

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

~~PROPOSED~~  
ORDER GRANTING  
PLAINTIFFS' UNOPPOSED  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS  
ACTION SETTLEMENT

Plaintiffs Michael Farruggio and Susan Karpen (“Plaintiffs”) having moved for preliminary approval of their class action settlement with Defendants (NYSCEF No. 593); and

NOW, upon the reading of Plaintiffs’ notice of motion for preliminary approval of class action settlement; Plaintiffs’ memorandum of law in support thereof; the affirmation of Jeremiah Frei-Pearson (the “Frei-Pearson Aff.”), with exhibits, on behalf of Plaintiffs in support thereof; and

Upon due deliberation having been had, and the Court having found that the Joint Stipulation and Settlement Agreement (the “Settlement Agreement”), attached as Exhibit 1 to the Frei-Pearson Aff., (i) is the product of extensive, arm’s-length negotiations; and (ii) contains no obvious deficiencies, it is hereby

**ORDERED** that the Settlement Agreement is preliminarily approved; and it is further

**ORDERED** that the proposed Class Notice, attached as Exhibit 2 to the Frei-Pearson Aff., is approved and shall be distributed to the Class in accordance with the Settlement Agreement; and it is further

**ORDERED** that, upon passage of the deadline for opt-out requests and objections, Class Counsel shall promptly file a motion for final approval of the proposed settlement, the proposed service awards, and the proposed attorney's fee and cost awards; and it is further

**ORDERED** that the Class shall be notified of the date for the hearing on the motion for Final Approval via the Settlement Website after that date is determined by the Court; and it is further

**ORDERED** that this Order may be filed without further notice with the Clerk of the Court.

Dated: 12/3/20  
Syracuse, New York

  
Hon. Anthony J. Paris, J.S.C.

ENTER:

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**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 a later date to be approved by the Court to address whether the proposed settlement should be approved. Once confirmed, the date of the hearing will be available on the case website.

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 valid Claim Form by [Claim Submission Deadline], 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 \$1,083. 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 \$1,083, 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 submit a valid Claim Form and 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 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?**

To participate and receive a payment from the Class Member Payment Settlement Fund, you must submit a valid claim online or postmarked by the [Claims Deadline]. 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. Payments from the Catastrophic Injury Fund will be made following this 90-day time period.

**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, settlement checks will be mailed for all valid claim submissions. The Court hearing to decide whether to approve the settlement will be on a later date to be approved by the Court. Once confirmed, the date of the hearing will be available on the case website. 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 on a later date to be approved by the Court. Once confirmed, the date of the hearing will be available on the case website. 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.

James Square Settlement  
c/o Postlethwaite & Netterville  
PO Box 1188  
Baton Rouge, Louisiana 70821-1188  
Email: [Claims@JamesSquareSettlement.com](mailto:Claims@JamesSquareSettlement.com)

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@fbfglaw.com](mailto:jfrei-pearson@fbfglaw.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](http://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]