuate the intent of this Agreement.

25. The undersigned agree, warrant, and represent that they each have full authority to execute this Agreement in the various capacities in which they so execute it.

26. The Parties represent and warrant that none of them have heretofore assigned any claim or any part of any claim, action, or cause of action which is hereby released to any person, firm, or corporation for or on their behalf.

27. The Parties to this Agreement agree that the terms and provisions of the Agreement shall be interpreted by, and according to, the laws of the State of New York, and any disputes

arising out of or relating to this Agreement will be exclusively resolved by arbitration before JAMS New York with Jed Melnick serving as the Arbitrator or, if he is unavailable, another Arbitrator chosen in accordance with JAMS's selection criteria.

28. The Parties to this Agreement agree that, should any provision of the Agreement be deemed unenforceable by a court of law, such finding shall not affect enforceability of the remaining provisions, except that any modification or restriction on the applicability of the releases provided for in Paragraph 5 or the dismissal with prejudice of the State Court Actions will render this Agreement null and void and will require the return of the Settlement Payment.

29. With the exception of the Defendant Released Parties, who are intended third-party beneficiaries of the release provisions, nothing contained in this Agreement is intended, nor shall it be construed or deemed, to confer any rights, powers, or privileges on any person or entity not a Party or a successor or assign of a Party.

30. The undersigned agree that this Agreement may be executed in any number of counterparts, each of which shall constitute one original, and all of which together shall constitute one and the same instrument; and .pdf and facsimile signatures shall be deemed originals.

31. Each Party acknowledges, agrees, and represents that it: (a) has been represented in connection with the negotiations and preparation of this Agreement by counsel of that Party's choosing; (b) has read the Agreement and has had it fully explained by counsel; (c) is fully aware of the contents and legal effect of this Agreement; (d) has authority to enter into and sign the Agreement; and (e) enters into and signs this Agreement by its own free will.

**IN WITNESS WHEREOF**, the parties hereto knowingly and voluntarily execute this Agreement as of the date set forth below:

**[SIGNATURE PAGE(S) FOLLOW]**

**PLAINTIFFS:**

EXECUTED this \_\_\_\_\_ day of April, 2020

**CLASS ACTION PLAINTIFFS**

By: \_\_\_\_\_

Michael Farruggio and Susan Karpen, as Administrators of the Estate of Theresa Farruggio, individually and on behalf of others similarly situated

EXECUTED this \_\_\_\_\_ day of April, 2020

**INDIVIDUAL PLAINTIFFS**

By: \_\_\_\_\_

Valerie Austin and Amanda Dillon, as co-administrators of the Estate of Larry C. Austin, Deceased

By: \_\_\_\_\_

Warren J. Dunbar, Individually and as Executor/Fiduciary of the Estate of Judy H. Dunbar

By: \_\_\_\_\_

Teresa M. Ferraro, Deceased, by and through, Irene Rotella, as Administratrix of the Estate of Teresa M. Ferraro, Deceased

By: \_\_\_\_\_

Marion Foertch, as Administratrix of the Estate of Ronald A. Foertch, deceased

By: \_\_\_\_\_

Charles A. Greco, Individually and as Administrator of the Estate of Joanne M. Shafer

By: \_\_\_\_\_

Theodora LaDuke, Deceased, by and through, Shirley Caolo, as Administratrix of the Estate of Theodora LaDuke

By: \_\_\_\_\_

Edith M. Sheldon a/k/a Edith Mary Sheldon, Deceased by and through, James P. Sheldon, as Executor of the Estate of Edith M. Sheldon a/k/a Edith Mary Sheldon

By: \_\_\_\_\_

Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased, by and through Anthony John Tangredi and Barbara Ann Calkins, as Co-Administrators of the Estate of Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased

By: \_\_\_\_\_

Louise M. Testone a/k/a Louise Testone, Deceased, by and through, John A. Testone, as Executor of the Estate of Louise M. Testone a/k/a Louise Testone

By: \_\_\_\_\_

William Strack, by and through his Power of attorney, Mary Strack

By: \_\_\_\_\_

Penny Wilcox, by Nancy Wilcox, as her Attorney-in-fact

By: \_\_\_\_\_

Barbara I. Faraino a/k/a Barbara J. Faraino, Deceased by and through Michele M. Pontillo, as Executor of the Estate of Barbara I. Faraino a/k/a Barbara J. Faraino

By: \_\_\_\_\_

Russell G. Heater, by Michelle Heater, as his Attorney-in-Fact

By: \_\_\_\_\_  
Barbara Brown

By: \_\_\_\_\_  
James A. Makal, Individually and as Administrator of the Estate of Andrew E. Makal

By: \_\_\_\_\_  
Thomas V. Carioti, Individually and as Executor of the Estate of Caroline M. Carioti

By: \_\_\_\_\_  
Sharon W. Barr, as Administrator of the Estate of Elizabeth Scott

**DEFENDANTS:**

EXECUTED this \_\_\_\_\_ day of April, 2020

EXCELERATE HEALTHCARE SERVICES, LLC

By: \_\_\_\_\_

EXECUTED this \_\_\_\_\_ day of April, 2020

JUDY KUSHNER

By: \_\_\_\_\_  
Judy Kushner

EXECUTED this \_\_\_\_\_ day of April, 2020

ABRAHAM GUTNICKI

By: \_\_\_\_\_  
Abraham Gutnicki

EXECUTED this \_\_\_\_\_ day of April, 2020

LIBERTY SENIOR HOLDINGS, LLC

By: \_\_\_\_\_

EXECUTED this \_\_\_\_\_ day of April, 2020

RIVER MEADOWS, LLC

By: \_\_\_\_\_  
William J Leberman, Esq. as Chapter 7 Trustee in Chapter 7 Proceeding  
and on behalf of River Meadows LLC

EXECUTED this \_\_\_\_\_ day of April, 2020

ELIEZER FRIEDMAN

By: \_\_\_\_\_

Barbara Brown

By: James A. Makal, Individually and as Administrator of the Estate of Andrew E. Makal

By: Thomas V. Carioti  
Thomas V. Carioti, Individually and as Executor of the Estate of Caroline M. Carioti

By: Sharon W. Barr, as Administrator of the Estate of Elizabeth Scott

**DEFENDANTS:**

EXECUTED this \_\_\_\_\_ day of April, 2020

By:

Theodora LaDuke, Deceased, by and through, Shirley Caolo, as Administratrix of the Estate of Theodora LaDuke

By:

Edith M. Sheldon a/k/a Edith Mary Sheldon, Deceased by and through, James P. Sheldon, as Executor of the Estate of Edith M. Sheldon a/k/a Edith Mary Sheldon

By:

Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased, by and through Anthony John Tangredi and Barbara Ann Calkins, as Co-Administrators of the Estate of Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased

By:

Louise M. Testone a/k/a Louise Testone, Deceased, by and through, John A. Testone, as Executor of the Estate of Louise M. Testone a/k/a Louise Testone

By:

William Strack, by and through his Power of attorney, Mary Strack

By:

  
Penny Wilcox, by Nancy Wilcox, as her Attorney-in-fact

By:

Barbara I. Faraino a/k/a Barbara J. Faraino, Deceased by and through Michele M. Pontillo, as Executor of the Estate of Barbara I. Faraino a/k/a Barbara J. Faraino

By:

Russell G. Heater, by Michelle Heater, as his Attorney-in-Fact

By: \_\_\_\_\_  
Barbara Brown

By: \_\_\_\_\_  
James A. Makal, Individually and as Administrator of the Estate of Andrew E. Makal

By: \_\_\_\_\_  
Thomas V. Carioti, Individually and as Executor of the Estate of Caroline M. Carioti

By: \_\_\_\_\_  
*Sharon W. Barr SWB*  
Sharon W. Barr, as Administrator of the Estate of Elizabeth Scott

By: Barbara Brown  
Barbara Brown

By: \_\_\_\_\_  
James A. Makal, Individually and as Administrator of the Estate of Andrew E. Makal

By: \_\_\_\_\_  
Thomas V. Carioti, Individually and as Executor of the Estate of Caroline M. Carioti

By: \_\_\_\_\_  
Sharon W. Barr, as Administrator of the Estate of Elizabeth Scott

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Page:32/36

**PLAINTIFFS:**

EXECUTED this \_\_\_\_\_ day of April, 2020

**CLASS ACTION PLAINTIFFS**

By:

Michael Farruggio and Susan Karpen, as Administrators of the Estate of Theresa Farruggio, individually and on behalf of others similarly situated

EXECUTED this \_\_\_\_\_ day of April, 2020

**INDIVIDUAL PLAINTIFFS**

By:

Valerie Austin and Amanda Dillon, as co-administrators of the Estate of Larry C. Austin, Deceased

By:

Warren J. Dunbar, Individually and as Executor/Fiduciary of the Estate of Judy H. Dunbar

By:

Teresa M. Ferraro, Deceased, by and through, Irene Rotella, as Administratrix of the Estate of Teresa M. Ferraro, Deceased

By:

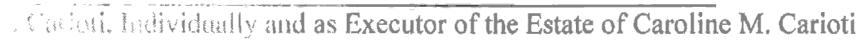
Marion Foertch, as Administratrix of the Estate of Ronald A. Foertch, deceased

By:

Charles A. Greco, Individually and as Administrator of the Estate of Joanne M. Shafer



Andrew E. Makal, Individually and as Administrator of the Estate of Andrew E. Makal



Caroline M. Carioti, Individually and as Executor of the Estate of Caroline M. Carioti



Barbara Scott, Individually and as Administrator of the Estate of Elizabeth Scott

122131455-2707-3020201030102020

**PLAINTIFFS:**

EXECUTED this \_\_\_\_\_ day of April, 2020

**CLASS ACTION PLAINTIFFS**

By:

Michael Farruggio and Susan Karpen, as Administrators of the Estate of Theresa  
Farruggio, individually and on behalf of others similarly situated

EXECUTED this \_\_\_\_\_ day of April, 2020

**INDIVIDUAL PLAINTIFFS**

By:

Valerie Austin and Amanda Dillon, as co-administrators of the Estate of Larry C.  
Austin, Deceased

By:

Warren J. Dunbar, Individually and as Executor/Fiduciary of the Estate of Judy H.  
Dunbar

By:

Teresa M. Ferraro, Deceased, by and through, Irene Rotella, as Administratrix of the  
Estate of Teresa M. Ferraro, Deceased

By:

Marion Foerth, as Administratrix of the Estate of Ronald A. Foerth, deceased

By:

Charles A. Greco, Individually and as Administrator of the Estate of Joanne M.  
Slater

122131455-2707-3020201030102020

By: \_\_\_\_\_

Theodora LaDuke, Deceased, by and through, Shirley Caolo, as Administratrix of the Estate of Theodora LaDuke

By: \_\_\_\_\_

Edith M. Sheldon a/k/a Edith Mary Sheldon, Deceased by and through, James P. Sheldon, as Executor of the Estate of Edith M. Sheldon a/k/a Edith Mary Sheldon

By: \_\_\_\_\_

Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased, by and through Anthony John Tangredi and Barbara Ann Calkins, as Co-Administrators of the Estate of Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased

By: \_\_\_\_\_

Louise M. Testone a/k/a Louise Testone, Deceased, by and through, John A. Testone, as Executor of the Estate of Louise M. Testone a/k/a Louise Testone

By: Mary A. Strack

William Strack, by and through his Power of attorney, Mary Strack

By: \_\_\_\_\_

Penny Wilcox, by Nancy Wilcox, as her Attorney-in-fact

By: \_\_\_\_\_

Barbara I. Faraino a/k/a Barbara J. Faraino, Deceased by and through Michele M. Pontillo, as Executor of the Estate of Barbara I. Faraino a/k/a Barbara J. Faraino

By: \_\_\_\_\_

Russell G. Heater, by Michelle Heater, as his Attorney-in-Fact

By:

Theodora LaDuke, Deceased, by and through, Shirley Caolo, as Administratrix of the Estate of Theodora LaDuke

By:

Edith M. Sheldon a/k/a Edith Mary Sheldon, Deceased by and through, James P. Sheldon, as Executor of the Estate of Edith M. Sheldon a/k/a Edith Mary Sheldon

By:

Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased, by and through Anthony John Tangredi and Barbara Ann Calkins, as Co-Administrators of the Estate of Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased

By:

Louise M. Testone a/k/a Louise Testone, Deceased, by and through, John A. Testone, as Executor of the Estate of Louise M. Testone a/k/a Louise Testone

By:

William Strack, by and through his Power of attorney, Mary Strack

By:

Penny Wilcox, by Nancy Wilcox, as her Attorney-in-fact

By:

Barbara I. Faraino a/k/a Barbara J. Faraino, Deceased by and through Michele M. Pontillo, as Executor of the Estate of Barbara I. Faraino a/k/a Barbara J. Faraino

By:

*Michelle Heater*

Russell G. Heater, by Michelle Heater, as his Attorney-in-Fact

**PLAINTIFFS:**

EXECUTED this \_\_\_\_\_ day of April, 2020

CLASS ACTION PLAINTIFFS

By:

Michael Farruggio and Susan Karpen, as Administrators of the Estate of Theresa Farruggio, individually and on behalf of others similarly situated

EXECUTED this 21st day of April, 2020

INDIVIDUAL PLAINTIFFS

By: Valerie Austin

Valerie Austin and Amanda Dillon, as co-administrators of the Estate of Larry C. Austin, Deceased

By:

Warren J. Dunbar, Individually and as Executor/Fiduciary of the Estate of Judy H. Dunbar

By:

Teresa M. Ferraro, Deceased, by and through, Irene Rotella, as Administratrix of the Estate of Teresa M. Ferraro, Deceased

By:

Marion Foertch, as Administratrix of the Estate of Ronald A. Foertch, deceased

By:

Charles A. Greco, Individually and as Administrator of the Estate of Joanne M. Shafer

**PLAINTIFFS:**

EXECUTED this \_\_\_\_\_ day of April, 2020

**CLASS ACTION PLAINTIFFS**

By:

Michael Farruggio and Susan Karpen, as Administrators of the Estate of Theresa Farruggio, individually and on behalf of others similarly situated

EXECUTED this 16 day of April, 2020

**INDIVIDUAL PLAINTIFFS**

By:

*Valerie Austin and Amanda Dillon*  
Valerie Austin and Amanda Dillon, as co-administrators of the Estate of Larry C. Austin, Deceased

By:

Warren J. Dunbar, Individually and as Executor/Fiduciary of the Estate of Judy H. Dunbar

By:

Teresa M. Ferraro, Deceased, by and through, Irene Rotella, as Administratrix of the Estate of Teresa M. Ferraro, Deceased

By:

Marion Foertch, as Administratrix of the Estate of Ronald A. Foertch, deceased

By:

Charles A. Greco, Individually and as Administrator of the Estate of Joanne M. Shafer

**PLAINTIFFS:**

EXECUTED this \_\_\_\_\_ day of April, 2020

**CLASS ACTION PLAINTIFFS**

By: \_\_\_\_\_

Michael Farruggio and Susan Karpen, as Administrators of the Estate of Theresa Farruggio, individually and on behalf of others similarly situated

EXECUTED this \_\_\_\_\_ day of April, 2020

**INDIVIDUAL PLAINTIFFS**

By: \_\_\_\_\_

Valerie Austin and Amanda Dillon, as co-administrators of the Estate of Larry C. Austin, Deceased

By: \_\_\_\_\_

Warren J. Dunbar, Individually and as Executor/Fiduciary of the Estate of Judy H. Dunbar

By: \_\_\_\_\_

  
Teresa M. Ferraro, Deceased, by and through, Irene Rotella, as Administratrix of the Estate of Teresa M. Ferraro, Deceased

By: \_\_\_\_\_

Marion Foertch, as Administratrix of the Estate of Ronald A. Foertch, deceased

By: \_\_\_\_\_

Charles A. Greco, Individually and as Administrator of the Estate of Joanne M. Shafer

**PLAINTIFFS:**

EXECUTED this 17 day of April, 2020

**CLASS ACTION PLAINTIFFS**

By: Susan T. Karpen

Michael Farruggio and Susan Karpen, as Administrators of the Estate of Theresa Farruggio, individually and on behalf of others similarly situated

EXECUTED this \_\_\_\_\_ day of April, 2020

**INDIVIDUAL PLAINTIFFS**

By:

Valerie Austin and Amanda Dillon, as co-administrators of the Estate of Larry C. Austin, Deceased

By:

Warren J. Dunbar, Individually and as Executor/Fiduciary of the Estate of Judy H. Dunbar

By:

Teresa M. Ferraro, Deceased, by and through, Irene Rotella, as Administratrix of the Estate of Teresa M. Ferraro, Deceased

By:

Marion Foertch, as Administratrix of the Estate of Ronald A. Foertch, deceased

By:

Charles A. Greco, Individually and as Administrator of the Estate of Joanne M. Shafer

By:

By: Shirley Caolo

Theodora LaDuke, Deceased, by and through, Shirley Caolo, as Administratrix of the Estate of Theodora LaDuke

By:

Edith M. Sheldon a/k/a Edith Mary Sheldon, Deceased by and through, James P. Sheldon, as Executor of the Estate of Edith M. Sheldon a/k/a Edith Mary Sheldon

By:

Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased, by and through Anthony John Tangredi and Barbara Ann Calkins, as Co-Administrators of the Estate of Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased

By:

Louise M. Testone a/k/a Louise Testone, Deceased, by and through, John A. Testone, as Executor of the Estate of Louise M. Testone a/k/a Louise Testone

By:

William Strack, by and through his Power of attorney, Mary Strack

By:

Penny Wilcox, by Nancy Wilcox, as her Attorney-in-fact

By:

Barbara I. Faraino a/k/a Barbara J. Faraino, Deceased by and through Michele M. Pontillo, as Executor of the Estate of Barbara I. Faraino a/k/a Barbara J. Faraino

By:

Russell G. Heater, by Michelle Heater, as his Attorney-in-Fact

**PLAINTIFFS:**

EXECUTED this \_\_\_\_\_ day of April, 2020

**CLASS ACTION PLAINTIFFS**

By:

Michael Farruggio and Susan Karpen, as Administrators of the Estate of Theresa Farruggio, individually and on behalf of others similarly situated

EXECUTED this \_\_\_\_\_ day of April, 2020

**INDIVIDUAL PLAINTIFFS**

By:

Valerie Austin and Amanda Dillon, as co-administrators of the Estate of Larry C. Austin, Deceased

By:

Warren J. Dunbar, Individually and as Executor/Fiduciary of the Estate of Judy H. Dunbar

By:

Teresa M. Ferraro, Deceased, by and through, Irene Rotella, as Administratrix of the Estate of Teresa M. Ferraro, Deceased

By: Mariion Foercht

Marion Foertch, as Administratrix of the Estate of Ronald A. Foertch, deceased

By:

Charles A. Greco, Individually and as Administrator of the Estate of Joanne M. Shafer

By:

Theodora LaDuke, Deceased, by and through, Shirley Caolo, as Administratrix of the Estate of Theodora LaDuke

By:

Edith M. Sheldon a/k/a Edith Mary Sheldon, Deceased by and through, James P. Sheldon, as Executor of the Estate of Edith M. Sheldon a/k/a Edith Mary Sheldon

By:

*Anthony Tangredi* *Barbara Calkins*  
Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased, by and through Anthony John Tangredi and Barbara Ann Calkins, as Co-Administrators of the Estate of Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased

By:

Louise M. Testone a/k/a Louise Testone, Deceased, by and through, John A. Testone, as Executor of the Estate of Louise M. Testone a/k/a Louise Testone

By:

William Strack, by and through his Power of attorney, Mary Strack

By:

Penny Wilcox, by Nancy Wilcox, as her Attorney-in-fact

By:

Barbara I. Faraino a/k/a Barbara J. Faraino, Deceased by and through Michele M. Pontillo, as Executor of the Estate of Barbara I. Faraino a/k/a Barbara J. Faraino

By:

Russell G. Heater, by Michelle Heater, as his Attorney-in-Fact

By:

Theodora LaDuke, Deceased, by and through, Shirley Caolo, as Administratrix of the Estate of Theodora LaDuke

By:

Edith M. Sheldon a/k/a Edith Mary Sheldon, Deceased by and through, James P. Sheldon, as Executor of the Estate of Edith M. Sheldon a/k/a Edith Mary Sheldon

By:

Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased, by and through Anthony John Tangredi and Barbara Ann Calkins, as Co-Administrators of the Estate of Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased

By:

*John A. Testone*

Louise M. Testone a/k/a Louise Testone, Deceased, by and through, John A. Testone, as Executor of the Estate of Louise M. Testone a/k/a Louise Testone

By:

William Strack, by and through his Power of attorney, Mary Strack

By:

Penny Wilcox, by Nancy Wilcox, as her Attorney-in-fact

By:

Barbara I. Faraino a/k/a Barbara J. Faraino, Deceased by and through Michele M. Pontillo, as Executor of the Estate of Barbara I. Faraino a/k/a Barbara J. Faraino

By:

Russell G. Heater, by Michelle Heater, as his Attorney-in-Fact

By:

Theodora LaDuke, Deceased, by and through, Shirley Caolo, as Administratrix of the Estate of Theodora LaDuke

By:

Edith M. Sheldon a/k/a Edith Mary Sheldon, Deceased by and through, James P. Sheldon, as Executor of the Estate of Edith M. Sheldon a/k/a Edith Mary Sheldon

By:

Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased, by and through Anthony John Tangredi and Barbara Ann Calkins, as Co-Administrators of the Estate of Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased

By:

Louise M. Testone a/k/a Louise Testone, Deceased, by and through, John A. Testone, as Executor of the Estate of Louise M. Testone a/k/a Louise Testone

By:

William Strack, by and through his Power of attorney, Mary Strack

By:

Penny Wilcox, by Nancy Wilcox, as her Attorney-in-fact

By:

  
Barbara I. Faraino a/k/a Barbara J. Faraino, Deceased by and through Michele M. Pontillo, as Executor of the Estate of Barbara I. Faraino a/k/a Barbara J. Faraino

By:

Russell G. Heater, by Michelle Heater, as his Attorney-in-Fact

By: \_\_\_\_\_  
Theodora LaDuke, Deceased, by and through, Shirley Caolo, as Administratrix of the  
Estate of Theodora LaDuke

*Jay O Sheldon*  
By: \_\_\_\_\_  
Edith M. Sheldon a/k/a Edith Mary Sheldon, Deceased by and through, James P.  
Sheldon, as Executor of the Estate of Edith M. Sheldon a/k/a Edith Mary Sheldon

By: \_\_\_\_\_  
Anthony Tangredi a/k/a Anthony J. Tangredi, Deceased, by and through Anthony John  
Tangredi and Barbara Ann Calkins, as Co-Administrators of the Estate of Anthony  
Tangredi a/k/a Anthony J. Tangredi, Deceased

By: \_\_\_\_\_  
Louise M. Testone a/k/a Louise Testone, Deceased, by and through, John A. Testone,  
as Executor of the Estate of Louise M. Testone a/k/a Louise Testone

By: \_\_\_\_\_  
William Strack, by and through his Power of attorney, Mary Strack

By: \_\_\_\_\_  
Penny Wilcox, by Nancy Wilcox, as her Attorney-in-fact

By: \_\_\_\_\_  
Barbara I. Faraino a/k/a Barbara J. Faraino, Deceased by and through Michele M.  
Pontillo, as Executor of the Estate of Barbara I. Faraino a/k/a Barbara J. Faraino

By: \_\_\_\_\_  
Russell G. Heater, by Michelle Heater, as his Attorney-in-Fact

**DEFENDANTS:**

EXECUTED this \_\_\_\_\_ day of April, 2020

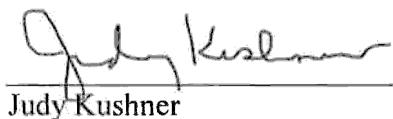
EXCELERATE HEALTHCARE SERVICES, LLC

By: \_\_\_\_\_

EXECUTED this 22nd day of April, 2020

JUDY KUSHNER

By: \_\_\_\_\_



EXECUTED this \_\_\_\_\_ day of April, 2020

ABRAHAM GUTNICKI

By: \_\_\_\_\_

Abraham Gutnicki

EXECUTED this \_\_\_\_\_ day of April, 2020

LIBERTY SENIOR HOLDINGS, LLC

By: \_\_\_\_\_

EXECUTED this \_\_\_\_\_ day of April, 2020

RIVER MEADOWS, LLC

By: \_\_\_\_\_

William J Leberman, Esq. as Chapter 7 Trustee in Chapter 7 Proceeding  
and on behalf of River Meadows LLC

DEFENDANTS:

EXECUTED this 2<sup>nd</sup> day of April, 2020

EXCELERATE HEALTHCARE SERVICES, LLC

By: \_\_\_\_\_

  
Abraham Gutnicki, Authorized Signatory

EXECUTED this \_\_\_\_\_ day of April, 2020

JUDY KUSHNER

By: \_\_\_\_\_

Judy Kushner

EXECUTED this 2<sup>nd</sup> day of April, 2020

ABRAHAM GUTNICKI

By: \_\_\_\_\_

  
Abraham Gutnicki

EXECUTED this \_\_\_\_\_ day of April, 2020

LIBERTY SENIOR HOLDINGS, LLC

By: \_\_\_\_\_

EXECUTED this \_\_\_\_\_ day of April, 2020

RIVER MEADOWS, LLC

By: \_\_\_\_\_

William J Leberman, Esq. as Chapter 7 Trustee in Chapter 7 Proceeding  
and on behalf of River Meadows LLC

EXECUTED this \_\_\_\_\_ day of April, 2020

**DEFENDANTS:**

EXECUTED this \_\_\_\_\_ day of April, 2020

EXCELERATE HEALTHCARE SERVICES, LLC

By: \_\_\_\_\_

EXECUTED this \_\_\_\_\_ day of April, 2020

JUDY KUSHNER

By: \_\_\_\_\_  
Judy Kushner

EXECUTED this \_\_\_\_\_ day of April, 2020

ABRAHAM GUTNICKI

By: \_\_\_\_\_  
Abraham Gutnicki

EXECUTED this 22nd day of April,

2020 LIBERTY SENIOR HOLDINGS, LLC

By: AL R

EXECUTED this 28<sup>th</sup> day of April, 2020

RIVER MEADOWS, LLC

By: William J Leberman  
William J Leberman, Esq. as Chapter 7 Trustee in Chapter 7 Proceeding  
and on behalf of River Meadows LLC

EXECUTED this 22nd day of April, 2020

ELIEZER FRIEDMAN

By: 

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONONDAGA

MICHAEL FARRUGGIO, as Executor of the Estate of THERESA FARRUGGIO, and SUSAN KARPEN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

918 JAMES RECEIVER, LLC; RIVER MEADOWS, LLC; JAMES SQUARE NURSING HOME, INC.; CLINTON SQUARE OPERATIONS, LLC; LIBERTY SENIOR HOLDINGS, LLC; EXCELERATE HEALTHCARE SERVICES, LLC; JUDY KUSHNER; ABRAHAM GUTNICKI; ELIEZER FRIEDMAN; AND DOES 1-25,

Defendants.

Index No. 003831/2017

**NOTICE OF SETTLEMENT OF CLASS ACTION AND SETTLEMENT HEARING**

If you resided at James Square Nursing and Rehab Centre, renamed the Bishop Rehabilitation and Nursing Center in December 2017 (the “Facility”), from August 15, 2014, through December 14, 2017, a class action settlement may affect your rights.

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY.**

The Supreme Court of the State of New York, County of Onondaga has authorized this Notice. This is not a solicitation from a lawyer.

This Notice has been sent to inform you of a proposed settlement of a class action lawsuit and a court hearing you may choose to attend. You may be entitled to receive a payment under the Settlement Agreement. Your rights may be affected by the legal proceedings in this Action. The Court will conduct a final approval hearing on January 13, 2021, to address whether the proposed settlement should be approved.

This notice pertains to any individual who resides, or resided, at the James Square Nursing and Rehab Centre, renamed the Bishop Rehabilitation and Nursing Center in December 2017, located at 918 James Street in Syracuse, New York (the “Facility”), from August 15, 2014, through December 14, 2017 (the “Settlement Class Period”). On August 25, 2017, Michael Farruggio, on behalf of the Estate of Theresa Farruggio, and Susan Karpen (“Plaintiffs”), on behalf of themselves and other similarly-situated current and former residents of the Facility, filed a lawsuit entitled *Farruggio et al. v. 918 James Receiver, LLC et al.*, Index No. 3831/2017 (Supreme Court Onondaga County) (the “Action”). Plaintiffs asserted claims of negligence and under New York’s Public Health Law (“PHL”) § 2801-d. The Court has certified the suit to be a class action, and

you have been identified as a Settlement Class Member. Defendants Excelerate Healthcare Services, LLC, Judy Kushner, Abraham Gutnicki, Liberty Senior Holdings, LLC, River Meadows, LLC, and Eliezer Friedman (collectively, "Defendants") have reviewed and investigated this matter and deny any wrongdoing.

Plaintiffs and Defendants (the "Parties") have entered into a Joint Stipulation and Settlement Agreement (the "Settlement Agreement") which is described in detail below and is available for your review as explained below.

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>DO NOTHING</b>	If you do nothing, you will be deemed to have released any applicable negligence or statutory claims under New York law.
<b>PARTICIPATE</b>	If you submit a claims form, you will receive money from the settlement and will be deemed to have released any applicable negligence or statutory claims under New York law.
<b>EXCLUDE YOURSELF</b>	If you make a valid and timely request to exclude yourself from the Settlement by sending a written, signed Opt-out Statement to the Claims Administrator by [OPT OUT DEADLINE], you will not receive a settlement payment but will retain all of the released claims subject to operation of the applicable statute of limitations.
<b>OBJECT</b>	To object you must submit a valid written objection to the settlement to the Claims Administrator by [OBJECTION DEADLINE] stating why you object to, or disapprove of, the settlement. If you exclude yourself from the settlement, you may not object. If you object in writing, you may also ask to speak in Court about the fairness of the settlement. You may only appear in Court to speak about the fairness of the settlement if you file a timely written objection to the settlement and if you do not exclude yourself from the settlement. Objecting to the settlement does not count as excluding yourself from the Action.

These rights and options -- **and the deadlines to exercise them** -- are explained in this notice.

- Under the allocation formula created by the settlement, the average Settlement Class Member will be entitled to receive approximately \$\_\_\_\_\_. This amount is based on the number of days you resided at the Facility during the Settlement Class Period. Residents who were at the Facility for more days will receive more than \$\_\_\_\_\_, while those who resided there for fewer days will receive less.
- Neither Plaintiffs' attorneys (also called "Class Counsel"), Defendants nor Defendants' attorneys make any representations concerning the tax consequences of this settlement or your participation in it, and you are advised to seek your own personal tax advice prior to acting in response to this Notice.
- Payment will be made once the Court approves the proposed settlement and after any appeals are resolved.

## **BASIC INFORMATION**

### **1. Why did I receive this notice?**

Defendants' records indicate that you resided at the Facility at some point from August 15, 2014, through December 14, 2017 (the "Settlement Class Period").

The Court ordered that you be sent this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court can approve the settlement. If the Court approves the settlement and after objections and appeals are heard, you will receive a payment if you do not exclude yourself from the settlement. This notice explains the Action, the settlement, your legal rights, and what benefits are available.

The Court overseeing this case is the Supreme Court of the State of New York in Onondaga County. This lawsuit is known as *Farruggio et al. v. 918 James Receiver, LLC et al.*, Index No. 3831/2017 (Supreme Court Onondaga County) (the "Action"). The people who filed the lawsuit are called the "Plaintiffs." Excelerate Healthcare Services, LLC, Judy Kushner, Abraham Gutnicki, Liberty Senior Holdings, LLC, River Meadows, LLC, and Eliezer Friedman are the "Defendants" who are participating in this Settlement Agreement.

### **2. What is this lawsuit about?**

This Action alleges that Defendants were negligent and violated the New York Public Health Law ("PHL") § 2801-d by depriving Facility residents of "any right or benefit created or established for the well-being of the patient by the terms of any contract, by any state statute, code, rule or regulation or by any applicable federal statute, code, rule or regulation." In particular, Plaintiffs allege that Defendants have failed to provide sufficient nursing staff to provide the nursing and related services necessary to attain and maintain the highest practicable physical and psycho-social well-being of the residents, violating their obligations pursuant to New York and federal law. Defendants deny all wrongdoing and liability, and maintains that it fully complied with the law.

### **3. Why is there a settlement?**

The Court has not ruled in favor of either Plaintiffs or Defendants. The Parties believe they would have prevailed in the case, but both sides have agreed to a settlement to avoid the cost and delay of litigating the case. The settlement also ensures that the people affected will receive compensation. The Plaintiffs and Class Counsel recommend the settlement for all Settlement Class Members.

## **THE SETTLEMENT BENEFITS -- WHAT YOU GET**

### **4. What does the settlement provide?**

Defendants have agreed to pay \$5,500,000.00 (the "Gross Settlement Amount"). This Gross Settlement Amount covers all payments to the Class Member Payment Settlement Fund, the Catastrophic Injury Fund, the Individual Plaintiff Actions Fund, and the Fees, Costs, and Enhancements Settlement Fund.

The Class Member Payment Settlement Fund, net of payments to the Claims Administrator for its fees and costs, will cover settlement payments to participating Settlement Class Members. Payments to participating Settlement Class Members will be based on the allocation formula approved by the Court, described in Paragraph 5 below, and made by check mailed directly to each Settlement Class Member. Any unclaimed funds will be revert to the Catastrophic Injury Fund.

In addition to the Class Member Payment Settlement Fund, Class Members may be entitled to additional funds through the Catastrophic Injury Fund, the portion of the settlement distributed to Class Members who suffered catastrophic injuries, as determined by the Settlement Master. The Catastrophic Injury Fund shall be funded with the value of all unclaimed funds after the claims period expires. Class Members participating in the Catastrophic Injury Fund (which may include Individual Plaintiffs and the Named Plaintiffs) shall provide any documentation requested to the Settlement Master.

## **5. How will my payment be calculated?**

Based on a formula preliminarily approved by the Court, the settlement payment for Settlement Class Members will be calculated as follows:

Class Members' Settlement Check = total money available after deducting cost of administration, payment to the Trustee, payment to the Individual Plaintiffs, Payment of Enhancement Awards, and Class Counsel's Attorneys' Fees and Costs, multiplied by total number of days the Class Member resided at the Facility in the Settlement Class Period, divided by the total number of days all Class Members resided at the Facility in the Settlement Class Period.

The Settlement Master shall, using his expertise and acting at his sole discretion, determine how the funds in the Catastrophic Injury Fund should be distributed. He shall share this determination with the Claims Administrator, who shall distribute the funds in the Catastrophic Injury Fund in accordance with the Settlement Master's determination. All moneys in the Catastrophic Injury Fund, minus any costs of administration or money that Individual Plaintiffs privately contract to pay to their counsel, shall be distributed to Class Members participating in the Catastrophic Injury Fund (which may include Individual Plaintiffs and the Named Plaintiffs) as determined by the Settlement Master. All Money in the Catastrophic Injury Fund shall be entirely distributed within nine (9) months of the Effective Date.

## **6. How can I get my settlement payment?**

You do not need to do anything to receive a payment from the Class Member Payment Settlement Fund. Once the Court approves the settlement and after all possible appeals have been exhausted, you will be sent a settlement check. If you choose to timely exclude yourself, then you will not receive a payment. You will have ninety (90) days from the date the settlement payment was mailed to cash or deposit your payment.

## **7. What am I giving up to get a payment or stay in the Settlement Class?**

Unless you timely exclude yourself from the settlement, you will remain in the Settlement Class. You will release all of the Released Claims (as defined in Paragraphs 4 through 11 of the

Settlement Agreement). This means you will not be able to bring a new lawsuit or benefit from any other lawsuit against Defendants about the legal issues in this Action or any legal issues involving any of the Released Claims during the Settlement Class Period. It does not apply to any claims prior to August 15, 2014. If you remain in the Settlement Class, all of the Court's rulings in this Action will apply to you and legally bind you.

## **8. When will my payment arrive?**

Once the Court approves the settlement and any appeals are resolved, you will receive your settlement check. The Court hearing to decide whether to approve the settlement will be on October 5, 2020. You can contact the Claims Administrator at any time for an update on the status of the case or the settlement.

## **9. Does the settlement include any other payments?**

Yes. Class Counsel will ask the Court to approve payment to the Claims Administrator, which will come from the Class Member Payment Settlement Fund. Class Counsel will also ask the Court to approve the distribution of fifty-thousand (\$50,000) to each Individual Plaintiff in recognition of their lawsuits. Additionally, Class Counsel will seek Court approval of an Enhancement Award to Michael Farruggio and Susan Karpen in recognition of the assistance they provided in the Lawsuit in the amount of twenty-five thousand dollars (\$25,000.00) each, for a total of fifty-thousand (\$50,000). Specifically, the Enhancement Award is intended to compensate them for their efforts in bringing and supporting the lawsuit, assisting Class Counsel, and responding to discovery requests.

## **10. How do I object to the settlement?**

If you disapprove of any part of the settlement, you have the right to make an objection.

To submit an objection, you must send a letter to the Claims Administrator (address in Section 17, below) postmarked by [OBJECTION DEADLINE]. You must include your name, address, telephone number, and the words: "I object to the settlement in the *Farruggio et al. v. 918 James Receiver et al.* Action." You must sign the letter. You must identify the specific part (or parts) of the settlement you find objectionable and explain in detail all of the reasons for your objection so the Parties, their counsel, and the Court can fully understand, consider, and address your objection.

If you submit an objection to the settlement, you may ask the Court for permission to speak at the final approval hearing. To do so, you must include the words "I request permission to appear and speak at the final approval hearing" in your written objection. The Court will ultimately decide whether to allow you to speak at the final approval hearing.

If you object to the settlement, you may withdraw your objection at any time before the final approval hearing by sending a written request to the Claims Administrator.

**11. How do I exclude myself from the settlement?**

To exclude yourself from the settlement, you must send a letter to the Claims Administrator (address in Section 17, below) postmarked by [OPT OUT DEADLINE]. You must include your name, address, social security number, telephone number, and, if you have one, e-mail address, and the words: "I want to opt out of the *Farruggio et al. v. 918 James Receiver et al.* Settlement." You must sign and date the letter.

If you ask to be excluded, you will NOT receive any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

If you exclude yourself from the settlement, you may withdraw your request at any time before the final approval hearing by sending a written request to the Claims Administrator.

**12. What's the difference between objecting to the settlement and excluding myself from the settlement?**

Objecting is simply telling the Court that you disapprove of something about the settlement. To present an objection, you must remain in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

**13. Do I have a lawyer in this case?**

The Court has decided that the lawyers at the law firm of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP are qualified to represent you and all Class Members. These lawyers are called "Class Counsel." You do not owe Class Counsel any money for their services relating to this Action or the settlement. You do not need to retain your own attorney to participate in the settlement. If you do not opt out of the Settlement Class and want to be represented by your own lawyer in connection with the settlement, you may hire a lawyer at your own expense.

**14. How will Class Counsel be paid?**

Class Counsel accepted this case on a contingent basis, meaning they would have received nothing if the case had been lost. Class Counsel have worked on this lawsuit since prior to August 2017 without receiving any fees and paid all of the costs associated with this lawsuit without receiving any reimbursement. As part of the settlement, Class Counsel will ask the Court to approve an attorneys' fee of \$1,833,330.00 and reimbursement for their actual litigation costs and expenses in the amount of \$75,000.00.

**15. When and where will the Court decide whether to approve the settlement?**

The Court will hold a final approval hearing at 10:00 a.m. on January 13, 2021. The hearing will take place in the Supreme Court of the State of New York, County of Onondaga, 401 Montgomery Street, Syracuse, New York 13202 or, due to the pandemic, the hearing may be virtual.

At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may listen to people who have asked to speak at the hearing. The Court will also consider Class Counsel's request for enhancement awards to Mr. Farruggio and Ms. Karpen, the payment of attorneys' fees and costs, and the payment to the Claims Administrator. After the hearing, the Court will decide whether to approve the settlement and the requested enhancement awards, fees, and cost payments. It is impossible to predict how long these decisions will take.

**16. Do I have to attend the final approval hearing?**

No. The Parties and their attorneys are responsible for presenting the settlement to the Court at the final approval hearing. You may attend the hearing at your own expense. If you submit a timely, valid objection, the Court will consider it. You do not have to appear at the hearing to support your objection or pay your own lawyer to attend the hearing, but you may do these things.

**17. Where can I get more information about the settlement?**

Please do not contact employees or managers at the Facility for information about the settlement or the claims process. If you have more questions about the settlement, please direct them to the Claims Administrator at the below address. You can also request a copy of the full Settlement Agreement from the Claims Administrator.

Postlethwaite & Netterville  
8550 United Plaza Blvd. Ste 1001  
Baton Rouge, Louisiana 70809  
Telephone: 212-944-4600

You may also contact Class Counsel:

Jeremiah Frei-Pearson, Esq.  
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP  
One North Broadway, Suite 900  
White Plains, New York 10601  
Telephone: 844-431-0695  
Email: [jfrei-pearson@fbflaw.com](mailto:jfrei-pearson@fbflaw.com)

In addition, there is a website with information which will include a long form notice and other appropriate Court documents, as well as other useful features of settlement websites, including the ability for Class Members to submit a Claim Form and update their addresses. That website is located at:

*www.JamesSquareSettlement.com*

**18. What if my address changes?**

If you change your address or reside at an address other than the one at which this notice was mailed to you, please promptly inform the Claims Administrator of your new address to ensure processing of your claim and mailing of your check to the correct address. It is your responsibility to keep a current address on file with the Claims Administrator.

DATED: [DATE OF MAILING]

# **EXHIBIT 3**

To be Argued by:  
LISA M. ROBINSON  
(Time Requested: 10 Minutes)

New York Supreme Court  
Appellate Division—Third Department

Docket No.  
CA 18-01595

MICHAEL FARRUGGIO, as Executor of the Estate of  
THERESA FARRUGGIO, and SUSAN KARPEN,  
Individually and on behalf of all others similarly situated,

*Plaintiffs-Respondents,*

—against—

RIVER MEADOWS, LLC,

*Defendant-Appellant,*

9118 JAMES RECEIVER, LLC, JAMES SQUARE NURSING HOME, INC.,  
and CLINTON SQUARE OPERATIONS, LLC,

*Defendants.*

BRIEF FOR DEFENDANT-APPELLANT  
RIVER MEADOWS, LLC

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**QUESTIONS PRESENTED**

1. Did the trial court err in finding that plaintiffs satisfied their evidentiary burden of proof to establish their entitlement to class certification?

Answer: Yes. The evidence plaintiffs submitted in support of their motion for class certification was insufficient to establish plaintiffs satisfied the CPLR §§ 901 and 902 requirements, requiring reversal of the trial court's Order granting class certification.

2. Did the trial court err in finding that plaintiffs satisfied the requirements of CPLR § 901?

Answer: Yes. The Court did not properly consider that four separate entities/defendants owned and operated the subject facility during the proposed class period, with each entity employing different staff and policies during their respective ownership period. Moreover, the Court failed to address how the proposed class satisfied the superiority element of CPLR §901. At a minimum, plaintiffs' failure to address the difference in ownership, and the trial court's failure to address how the different ownership satisfied the commonality, typicality and superiority requirements of CPLR §§ 901 and 902 constitutes reversible error.

3. Did the trial court err in determining that plaintiffs' proposed class satisfied the discretionary factors of CPLR § 902.

Answer: Yes. The trial court was required to consider the discretionary CPLR § 902 factors before certifying the class, which do not favor certification. The trial court erred in certifying the proposed class as the individualistic nature of the claims at issue will result in unwieldy litigation that is not amenable to class certification.

### PRELIMINARY STATEMENT

Defendant-appellant River Meadows, LLC (hereinafter “River Meadows”) respectfully submits this Appellate Brief in support of its appeal of the Hon. Anthony J. Paris’ Decision and Order granting plaintiffs’ Motion for Class Certification certifying a class consisting of all residents at the James Square Nursing & Rehabilitation Center (hereinafter “the Facility”) from August 25, 2014 to present. Record on Appeal (hereinafter “R.”), 19.

The trial court improperly found that plaintiffs satisfied their evidentiary burden. The plaintiffs largely relied on Center for Medicare Services (“CMS”) data to assert that defendants inadequately staffed the Facility in violation of federal and state law. However, the CMS data plaintiff relied on is plainly insufficient to satisfy their evidentiary burden on a motion for class certification.

When the problematic CMS data is disregarded, and the remainder of the evidence submitted is viewed in conjunction with the period each defendant in this case operated the Facility, it is readily apparent that plaintiffs’ submissions were woefully insufficient to certify a class period of approximately four years.

Notwithstanding the lack of proper foundational evidence, the trial court also erred in finding that plaintiffs satisfied the requirements of CPLR § 901. The trial court certified the class against four separate defendants that all operated the Facility at different periods, independent of each other.

Moreover, the individualistic nature of each defendants' care of each individual resident is inherently unique and not amenable to class action litigation. As such, this matter does not present common issues of law or fact, but instead poses discrete questions of law and fact that are isolated to each individual defendant and resident within the proposed class.

Finally, the trial court did not properly consider the discretionary factors of CPLR §902, warranting a reversal of the trial court's Order. The discovery portion of this case could easily take years to complete, and a trial of this matter is difficult to fathom given the sheer number of class members and multiple defendants. If the class is not de-certified or modified, it will encompass thousands of residents, generating the production and examination of millions of pages of medical records. The sheer unwieldiness of the proposed litigation weighs against certification of the class pursuant to CPLR §902.

Accordingly, for the reasons discussed below, River Meadows respectfully requests this Court reverse the Order granting class certification in its entirety, or, in the alternative, requests this Court modify the trial court's Order and limit the class in this matter to all residents residing at the Facility from January 1, 2017 to April 30, 2017, the period encompassed within the DOH citation plaintiffs submitted in support of their Motion for Class Certification.

### PROCEDURAL HISTORY

On January 22, 2018, Plaintiffs filed their Second Amended Summons and Complaint against defendants River Meadows, James Square Nursing Home, Inc. (hereinafter “JSNH Inc.”), 918 James Receiver (hereinafter “James Receiver”), and Clinton Square Operations, LLC (hereinafter “Clinton Square”). R. 34. Plaintiffs’ Second Amended Summons and Complaint sought to certify a class consisting of all residents at the Facility from August 25, 2014 to the present. R. 34-63.

On April 17, 2018, Clinton Square filed a Motion for Severance. R. 21-89. Thereafter, plaintiffs filed their Motion for Class Certification on May 1, 2018. R. 210-410. River Meadows filed its opposition to plaintiffs’ Motion for Class Certification on June 6, 2018. R. 411-696. Defendants James Receiver and JSNH Inc. also opposed plaintiffs’ Motion for Class Certification. R.697-719, 720-753. However, immediately prior to the oral argument of the motion, the current owner of the facility, Clinton Square, advised the Court that it had entered into a settlement agreement with plaintiffs. R. 14.

On June 13, 2018, after hearing oral argument, the trial court found that plaintiffs satisfied the requirements of CPLR §§ 901 and 902 and issued a bench decision granting plaintiffs’ motion and certifying the proposed class. R. 11-20. On August 21, 2018, the trial court issued its Order formally certifying the class. R. 7-

10. The trial court denied, without prejudice, plaintiffs' motion to certify a class concerning plaintiffs' negligence cause of action. R. 10, 19.

The class consists of:

*All persons or their survivors who reside or have resided at James Square Health Rehabilitation Centre, renamed the Bishop Rehabilitation and Nursing Centre in December 2017, located at 918 James Street, Syracuse, New York 13203, from August 25, 2014, to the present. R. 9.*

On August 22, 2018, River Meadows filed its Notice of Appeal of the Order and Bench Decision certifying the class in this matter. R. 3.

**STATEMENT OF FACTS:**

As it pertains to this appeal, plaintiffs seek to recover damages on behalf of the Class for the defendants' alleged violations of Public Health Law § 2801-d. R. 34-63. Plaintiffs allege, in pertinent part, that defendants understaffed the Facility, which resulted in inadequate care and unsafe conditions that caused harm to the Facility's residents during the proposed class period, August 25, 2014 to the present. R. 37.

The Facility is a 440-bed skilled nursing facility. R. 38. The class, as presently certified, encompasses all residents at the Facility from August 25, 2014 to the present: approximately 2100 people. R. 9. Critically, the Facility was operated by several different owners during the class period. R. 39-40. JSNH Inc. owned and

operated the Facility from 1984 to 2007. R. 39. Thereafter, James Receiver assumed operation of the Facility, although JSNH, Inc. remained the facility's owner. R. 40.

JSNH Inc. sold the Facility to River Meadows in June 2015. R. 40. River Meadows owned and operated the Facility from June 2015 to December 2017, at which time it sold the Facility to Clinton Square. R. 40.

Although ownership and operation of the Facility passed through four different entities during the class period, Plaintiffs' Complaint makes no effort to distinguish or differentiate their claims against each individual defendant in this matter. R. 34-63. Rather, plaintiffs allege that each defendant—although wholly separate entities that operated the Facility for distinct time periods—operated the Facility in the exact same manner as the other named defendants. R. 34-63.

#### **STANDARD FOR CLASS CERTIFICATION**

"Whether a lawsuit qualifies as a class action matter is a determination made upon review of the statutory criteria as applied to the facts." *Small v. Lorillard Tobacco, Co.*, 94 N.Y.2d 43, 52 (1999). A party seeking to maintain a class action suit bears the burden of establishing: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class which predominate over any questions affecting only individual members; (3) the claims of the representative parties are typical of the claims of the class; (4) the representative parties will fairly and adequately protect the interests of the class; and

(5) a class action is superior to other available methods to adjudicate the controversy.

*See, N.Y. C.P.L.R. § 901; see CLC/CFI Liquidating Trust v. Bloomingdale's, Inc., 50 A.D.3d 446, 447 (1st Dep't 2014). "General or conclusory allegations in the pleadings or affidavits are insufficient to sustain this burden." Rallis v. City of New York, 3 A.D.3d 525, 526 (2d Dep't 2004) citing Yonkers Contr. Co. v. Romano Enters. of N.Y., 304 A.D.2d 657, 658-59 (2d Dep't 2003) (emphasis added).*

A party is not automatically entitled to class certification even if it satisfies the statutory requirements of CPLR § 901. CPLR § 902 mandates that prior to a court permitting the case to proceed as a class action, the court must also consider the following factors: (1) the interest of the members of the class in individually controlling the prosecution of separate actions; (2) the impracticability or inefficiency of prosecuting or defending separate actions; (3) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (4) the desirability or undesirability of concentrating the litigation in a particular forum; and (5) the difficulties likely to be encountered in the management of a class action. N.Y. C.P.L.R. § 902; *Ferrari v. National Football League*, 153 A.D.3d 1589, 1593 (4th Dep't 2017) ("Once the section 901(a) prerequisites have been met, a court must consider" the CPLR § 902 factors).

**ARGUMENT**

**POINT I**

**THE COURT ERRED IN FINDING PLAINTIFFS SATISFIED  
THEIR EVIDENTIARY BURDEN OF PROOF**

A party moving for class certification is required to establish their entitlement to class certification through sufficient and competent evidence. *See Rallis v. City of New York*, 3 A.D.3d 525, 526 (2d Dep’t 2004). Self-serving conclusory allegations in pleadings or affidavits are insufficient to satisfy a plaintiff’s burden of proof on a motion for class certification. *Id.*; *see also Yonkers Contracting Co. v. Romano Enters.*, 304 A.D.2d 657, 658 (2d Dep’t 2003) (class certification “must be founded on an evidentiary basis.”); *Katz v. NVF Company, APL*, 100 A.D.2d 470, 473 (1st Dep’t 1984). Contrary to the trial court’s conclusion, the record plainly shows that plaintiffs fell far short of meeting their evidentiary burden to establish their entitlement to class certification for all residents at the facility from August 25, 2014 to the present. Accordingly, a reversal of the class certification, or, at a minimum a modification of the class period, is warranted in this case.

Absent from the trial court’s Decision and Order is a single reference to the substance, sufficiency or competency of the evidence plaintiffs relied on in support of their motion. R. 11-20. In granting plaintiffs’ motion for class certification, the trial court engaged in a one sentence analysis with respect to plaintiffs’ evidentiary requirement. R. 16-17. The trial court stated that it appeared plaintiffs had satisfied

the statutory requirements of CPLR §§901 and 902 by submitting: (1) the affidavit of Dr. Terry Gottlieb, (2) the New York State Department of Health's (DOH) 2017 citation of the Facility, and (3) twenty-two affidavits from residents and former residents and/or their survivors. R. 16-17.

However, as can be seen by examining Dr. Gottlieb's faulty analysis, as well as juxtaposing the 2017 Citation – which focuses on a limited period of time that the Facility was operated by one independent defendant— with the unique experiences described in the twenty-two individual affidavits, neither category of evidence is sufficient to meet plaintiffs' burden.

#### **A. Dr. Gottlieb's Analysis Does Not Establish the Requirements of §901**

Plaintiffs' Motion for Class Certification largely relied on the Expert Report of Dr. Terry Gottlieb, who conclusively opined that the defendants violated both New York and federal law by failing to adequately staff the Facility during the proposed class period. R. 217. While a motion for class certification does not require the moving party to prove its claims, it must still show that class certification is warranted based on competent and admissible evidence. *See, Rallis*, 3 A.D.3d at 526. Dr. Gottlieb's opinions are the antithesis of this standard.

##### **1. Dr. Gottlieb Based Her Analysis on Unreliable, Imprecise CMS data**

Critically, nowhere in her report did Dr. Gottlieb address what staffing levels were actually required at the Facility during the time period at issue, or how staffing

levels were impacted by the substantial differences in the needs of the Facility's residents. R. 217-35. Dr. Gottlieb also failed to offer any specific information concerning the actual number of staff each individual defendant employed at any given time and the actual number of residents in the Facility itself. R. 217-35. Indeed, nowhere in Dr. Gottlieb's report did she discuss the actual resident population, the differences in their needs, and what staffing levels were required to be in place to conform with New York and/or federal law. R. 217-35.

The CMS "data" Dr. Gottlieb relied upon is culled from Medicare's Five-Star Rating System and Nursing Home Compare, which are consumer tools that help people compare nursing homes. *See* CMS, Five-Star Quality Rating System; <https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcomplianc/fsqrs.html>. The Five-Star Rating System admits on its website that it is nothing more than a tool to help people compare nursing home facilities. *Id.* It is certainly not equivalent to a New York State Department of Health Annual Survey or Investigation Report, both of which provide significant information based on a thorough inspection and review of a nursing home, such as the Facility.

In spite of this fact, Dr. Gottlieb treated the CMS Five Star Rating System as gospel and used the ratings as the primary basis for her opinion the Facility was understaffed during the majority of the class period. R. 217-35.

**2. The Trial Court Ignored Both Case Law and Expert Opinion Discrediting Dr. Gottlieb's Analysis**

At least one court in New York has denied a motion for class certification in a nursing home case where the moving party largely relied on the CMS Five Star Rating System in support of its position the defendant facility was understaffed. R. 435-53. In *Olmann v. Willoughby Rehab. and Health Care Cntr., LLC* (Kings Co. Sup. Ct. 2017), which was included in River Meadow's papers in opposition to plaintiff's motion, the plaintiff presented an expert report that, similar to Dr. Gottlieb's report, reviewed the defendant facility's Five Star Rating data and concluded that the facility was understaffed for the duration of the proposed class period. R. 435-53. The trial court in *Olmann* held that "plaintiff's reliance on self-reported CMS data falls short of satisfying its evidentiary burden." R. 450. Yet, the trial court here ignored the sound reasoning of this opinion.

The trial court also disregarded River Meadows' submission of the Expert Report of Marc Zimmet and Jake Komin, which systematically explained why the CMS data and metrics Dr. Gottlieb relied upon in forming her opinions are not a sufficient basis to opine the defendants understaffed the Facility during the class period. R. 435-53, 661-70. Specifically, River Meadows' Expert Report stated that the measurements used by the Five Star Rating system to assess staffing levels at a nursing home fail to properly recognize co-morbidities that inherently impact the actual staffing requirements of a facility. R. 661. Indeed, individuals within the

skilled nursing field note that the Five Star Rating System fails to account for the varying levels of patient acuity and facility size in the nursing home industry. See Re-Examining CMS' 5-Star Rating System, <https://www.iadvanceseniorcare.com/blogs/alan-chorowitz/regulatorycompliancecms/re-examining-cms-5-star-rating-system?page=3>.

Furthermore, as set forth in River Meadows' Expert Report, Dr. Gottlieb's opinions in this case were premised upon data that is both biased and inaccurate. R. 661- 70. For example, Dr. Gottlieb claims in her report that the Facility's intention to reduce staffing caused inadequate staffing levels. R. 224-225. However, this claim has no evidentiary basis. Nowhere in the NYS Health and Health Planning report was it stated the cuts were in direct patient care. R. 669, 257-68. Moreover, Dr. Gottlieb failed to address the fact the Facility planned to decertify 10 beds, which would inherently result in a natural reduction in personnel. R. 224-25; R. 669. For example, removing 10 residents with complex medical acuities would dilute overall staffing needs. R. 669. Furthermore, River Meadows' Expert Report was critical of Dr. Gottlieb's reliance on the Department of Health inspections because the inspections and surveys performed do not include time-in motion studies and there is no quantitative foundation/scientific formula against which to conclude there was inadequate staffing. R. 668. Despite placing this critical information before the

trial court, the trial court's Decision disregarded River Meadows' Expert Report in its entirety. R. 11-20. It is clear that Dr. Gottlieb's analysis was inadequate to establish plaintiffs' entitlement to class certification, and should not have been the foundation of the trial court's decision.

**B. A 2017 DOH Survey Cannot Form the Evidentiary Basis for Establishing a Class of Residents over Four Years**

The trial court also incorrectly certified a four-year class period based on a single citation to a January 2017 DOH survey. R. 11-20. The 2017 DOH survey represents a mere snapshot of one Defendant's operation of the Facility that does not speak to the behaviors of the other three Defendants, or to the circumstances of the vast majority of the class. It is an inadequate basis for a grant of class certification.

As clearly outlined in the record, from August 25, 2014 through May 2015, defendants JSNH Inc. and James Receiver owned and operated the Facility. R. 729. River Meadows owned and operated the Facility from June 2015 to December 2017. R. 802. Defendant Clinton Square assumed ownership and control of the Facility on December 15, 2017. R. 28-29.

Yet the DOH Citation, which was issued in April 2017, resulted from a January 2017 inspection of the facility. R. 7-10. The record is devoid of any DOH commentary concerning anything outside of that time frame. Thus, to the extent that the 2017 DOH Citation is an adequate evidentiary basis for the certification of a

class, that class should be limited to residents of the Facility between January and April 2017- not widened to encompass the years prior, or the months that followed.

**C. The Patient Affidavits Did Not Serve as Evidence Establishing Class Certification:**

Plaintiffs' submission of twenty-two affidavits from residents and former residents and/or their family did nothing to advance their argument towards class certification, much less carry the day given the insufficiency of the other evidence plaintiffs presented. R. 16-17. Twelve of those affidavits spanned the period from June 2015 through December 2016.R. 217-229, 283-367. Five affidavits related to January 2017 to April 2017, and five more related to the May 2017 through December 15, 2017 period. R. 303-10, R. 317-22, R. 323-36, R. 349-51, R. 36-65. An additional five affidavits spanned the remaining time period, but the defendant operating the home during that time has settled with plaintiffs and is no longer in the case. R. 14. As noted above, these affidavits relate to four different owner/operator structures, and represent less than 1% of the potential class members. R. 11-20. This is an inadequate evidentiary basis to justify the status of the class as certified.

An instructive case is *Passucci v. Absolut Ctr. For Nursing & Rehabilitation at Allegany, LLC*, 2014 N.Y. Slip Op. 33459[U], (N.Y. Sup Ct, Erie County 2014).

The *Passucci* plaintiffs sought to certify a class period of nursing home residents spanning approximately 6.5 years, and involving different facilities. Despite their submission of affidavits from eighty residents/former residents, nursing and

economic expert reports and multiple DOH surveys and investigations, the trial court in *Passucci* drastically limited the proposed class period to one year and seven-months. *Id.* at \*7-21. Similarly, even if the evidence submitted in the twenty-two affidavits here are adequate to support the certification of any class, it must be a far more limited class than what the trial court allowed.

Accordingly, River Meadows respectfully requests this Court reverse the Order granting class certification in its entirety, or, in the alternative, requests this Court modify the trial court's Order and limit the class in this matter to all residents residing at the Facility from January 1, 2017 to April 30, 2017, the period encompassed within the DOH citation plaintiffs submitted in support of their Motion for Class Certification. Given that plaintiffs sought to certify a class over a four-year period, against four different defendants, the trial court erred in failing to review plaintiffs' evidence in conjunction with the period each individual operated the Facility. When the evidence is viewed through this lens, as it should have been, it is readily apparent that plaintiff fell well short of satisfying their evidentiary burden in this matter.

**POINT II****THE COURT ERRED IN FINDING THE PLAINTIFFS PROPOSED CLASS  
SATISFIED THE REQUIREMENTS OF CPLR § 901**

Not only was the evidence submitted by plaintiffs inadequate to make a tenable decision to certify the class as requested, the legal requirements of establishing a class were not met either. Plaintiffs failed to establish that commonality, typicality or superiority thresholds were satisfied.

**A. The Commonality Requirement Was Not Met**

A party seeking class certification is required to show that "there are common questions of law or fact that predominate over questions affecting only individual members." *Ferrari v. National Football League*, 153 A.D.3d 1589, 1591 (4th Dep't 2017), citing N.Y. C.P.L.R. § 901(a)(2). If individual questions of law or fact are inherently present, the commonality requirement of CPLR § 901(a)(2) is not met.

*See Batas v. Prudential*, 37 A.D.3d 320 (1st Dep't. 2007); *Geiger v. American Tobacco Co.*, 277 A.D.2d 420 (2d Dep't. 2000), *leave dismissed*, 96 N.Y.2d 754 (2001).

Personal injury cases, which this case essentially amounts to, are generally held to be poor candidates for class actions because commonality is exceptionally difficult to establish. As held in *Small v. Lorillard Tobacco Co.*, 94 N.Y.2d 43 (1999), when the ultimate inquiry is whether each class member was injured

“require[s] individualized inquiry” for each plaintiff CPLR§901(a)(2) cannot be met and class certification cannot be established. *Id.* at 53-54, *see also* *Globe Surgical Supply v. GEICO Ins. Co.*, 59 A.D.3d 129, 138 (2d Dep’t 2008) (“Since enactment of CPLR article 9 in 1975, there has been some reluctance on the part of New York courts to certify some types of class actions, e.g. ....[] physical injury and property damage mass tort class actions”), *citing Catalano v. Heraeus Kulzer, Inc.*, 305 A.D.2d 356 (2d Dep’t 2003); *Lieberman v. 293 Mediterranean Mkt. Corp.*, 303 A.D.2d 560 (2d Dep’t 2003); *Aprea v. Hazeltine Corp.*, 247 A.D.2d 564 (2d Dep’t 1998).

Similarly, in *Batas*, 37 A.D.3d at 322, the First Department held that commonality had not been established in a class where plaintiffs asserted they had been denied medical care through an improper insurance review process. The court noted, “the medical necessity issue – unique and complex in each class member’s particular case –would predominate over the questions of law or fact common to the class as a whole[.]” *See also Fleming v. Barnwell Nursing Home and Health Facilities, Inc.*, 309 A.D.2d 1132 (3d Dep’t 2003) (“questions as to whether [a nursing home’s] policies breached defendant’s duty to individual residents, whether those inadequate policies proximately caused harm to each resident, and the different amounts of individual residents’ damages demonstrate the lack of common question predominance”). As similar problems will arise here, the trial court should not have

held that common questions predominated.

**1. Different Plaintiffs Received Nursing Home Care from Different Defendants**

The trial court certified a single class against four separate defendants that owned and operated the Facility at separate and distinct times. R. 19. Given the inherent differences between the defendants' operation of the Facility, there are no common factual allegations concerning each defendants' respective care and treatment of residents, nor could there be as each defendant operated the subject Facility in their own discrete manner. Indeed, the only common allegation in this matter is that each defendant operated the Facility at one point in time. Given this fact, each claim within the class will have to be viewed and analyzed within the context of the care and treatment each defendant provided during the period they operated the subject facility. What may be an issue for one defendant could be entirely irrelevant to another. The trial court failed to comprehend this critical distinction in its Decision and Order. R. 11-20.

*Passucci* is especially instructive on this matter. In *Passucci*, plaintiff commenced a class action suit against the Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC (hereinafter "Orchard Park") pursuant to Public Health Law §2801-d. *Passucci*, 2014 N.Y. Slip Op. 33459[U]. Plaintiff also named 11 other nursing home facilities as defendants that were all owned and operated by the same entity that owned Orchard Park. *Id.*. Plaintiff's decedent was a resident at

Orchard Park from 2006 to 2008. Plaintiff subsequently moved to certify a class that consisted of all residents that resided at the defendants' facilities from July 9, 2007 to the present. *Id.* Plaintiff filed the motion in 2014, so the class period she sought to certify was approximately 6.5 years. *Id.*

The *Passucci* court granted plaintiff's motion for class certification, however, issues of commonality caused the court to drastically limit the class period to all residents who resided at Orchard Park from July 9, 2007 to February 3, 2009. *Passucci*, 2014 N.Y. Slip Op. 33459[U] at \*25. Critically, the court noted that "the only claims that any prospective class members have or might have in common with decedent, and the only claims of prospective class members that are or might be typified by claims brought on behalf of decedent, are claims likewise arising out of the Orchard Park facility during the same time frame." *Id.* at \* 21. The court went on to state that "claims of understaffing on the part of the putative class members who were residents of facilities other than the Orchard Park facility do not have a great deal to do with the claims of understaffing of the Orchard Park facility." *Id.* at \* 22. Accordingly, plaintiff's claims did not present common questions of law and fact, nor were they typical, of proposed class members that resided at the other named facilities.

In this matter, although we are dealing with only one facility, similar to *Passucci*, plaintiffs sought to certify a class against multiple defendants. R. 210-410.

Essentially, plaintiffs seek to hold each individual defendant liable for the alleged wrongs of the other, regardless of the fact the defendants' ownership of the facility was not concurrent. The claims of residents of the facility during River Meadows' operation are distinct from the claims of residents at the facility during James Receiver or Clinton Square's operation of the facility. As the court in *Passucci* sagely noted, "the respective patient populations of the various...facilities suffered, if at all, from separate and discrete wrongs . . . perpetuated by *the discrete workforce employed, and involving the other discrete conditions....*" *Passucci*, 2014 N.Y. Slip Op. 33459[U] at \*22 (*emphasis added*). The *Passucci* court further noted "the mere fact that wrongs were committed pursuant to a common plan or pattern does not permit invocation of the class action mechanism where the wrongs done were individual in nature or subject to individual defenses." *Id.* This statement was in reference to the *Passucci* court's acknowledgment that the discrete staff of each facility (akin to the discrete staff employed by each defendant in this matter) would have a statutorily created affirmative defense to the resident's claims based on the discrete staff's exercise of reasonable care. *Id.*

Similarly, each defendant in this case operated the facility it its own separate and discrete manner, including hiring of staff and formulation and implementation of policies and procedures. Further, although there is some overlap, the majority of residents differed during each defendants' operation of the Facility, a fact confirmed

by the Affidavits plaintiffs submitted, which largely establish the lack of proposed class members that resided in the Facility under multiple owners/operators. Each defendant allegedly perpetrated separate and discrete wrongs during the time-period they respectively operated the Facility. As such, even if class members were harmed by an individual defendant's common plan or pattern, the discrete nature of each defendants' operation of the Facility does not permit invocation of the class action mechanism against all defendants, because the wrongs each defendant allegedly committed are discrete in nature and subject to individual defenses. Accordingly, the trial court had no viable legal or factual basis to certify a single class against four separate defendants in this matter.

**2. The Measure of Each Class Member's Claim, as Well as Each Defense, Will Require Individualized Evaluation**

Notwithstanding the clear problems with certifying a single class against four separate defendants that operated the Facility during distinct time periods, the trial court also erred by failing to properly consider the individualistic nature of the care and treatment defendants provided to the residents of the Facility. A Public Health Law violation claim requires a fact specific analysis that will be distinct for each individual resident. Even a cursory review of the Affidavits plaintiffs submitted reveals the differing nature of each resident's medical condition and needs. The proffered resident Affidavits concern health issues ranging from rehabilitation for a broken leg to substantial long-term care following a stroke. R. 279-364. There can

be no argument that the level of care, and in turn, the level of staffing, required to care for a stroke patient is not the same as the level of care required to assist a patient who is rehabilitating a broken leg. Although the care and treatment provided to one resident may be adequate and proper under the Public Health Law, if that same level of care and treatment is provided to a different resident, it may be inadequate and deprive that resident of his rights under the Public Health Law. The determination hinges on an individualized analysis of the resident's condition and needs. Because every resident in the proposed class suffers from different health issues, requires differing levels of care, and was provided with different levels of staffing, there are no common questions that predominate in this matter. Rather it is plainly evident that individual questions of law or fact are inherently present in this case, negating the commonality requirement of CPLR § 901(a)(2).

The Public Health Law, which serves as the statutory basis for plaintiffs' claims, states that River Meadows may escape liability by establishing that it "exercised all care reasonably necessary to prevent and limit the deprivation and injury for which liability is asserted. N.Y. PUB. HEALTH LAW § 2801-d(1). The trial court also erred in finding that River Meadows' statutorily created affirmative defense did not present individual questions of fact and law that justified denial of plaintiffs' motion. In order to prevail on its affirmative defense, River Meadows is required to show that it exercised all reasonable care to prevent the deprivation of

rights or injuries plaintiff claims. This will inevitably require an individualized fact specific analysis for each member of the proposed class and cannot be accomplished on the mass scale that the present class certification will require.

The provision of care in a skilled nursing setting is not a one-size fits all endeavor. Litigation of a Public Health Law claim requires a fact specific analysis of a defendant's care of each individual resident. Here, plaintiffs seek to litigate four individual defendant's separate care and treatment of a litany of different residents, many of whom were only cared for by one of the defendants in this case. Although plaintiffs attempt to circumvent this fact by asserting a persistent pattern of inadequate staffing at the Facility, it does not change the fact that each named defendant operated the Facility in its own way, and provided different care to different residents. Accordingly, River Meadows respectfully requests this Court reverse the Order granting class certification in its entirety, or, in the alternative, requests this Court modify the trial court's Order and limit the class in this matter to all residents residing at the Facility from January 1, 2017 to April 30, 2017, the period encompassed within the DOH citation plaintiffs submitted in support of their Motion for Class Certification.

**B. The Typicality Requirement Was Not Met**

The trial court also erred in determining that plaintiffs met the typicality requirement of CPLR §901. R. 18. With regard to this factor under CPLR §901, the

trial court summarily and conclusory determined, “As to the typicality requirement, there is no question that in this nursing home context all residents and patients lived or live in the same facility and were exposed to the same staffing and regulatory issues, business practices and conduct by defendant so as to establish this requirement.” R. 18. However, the trial court failed to set forth how plaintiffs met the statutory requirement “that the claims of the representative parties arise out of the same course of conduct and [that they] are based on the same theories as the other class members.” *Freeman v. Great Lakes Energy Partners, L.L.C.*, 12 A.D.3d 1170, 1171 (4th Dep’t 2004).

Typicality is an essential element of the determination of class certification, and requires its own independent analysis separate and apart from commonality. See, e.g., *Dimich v. Med-Pro, Inc.*, 34 A.D.3d 329 (1<sup>st</sup> Dep’t 2006)(holding that denial of class certification was proper because plaintiff failed to satisfy the typicality requirement of CPLR §901(a)(3) and the predominance of individualized factual questions also rendered the case unsuitable for class treatment under CPLR §901(a)(2); *Yeger v. E\*Trade Sec., LLC*, 65 A.D.3d 410 (1<sup>st</sup> Dep’t 2009) (affirming denial of class certification on typicality grounds).

In their motion, plaintiffs argued the claims of the named plaintiffs are typical of the claims of the proposed class because “nursing home plaintiffs all live in the same facilit[y] and are subjected to the same staffing issues.” R. 403-04. Plaintiffs

claim the proposed class' claims were all based upon the same legal theories and violations of New York State Law. R. 403-04. However, this argument is inherently flawed as it does not take into consideration the varying level of care required for each resident and the resulting injuries, if any, to each resident due to the alleged inadequate staffing. R. 418-19. Plaintiffs' claim also fails to acknowledge the fact that the Facility was operated during the proposed class period by four separate and distinct owners that operated the Facility in their own discrete manner as set forth above.

Plaintiffs broadly assert inadequate staffing placed all residents at the Facility at risk of harm. R. 403-04. Specifically, they claim that inadequate staffing allegedly resulted in plaintiff Susan Karpen suffering from urinary tract infections ("UTIs") due to being left in her own feces for extended periods of time. R. 361-65. Plaintiffs further allege plaintiff Michael Farruggio's mother, Theresa Farruggio, developed UTIs and suffered a fall as a result of inadequate staffing. R. 333-40. The remaining affidavits generally allege the inadequate staffing at the Facility resulted in various issues, including: the development of UTIs, falls, development of pressure sores and service of inedible food to residents. R. 283-367.

Although plaintiffs assert the claims of Susan Karpen and Theresa Farruggio are typical of the claims of the proposed class, the submitted affidavits failed to establish this point. In fact, it was not discussed in the proffered affidavits why many

of these residents were admitted to the Facility, what their care plans entailed, what activities of daily living they were able to accomplish independently versus assisted, and, most importantly, what level of staffing these residents required. Theresa Farruggio was allegedly an elderly woman who required significant amounts of assistance in her day to day life. R. 333-40. Conversely, it is unknown why Susan Karpen was admitted to the Facility. R. 361-65. In any event, it appears from her affidavit she required substantially less assistance on a day to day basis. R. 361-65. Further, Theresa Farruggio died on January 7, 2016 well before Clinton Square Operations, LLC assumed control of the subject Facility's operation, R. 334, while Susan Karpen was not a resident at any point in time James Square Nursing Home, Inc. or 918 James Receiver, LLC operated the Facility. R. 361-65. The discrepancies in time periods, the fact different defendants operated the subject Facility at different points in the named plaintiffs' residencies, and the apparent differences in levels of care, viewed in their totality, were plainly insufficient to establish the named plaintiffs' claims are typical of the class as a whole.

#### **C. The Superiority Requirement was Not Even Considered, Much Less Met**

The trial court erred by overlooking plaintiffs' failure to address the superiority component of CPLR §901. R. 16-20. Like typicality, meeting the superiority prong on CPLR §901 is required to establish a class. *See Geiger v. American Tobacco Co.*, 191 Misc. 2d 875, 886 (Sup. Ct. Queens Cty. 1999),

*affirmed* 277 A.D.2d 420 (2d Dep't 2000), *leave dismissed*, 96 N.Y.2d 754 (2001) (holding that the case failed to satisfy the predominance and superiority prerequisites of N.Y. CPLR §901(2) and (5) respectively); *Bartis v. Harbor Tech, LLC*, 2014 N.Y. Slip.Op. 31612 (U) (Sup. Ct. Kings Cty. 2014) (plaintiffs have failed to demonstrate . . . that a class action is “superior to other available methods for the fair and efficient adjudication of the controversy”). In support of their argument a class action is a superior vehicle to litigate this matter, plaintiffs merely noted that PHL §2801-d(4) allows nursing home claims under the PHL to be litigated as a class action, and conclusory stated that litigating this case as a class action advances the interest of judicial economy. R. 405-06; 793-94.

However, plaintiffs failed to address the fact that prospective plaintiffs are provided with a private right of action under the Public Health Law, and at least 9 of the potential class members had already taken advantage of this right by commencing separate actions that were pending at the time the parties argued plaintiffs' motion for class certification. R. 533-660. Despite the fact there were nine separate actions pending against the Facility, plaintiffs argued a class action is superior to the individual prosecution of claims because members of the proposed class generally lack the resources and abilities to bring individual claims. Plaintiffs failed to address the fact that counsel for each plaintiff that brings an action under the PHL can seek attorney fees upon receiving a judgment in plaintiff's favor. N.Y.

PUB. HEALTH LAW § 2801-d(7). Accordingly, this contradicts plaintiffs' claim that potential plaintiffs "lack the resources" since the statute provides a remedy to potential plaintiffs for the costs of attorney fees.

In addition, the individualized analysis of claims under the Public Health Law weighs against class certification. *See, e.g., Feder v. Staten Island Hosp.*, 304 A.D.2d 470, 471 (1<sup>st</sup> Dep't 2003)(declining to certify class seeking to bring claim pursuant to Public Health Law §18(2)(e) for failure to meet the requirements of CPLR §901(a)); *see also McBarnette v. Feldman*, 153 Misc. 2d 627, 628 (Sup. Ct. Suffolk Cty. 1992) (class seeking to bring claim relating to Public Health Law §206 could not be certified). Individualized actions permit the parties, attorneys and the court to review the care and treatment provided to each resident on a case by case basis, and, if necessary, more fully determine what damages are appropriate. This individualized approach could easily result in a significantly better outcome for a potential class member, as his/her potential damages would not be limited to the minimum damages set forth in the Public Health Law, which plaintiffs seek, but would instead more properly reflect the damages, if any, the potential class member incurred as a resident.

The Court also failed to discuss the fact that individual actions significantly limit the amount of discovery necessary to reach a resolution, especially when compared to the voluminous discovery that will be necessary should this matter

proceed as a class action. There is no doubt that discovery in this matter as presently certified will require years of extensive discovery, both written and oral, before a resolution is reached. Conversely, if a potential class member chose to initiate his own action, discovery would be limited to that resident's care and treatment, resulting in a quicker resolution that could potentially result in a significantly better outcome for the individual plaintiff. For all these reasons, the commencement of individualized claims is vastly superior to permitting this matter to move forward as a class action.

Significantly, plaintiffs' counsel's "sister firm" Finkelstein & Partners, sided with River Meadows' position that individual actions are a better avenue for resolution. The "sister firm" has already commenced nursing home negligence actions against the Facility. Specifically, Mary Ellen Wright, Esq., who is of counsel to Finkelstein & Partners, LLP, , had two actions pending in the Supreme Court, Onondaga County, which name River Meadows as a defendant and have plaintiffs that qualify as potential class members. R. 465-532; 547-80.

### **POINT III**

**THE TRIAL COURT ERRED IN CONCLUDING THE CPLR § 902  
FACTORS WERE SATISFIED**

Should this Court determine the trial court properly found that plaintiffs met their burden on the CPLR § 901 requirements for class certification, it must still assess whether the trial court properly considered the CPLR § 902 factors in

certifying the class. CPLR § 902 requires the court to consider the following factors:

(1) the interest of the members of the class in individually controlling the prosecution of separate actions; (2) the impracticability or inefficiency of prosecuting or defending separate actions; (3) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (4) the desirability or undesirability of concentrating the litigation in a particular forum; and (5) the difficulties likely to be encountered in the management of a class action. N.Y. C.P.L.R. § 902; *Ferrari v. National Football League*, 153 A.D.3d 1589, 1593 (4<sup>th</sup> Dep't. 2017); *see also Westfall v. Olean Gen. Hosp.*, 132 A.D.3d 1393, 1394 (4<sup>th</sup> Dep't 2015)(affirming denial of class certification for failure to meet requirements of CPLR § 902); *Rife v. The Barnes Firm, P.C.*, 48 A.D.3d 1228 (4<sup>th</sup> Dep't 2008)(same). The trial court did not discuss CPLR § 902 factors in its Decision and Order, merely stating that plaintiffs met the CPLR §901 requirements. R. 10-20. This in itself is reversible error.

Critically, the trial court did not consider or analyze how the unwieldiness of the litigation as presently constructed will impact the proposed members of the class as required by CPLR § 902. If the trial court had properly considered these issues, it would have come to the only conclusion that can be drawn from these facts. Litigating a nursing home class action encompassing thousands of patients, many of whom were not cared for by most of the defendants in this case, will result in

litigation that is utterly unmanageable.

The trial court did not discuss the CPLR § 902 factors in its Decision and Order, merely stating that plaintiffs met the CPLR §901 requirements. R. 10-20. The *Passucci* decision provides an appropriate framework for why the CPLR § 902 factors weigh against the present certification of this class.

The class period, as presently certified, is approximately four years. R. 7-10. During the class period, the Facility was a 440-bed facility. Even operating under an assumption that each bed housed only one patient over the four-year class period, the potential number of class members is 1,760. Realistically, the number of class members is substantially higher as the resident population was not static, but fluctuated based on new admissions and discharges.

In *Passucci*, plaintiffs sought to certify a class that was over 10,000 potential class members. *Passucci*, 2014 N.Y. Slip Op. 33459[U] at \*24. The *Passucci* court prudently recognized that there was no realistic prospect of managing discovery, let alone a trial, with a class that large or multiple defendants. *Id.* at \*24. The *Passucci* court also considered how the calculation of statutory damages would render the litigation unmanageable:

According to the statute, the measure of the minimum damages imputed to any single class member would be 25% of the per patient per diem charge or reimbursement rate *for each day* that the statutory violation and consequent patient injury (or, as plaintiffs frame it, the understaffing situation) existed (see Public Health Law §

2801-d [2]). That in turn means that plaintiffs, in order to recover statutory damages for each member of the class (who were confined at the various homes for discrete time periods) ultimately would have to adduce proof of the level of staffing on each unit of each facility on each day, if not on each shift. Although plaintiffs' counsel apparently genuinely desires to undertake to manage a litigation of such expansiveness and complexity, this Court will do counsel the favor of not allowing him to try to do so. *Passucci*, 2014 N.Y. Slip Op. 33459[U] at \*24.

The same issues are present in this matter and weigh against class certification. As in *Passucci*, the parties are dealing with a potential class that is well into the thousands. As a result, this will require production of each individual class members' medical records, which can easily be tens of thousands of pages for an individual resident depending on the length of the resident's admission. Additionally, similar to *Passucci*, the class as presently certified contains allegations against multiple defendants, which will require the adjudication of the adequacy or inadequacy of each individual defendant's staffing of the Facility at a single trial. The parties to this action will also face the same issues concerning the computation of statutory damages as the parties faced in *Passucci*. Moreover, unlike the plaintiff in *Passucci*, plaintiffs in this matter have not limited their claimed damages to the statutory damages provided by the Public Health Law, indicating they intend to seek damages related to pain and suffering as well. This will add yet another issue that needs to be analyzed and investigated on an individualized resident-by-resident basis. When all of these issues are viewed together, the utter unwieldiness of this

litigation becomes readily apparent and plainly weighs in favor of reversing the class certification order in this matter.

To certify this class actually prejudices the rights of the proposed class members, who could easily litigate their individual claims in a much more expedient fashion than participating in the proposed class action. Accordingly, River Meadows respectfully requests this Court reverse the Order granting class certification in its entirety, or, in the alternative, requests this Court modify the trial court's Order and limit the class in this matter to all residents residing at the Facility from January 1, 2017 to April 30, 2017, the period encompassed within the DOH citation plaintiffs submitted in support of their Motion for Class Certification.

**CONCLUSION**

Based on the foregoing, defendant-appellant River Meadows respectfully requests this Court reverse the trial court's Order granting class certification in its entirety, or, in the alternative, requests this Court modify the trial court's Order and limit the class in this matter to all residents residing at the Facility from January 1, 2017 to April 30, 2017, the period encompassed within the DOH citation plaintiffs submitted in support of their Motion for Class Certification, along with such other and further relief as this Court deems just and proper.

Dated: May 24, 2019

Respectfully submitted,



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5786 Widewaters Parkway, 3<sup>rd</sup> Floor  
Syracuse, New York 13214  
(315) 413-5400

### PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

*Type.* A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman  
Point size: 14  
Line spacing: Double

*Word Count.* The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service and this statement is 7,915.



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# **EXHIBIT 4**



Lisa M. Robinson | Partner  
Direct 315.413.5430 | lrobinson@goldbergsegalla.com

September 17, 2019

**Via facsimile and regular mail:** (585) 530-3247

Larry Dalton  
c/o Clerk of the Court  
State of New York Supreme Court  
Appellate Division, Fourth Department  
50 East Avenue  
Rochester, New York 14604

**Re: Farruggio, et al. v. River Meadows, LLC, et al.  
Onondaga County Index No. 003831/2017  
Docket No. CA-18-01595**

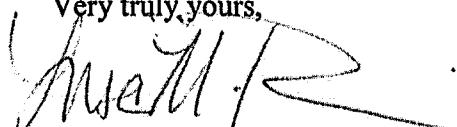
Dear Mr. Dalton/Clerk:

Please be advised the parties in the above-captioned appeal reached a resolution of the above matter last week. However, because my client, defendant River Meadows, LLC filed for Chapter 7 bankruptcy in January 2019, the resolution must be approved by the bankruptcy Court, which may take some time.

In light of the tentative resolution of this matter, the parties jointly request that the oral argument of the above-captioned appeal that is scheduled to take place on October 15, 2019, be adjourned to a term early next year, in hopes that my client's appeal will ultimately be withdrawn.

Thank you for your time and attention in this regard.

Very truly yours,



Lisa M. Robinson

LMR:ms

cc: Jeremiah Frei-Pearson, Esq., via email and regular mail

# **EXHIBIT 5**



NEW YORK STATE SUPREME COURT  
APPELLATE DIVISION, FOURTH DEPARTMENT  
M. DOLORES DENMAN COURTHOUSE  
50 EAST AVENUE, SUITE 200  
ROCHESTER, NEW YORK 14604  
(585) 530-3100 Fax (585) 530-3247



MARK W. BENNETT  
CLERK OF THE COURT

ALAN L. ROSS  
DEPUTY CLERK OF THE COURT

September 17, 2019

Lisa M. Robinson  
Goldberg Segalla  
5786 Widewaters Parkway  
Syracuse, NY 13214

Re: Farruggio v River Meadows  
CA 18-1595

Dear Ms. Robinson:

Receipt of your letter of September 17, 2019 is acknowledged. In light thereof, the above-referenced appeal has been deemed submitted pending receipt of a stipulation of withdrawal.

Very truly yours,

A handwritten signature in black ink, appearing to read "LX Dalton".

Lawrence X. Dalton  
Principal Appellate Court Attorney

LXD/cat  
xc: Jeremiah Frei-Pearson

Farruggio et al. v. 918 James Receiver, LLC  
 c/o Postelthwaite & Netterville  
 Address 1  
 Address 2

Your Claim Form Must Be Submitted On  
 or Before XX/XX/XXXX

## ***Michael Farruggio et al. v. 918 James Receiver, LLC et al.***

### **Claim Form**

**Class Member Name:** Smith, John  
**Class Member ID:** 123ABC

**Class Member Address:** 123 Main Street  
 Baton Rouge LA, 70808

**Settlement Award Amount:** \$X,XXX.XX

The easiest way to submit a claim is online at {www.settlementwebsite.com}, or you can complete and mail this claim form to the address above. If you are completing this claim form on behalf of a deceased or incapacitated class member, please submit your claim online or visit the case website to download and print the Deceased or Incapacitated Class Member Claim Form.

**You may submit a claim for each of the following benefits:**

**1. Settlement Award for Time Spent at the Facility.** To claim your settlement award based on the number of days that you resided in the Facility and claim the Settlement Award Amount above, you only need to complete and submit Section I: Settlement Claim Form.

**2. Catastrophic Injury Claim.** If you experienced extraordinary circumstances or had a catastrophic injury as a result of your time spent in the Facility, you may complete Section II of this claim form to request additional funds from the Settlement. At the Settlement Master's discretion you (i) may be required to provide additional documentation to support your claim, and / or (ii) you may be subject to a phone or video call interview by the Settlement Master. **Awards distributed for a Catastrophic Injury Claim will be determined at the sole discretion of the Settlement Master.** If you fill out Section II of this claim form you must ALSO fill out Section I of this claim form.

### **Section I: Settlement Claim Form**

**Instructions:** Please provide all information in Section I below and sign and date the claim form before returning the completed form to the Claims Administrator at the address provided at the top of this page.

--

Primary Address

--	--

City

State

Zip Code

--	--	--

Social Security Number

--	--	--

Date of Birth

--	--	--

Current Phone Number

Male     Female

Gender

--

Current Email Address

Yes     No

--

Attorney Name

-  -

Attorney Phone Number

--

Law Firm

### **Certification**

I affirm that all of the information provided on this claim form is true and correct to the best of my knowledge.

**Signature:** \_\_\_\_\_

**Date:**  /  /

**FOR MORE INFORMATION, VISIT {www.settlementwebsite.com} OR CALL 1-XXX-XXX-XXXX**

*\*It is your responsibility to notify the Claims Administrator of any changes to your contact information after the submission of your Claim Form.*

## Section II: Catastrophic Injury Claim

This section is only required if you would like to submit a claim for the Catastrophic Injury Fund. You do not need to complete this section to receive the Settlement Award Amount on page one of this claim form. If you complete this Section II please also complete Section I of this claim form.

If you wish to be considered for a Catastrophic Injury award, please select the injuries the claimant suffered below and provide a description of the injuries in the designated field. For consideration of an award, documentation must be provided to support these injuries. Acceptable forms of documentation include but are not limited to, medical files, medical notes from doctors and time-stamped emails.

**Completion of this form does guarantee funds will be awarded to you. Awards will be determined at the sole discretion of the Settlement Master, and you may be required to provide additional information or documentation to support your claim.**

Select all injuries that the claimant suffered while in the care of this Facility between 8/15/2014 and 12/14/2017.

- |  |  |
|--|--|
| <input type="checkbox"/> Physical injury as a result of understaffing    | <input type="checkbox"/> Lack of care leading to hospitalization |
| <input type="checkbox"/> Emotional distress as a result of understaffing | <input type="checkbox"/> Lack of care leading to death           |
| <input type="checkbox"/> Cost of other necessary medical treatment       | <input type="checkbox"/> Other                                   |

Please provide a detailed written description of these injuries below referencing any documentation provided that supports the injury. Please be as specific as possible with your written description (including, but not limited to, dates, employee names, location of injury within the Facility, etc.). Please upload or mail a copy of the supporting documentation with this claim form.

If additional space is needed, please attach a separate sheet and return with the claim form.

### Catastrophic Injury Claim Certification

I affirm under the laws of the United States that the information I have supplied in this claim form and any documentation that I am providing to support my claim are true and correct to the best of my knowledge.

I understand that I may be asked to provide more information by the Settlement Master before my claim is deemed complete.

Signature: \_\_\_\_\_

Date:  /  /

FOR MORE INFORMATION, VISIT [www.settlementwebsite.com](http://www.settlementwebsite.com) or CALL 1-XXX-XXX-XXXX