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

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Michael Farruggio, as Administrator of the Estate of Theresa Farruggio, and Susan Karpen ("Plaintiffs"), individually and on behalf of the certified class ("Class"), respectfully request this Court's final approval of the settlement of their claims 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") for Defendants' ownership and operation of the skilled nursing facility known until December 2017 as James Square Nursing and Rehabilitation Centre (the "Facility").[1] This $5,500,000.00 settlement (the "Settlement"), which resolves nearly four years of litigation between Plaintiffs and Defendants (the "Parties"), compares favorably with similar settlements -- indeed, it is easily the highest nursing home class action settlement in New York.

Bankruptcy Judge Margaret M. Cangilos-Ruiz, of the Northern District of New York, has already approved the settlement, stating "I cannot communicate enough what a Yeoman's task this was for all the parties to come together. I have overseen mediations of cases involving [ ] numerous parties from other judges. I can only appreciate the hours that went into this and what it took to get where we are today . . . I congratulate you for coming to terms with this. I think it is certainly in the interest of your clients and the estates, and I am sure Judge Paris will be very happy to hear about the result. So, I will go ahead and enter the order." *In re River Meadows, LLC*, No. 19-30022-5, ECF No. 101, Hr'g Recording at 11:39-12:48, 14:07-14:29 (N.D.N.Y. Sept. 24, 2021); *see also In re River Meadows, LLC*, No. 19-30022-5, ECF No. 102, Order

[1] The individual actions of individual plaintiffs identified in the Recitals to the Settlement Agreement are also being resolved by the Settlement. On December 3, 2020, Justice Paris ordered the consolidation of the individual actions with this action. *See* NYSCEF Doc. No. 607.

Approving Settlement (N.D.N.Y. Sept. 25, 2020). Justice Paris preliminarily approved the settlement as well. NYSCEF Doc. No. 608, Order Granting Plaintiff' Unopposed Motion For Preliminary Approval of Class Action Settlement ("Paris Order"). Plaintiffs respectfully submit that final approval by this Court is also appropriate.

"Class action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation. There is a strong public interest in quieting any litigation; this is particularly true in class actions." *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995) (internal quotations omitted). Under CPLR 908, this Court must also approve the settlement; with approval granted in two stages: the preliminary approval stage, where the Court can authorize notice of the settlement to be sent to the Class, and the final approval stage, where the Court can consider the Class' reaction to the settlement, including any objections. After Justice Paris granted preliminarily approval and authorized Plaintiffs to formally notify the class, the Class's reaction to the settlement has been overwhelmingly positive, with not a single one of the 2,392 Class Members objecting to the settlement. Final approval is appropriate because the Settlement represents a strong outcome for the Class and, as outlined below, easily meets all of the requirements for approval.

Accordingly, Plaintiffs respectfully move this Court for an Order granting final approval of the Joint Stipulation and Settlement Agreement ("Settlement Agreement"), attached as Exhibit ("Ex.") 1 to the Affirmation of Jeremiah Frei-Pearson (the "Frei-Pearson Aff."), with a few ministerial revisions as discussed below.[2]

[2] Unless otherwise indicated, all exhibits are attached to the Frei-Pearson Aff.

II. FACTUAL BACKGROUND

Plaintiffs filed this class action lawsuit alleging inadequate care at the Facility on August 25, 2017. *See* NYSCEF Doc. No. 1. Plaintiff Michael Farruggio is the son of and administrator of the Estate of Theresa A. Farruggio, who was a resident of the Facility from approximately January 2012 until her death on January 7, 2016. *See* NYSCEF Doc. No. 32, Second Amended Class Action Complaint ("SAC") ¶ 7. Plaintiff Susan Karpen has been a resident of the Facility from approximately August 21, 2015, to the present. *Id.* ¶ 10.

Plaintiffs alleged claims of negligence and violation of Public Health Law ("PHL") § 2801-d against the multiple defendants that owned and operated the Facility during the relevant time based on their systemic failure to provide the statutorily-required level of care and staffing at the Facility. *Id.* ¶ 1. PHL § 2801-d provides a cause of action for a nursing home resident who is deprived 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." Plaintiffs alleged that conditions at the Facility were unsafe and violated numerous applicable laws, rules, and regulations, causing all residents to receive inadequate care. In particular, Plaintiffs alleged that Defendants 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. *Id.* ¶ 52.

On December 18, 2018, Plaintiffs settled their claims against Defendant Clinton Square, LLC, NYSCEF No. 340 ("First Settlement"), which purchased the Facility on October 2017 and currently owns and operates the Facility. *See* NYSCEF Doc. No. 343, Third Amended Complaint ("TAC") ¶ 61. The First Settlement provided $495,000 to the Class and, most importantly, required Clinton Square to spend millions of dollars on injunctive relief to improve

conditions at the Facility. *See* NYSCEF No. 340. Conditions at the Facility have substantially improved as a result of the First Settlement. *See* NYSCEF Doc Nos. 566-78.

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"). Frei-Pearson Aff. ¶ 32; Affidavit of Settlement Master Jed Melnick ("Melnick Aff.") ¶¶ 12-14. This is the highest PHL § 2801 class settlement ever agreed to and, for reasons to follow, a wholly fair compromise that easily falls within the range of reasonableness. *Id.*

III. PROCEDURAL BACKGROUND

A. The Parties Heavily Litigate This Matter.

Prior to filing the present lawsuit, attorneys for Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("Class Counsel" or "FBFG") conducted a thorough investigation into the merits of the class claims and the likelihood of class certification. *See* Frei-Pearson Aff. ¶ 3. Since the initiation of the action, Plaintiffs have diligently litigated their and the Class's claims.

On August 25, 2017, Plaintiffs filed a summons and class action complaint against defendants 918 James Receiver, LLC ("918 James") and River Meadows. *See* NYSCEF Doc. Nos. 1-4. On October 20, 2017, Plaintiffs served discovery requests. *See* Frei-Pearson Aff. ¶ 4. On October 31, 2017, River Meadows filed its Answer. *See* NYSCEF Doc. No. 7. 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. *See* Frei-Pearson Aff. ¶ 5.

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. *See* Frei-Pearson Aff. ¶ 6.

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. *See* Frei-Pearson Aff. ¶ 7.

On December 15, 2017, Plaintiffs filed an amended class action complaint, adding defendant James Square Nursing Home, Inc. *See* NYSCEF Doc. Nos. 9-12.

On December 21, 2017, Plaintiffs filed a request for judicial intervention ("RJI") seeking a preliminary conference and assignment to the Commercial Division. *See* NYSCEF Doc. Nos. 13-15.

On January 5, 2017, Plaintiffs moved for leave to file a second amended class action complaint. *See* NYSCEF Doc. Nos. 21-25 (Motion Sequence 1).

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. *See* Frei-Pearson Aff. ¶ 8. On January 22, 2017, 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. *See* NYSCEF Doc. No. 31.

On January 22, 2018, Plaintiffs filed their Second Amended Class Action Complaint ("SAC"), adding Clinton Square as a defendant. *See* NYSCEF Doc. Nos. 32-35. By March 2, 2018, all defendants filed answers to the SAC. *See* NYSCEF Doc. Nos. 39, 41, 69, 77.

On February 26, 2018, River Meadows moved for a stay of the action. *See* NYSCEF Doc. Nos. 43-57 (Motion Sequence 2). On February 27, 2018, Plaintiffs and River Meadows submitted letters to the Court regarding the motion for a stay. *See* NYSCEF Doc. Nos. 72-73.

On April 11, 2018, Plaintiffs opposed River Meadows's motion for a stay. *See* NYSCEF Doc. Nos. 98-106. On April 16, 2018, River Meadows replied. *See* NYSCEF Doc. Nos. 115-117.

On February 26, 2018, pursuant to the Commercial Division Rules, Plaintiffs filed a letter with the Court seeking a discovery conference. *See* NYSCEF Doc. Nos. 58-67.

On February 28, 2018, the Parties appeared before the Court for a preliminary conference. *See* Frei-Pearson Aff. ¶ 9. At the conference, the Parties agreed to a Preliminary Conference Stipulation and Order ("PCSO") which the Court so-ordered on March 2, 2018, and entered on March 13, 2018. *See* NYSCEF Doc. No. 89.

On March 1, 2018, Plaintiffs served document requests and expert demands on 918 James Receiver, James Square Nursing Home ("JSNH"), and Clinton Square. *See* Frei-Pearson Aff. ¶ 10. On March 1, 2018, Defendants began to produce insurance policies. *See id.*

On March 9, 2018, Plaintiffs moved for entry of a HIPAA-qualified protective order. *See* NYSCEF Doc. Nos. 79-88 (Motion Sequence 3). On April 11, 2018, both River Meadows and Clinton Square opposed. *See* NYSCEF Doc. Nos. 92-97 (River Meadows) & 107-112 (Clinton Square). On April 16, 2018, Plaintiffs replied. *See* NYSCEF Doc. Nos. 113-114.

On March 26, 2018, JSNH served its responses to Plaintiffs' discovery requests. *See* Frei-Pearson Aff. ¶ 11. The Parties also conferred regarding an Electronically-Stored Information ("ESI") protocol. *See id.* On March 30, 2018, and again on April 23, 2018, the Parties filed a proposed ESI Protocol and Document Production Stipulation and Order. *See* NYSCEF Doc. Nos. 90 & 124.

On April 2, 2018, Plaintiffs served demands for verified bills of particulars on all Defendants. *See* Frei-Pearson Aff. ¶ 12. On April 17, 2018, Clinton Square moved for severance from this action. *See* NYSCEF Doc. Nos. 119-123. On May 30, 2018, River

Meadows cross-moved to sever itself from this action. *See* NYSCEF Doc. Nos. 165-179 (Motion Sequence 6). On June 6, 2018, Plaintiffs opposed Clinton Square's motion and River Meadows's cross-motion to sever. *See* NYSCEF Doc. No. 186-192. On June 11, 2018, River Meadows replied. *See* NYSCEF Doc. Nos. 204-206.

On April 18, 2018, the Parties appeared before this Court on the motions to stay (Motion Sequence 2) and for entry of a protective order (Motion Sequence 3). In an oral decision issued that day, the Court denied both motions. *See* NYSCEF Doc. No. 162.

On April 30, 2018, Clinton Square served its responses to Plaintiffs discovery requests with an accompanying production of documents. *See* Frei-Pearson Aff. ¶ 13.

On May 1, 2018, Plaintiffs moved for class certification. *See* NYSCEF Doc. Nos. 128-160 (Motion Sequence 5). On June 6, 2018, River Meadows, JSNH, and 918 James all opposed. *See* NYSCEF Doc. Nos. 180-185 (River Meadows), 193 (JSNH), & 194-203 (918 James). On June 11, 2018, Plaintiffs replied. *See* NYSCEF Doc. Nos. 207-208.

On May 11, 2018, River Meadows sought an adjournment of the pending motions to sever and for class certification. *See* NYSCEF Doc. No. 161. On May 16, 2018, Plaintiffs opposed. *See* NYSCEF Doc. No. 163. On May 21, JSNH joined in River Meadows's request for an adjournment. *See* NYSCEF Doc. No. 164. On May 22, 2018, this Court denied River Meadows and JSNH's request. *See* Frei-Pearson Aff. ¶ 14.

On June 4, 2018, Plaintiffs provided all defendants with HIPAA-compliant authorizations for Plaintiffs. *See* Frei-Pearson Aff. ¶ 15.

On June 11, 2018, JSNH served its Response to Plaintiffs' Demand for Verified Bill of Particulars. *See* Frei-Pearson Aff. ¶ 16.

On June 13, 2018, the Parties appeared before this Court for a hearing on the class certification motion and motions to sever. *See* Frei-Pearson Aff. ¶ 17. 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. NYSCEF Doc. No. 257. On August 22, 2018, River Meadows noticed its appeal of the Court's Order certifying a class. See NYSCEF Doc. No. 258.

B. The Class Settles With Clinton Square.

Plaintiffs and Clinton Square entered productive settlement discussions soon after Clinton Square's take-over of the Facility on December 15, 2017, and subsequent appearance in this action. *See* Frei-Pearson Aff. ¶ 17.

On June 12, 2018, Plaintiffs notified the Court that Plaintiffs and Clinton Square had agreed to settle (the "First Settlement"). *See* NYSCEF Doc. No. 209.

On August 20, 2018, the Court preliminarily approved the First Settlement. *See* NYSCEF Doc. No. 254. On December 18, 2018, after no Class Members objected and only four Class Members had opted out, the Court finally approved the First Settlement. *See* NYSCEF Doc. No. 340.

C. Plaintiffs File A Third Amended Complaint Naming Additional Defendants, And The Parties Continue To Vigorously Litigate.

On October 22, 2018, Plaintiffs filed a Motion to Compel Electronically Stored Information ("ESI"), asking the Court to impose a final deadline for River Meadows to review and produce all responsive ESI. *See* NYSCEF Doc. No. 277.

On January 10, 2019, the court granted Plaintiffs' Motion to Compel Production of ESI, ordering that "Defendants must produce all electronically-stored information responsive to

Plaintiffs' discovery requests on or before March 11, 2019." NYSCEF Doc. No. 342, Order Granting Plaintiffs' Motion To Compel Production Of Electronically-Stored Information at 2.[3]

On January 11, 2019, Plaintiffs filed a detailed Third Amended Complaint ("TAC") naming Excelerate, Kushner, Gutnicki, Liberty, and Friedman as additional defendants. *See* NYSCEF Doc. No. 343. The newly-added defendants moved to dismiss. *See* NYSCEF Doc. Nos. 358, 372, 374, 383.

On April 4, 2019, Plaintiffs moved to compel Defendants to produce all ESI responsive to Plaintiffs' discovery requests within one week of the Court's Order and requesting sanctions. *See* NYSCEF Doc. No. 388. Plaintiffs also moved to attach certain Defendants' assets. NYSCEF Doc. Nos. 406, 407.

On May 24, 2019, River Meadows filed its brief appealing certification of the class with the Fourth Department. *See* Frei-Pearson Aff. ¶ 18. Plaintiffs filed their response on August 28, 2019. *Id.*

At a July 10, 2019 motion hearing, this Court denied, on the record, motions to dismiss brought by the newly-added defendants. *See* NYSCEF Doc. No. 556, Hr'g Tr. at 45, 48 ("[The pre-answer motions of the moving defendants [Friedman, Kushner, Gutnicki, Liberty, and Excelerate, brought pursuant to CPLR 3211(a)(1) and (a)(7),] are denied, and they are directed to interpose answers and other responsive pleadings within thirty days of the filing of this order with notice of entry."). The Court also denied Plaintiffs' motion to attach without prejudice to renew. *Id.* at 48. The Court, however, granted Plaintiffs' motion to compel ESI. *Id.* The Court

[3] River Meadows did not make the ESI deadline, because it filed a petition for bankruptcy with the United States Bankruptcy Court for the Northern District of New York ("Bankruptcy Court") on January 11, 2019. *See In re River Meadows, LLC*, No. 19-30022-5, ECF No. 11 (N.D.N.Y. Jan. 11, 2019); NYSCEF Doc. No. 376.

also granted Defendants' motion to dismiss Plaintiffs' negligence claims. NYSCEF Doc. No. 556, Hr'g Tr. at 47:20-24.

D. River Meadows Files For Bankruptcy, And Plaintiffs Successfully Move To Lift The Bankruptcy Stay.

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 Bankruptcy Court. *In re River Meadows, LLC*, No. 19-30022-5, ECF No. 1. On January 30, 2019, Judge Cangilos-Ruiz appointed William J. Leberman, Esq., as Chapter 7 trustee in the Bankruptcy Case. *Id.*, ECF No. 5.

On February 28, 2019, Plaintiffs sought to dismiss the Chapter 7 bankruptcy petition or, alternatively, to lift the automatic stay. *Id.*, ECF No. 10. On March 28, 2019, Judge Cangilos-Ruiz denied the request to terminate the bankruptcy, *id.*, ECF No. 26, but ultimately granted Plaintiffs' request to lift the bankruptcy stay on April 15, 2019, *id.*, ECF No. 34.

E. The Parties Settle The Instant Action With The Assistance Of Jed Melnick, An Experienced Mediator.

On September 18, 2018, early in this litigation and before the additional individual defendants were added as defendants, Plaintiffs and River Meadows held a mediation before Judge Lunn. *See* Frei-Pearson Aff. ¶ 20. Despite good faith efforts, this mediation was unsuccessful. *Id.* After that unsuccessful mediation, the Parties informally discussed settlement while continuing to litigate. *Id.* ¶ 20. After the Court denied Defendants' motions to dismiss, the informal settlement discussions became more serious. *Id.* ¶ 21. In August of 2019, the Parties agreed to stay the litigation pending mediation before Jed Melnick, a highly experienced mediator. *Id.* ¶ 21. 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 then-pending against defendant River Meadows. *Id.*

Prior to mediation, the Parties had several separate calls with Mediator Melnick and his team and also provided detailed pre-mediation statements to Mediator Melnick in all actions. *Id.* ¶ 22. The Parties mediated in Syracuse with Mediator Melnick over two days -- September 11 and 12, 2019. *Id.* In the evening of September 12, 2019, the Parties reached a verbal agreement in principle concerning the settlement terms. *Id.* ¶ 22.[4] With Mediator Melnick's assistance, Class Counsel subsequently negotiated with counsel for plaintiffs in the consolidated individual actions concerning settlement terms. *Id.* Class Counsel and Defendants' counsel then negotiated the terms of the Settlement Agreement, which were finally agreed to on March 27, 2020. *Id.* The Settlement requires River Meadows' insurer and certain Defendants to contribute $5.5 million to the River Meadows Bankruptcy estate, which the estate will contribute to the Settlement for a total of $5.5 million, which is easily the highest nursing home class action settlement in New York. *See* Ex. 1 to Frei-Pearson Aff., Settlement Agreement ¶ 6.

F. Judge Cangilos-Ruiz Approves The Settlement.

On September 24, 2020, Judge Cangilos-Ruiz approved the settlement in the Bankruptcy Case, stating "I cannot communicate enough what a Yeoman's task this was for all the parties to come together. I have overseen mediations of cases involving [ ] numerous parties from other judges. I can only appreciate the hours that went into this and what it took to get where we are today . . . I congratulate you for coming to terms with this. I think it is certainly in the interest of your clients and the estates, and I am sure Judge Paris will be very happy to hear about the result. So, I will go ahead and enter the order." *See In re River Meadows, LLC*, ECF No. 101, Hr'g Recording at 11:39-12:48, 14:07-14:29; *id.*, ECF No. 102, Order Approving Settlement.

[4] On September 17, 2019, in light of the instant Settlement, the Parties informed the Fourth Department of their tentative resolution of the matter. *See* Frei-Pearson Aff. ¶ 23. The Parties ultimately stipulated to withdraw the appeal. *Id.*

G. Justice Paris Preliminarily Approves The Settlement.

On December 3, 2020, Justice Paris granted preliminary approval of this settlement. NYSCEF Doc. No. 608. In his order, he noted, "Upon due deliberation having been had, and the Court having found the Joint Stipulation and Settlement Agreement . . . (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[.]" *Id.*

IV. BASIS FOR SETTLEMENT

The Parties recognize and acknowledge the benefits of settling this case. *See* Frei-Pearson Aff. ¶ 24. 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. *Id.* 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. *Id.* ¶ 24. 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 approximately $2.1 million made available. *Id.* ¶ 24. In addition, there was a risk that the other Defendants may have prevailed on appeal or avoided paying a judgment. *Id.* ¶ 25. Class Counsel has, therefore, determined that the Settlement agreed to by the Parties is fair, reasonable, and adequate. *Id.* The Settlement confers substantial benefits upon, and is in the best interests of, the Class. *Id.*

Defendants maintain that they have a number of meritorious defenses to the claims asserted in this action and deny any and all liability. *Id.* ¶ 26. Further, Defendants maintain that

at all times they were not negligent and deny that they failed to satisfy their obligations pursuant to PHL § 2801-d. *Id.* Nevertheless, 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 their business operations. *Id.* ¶ 27. Defendants also recognize that a trial on class-wide claims would pose litigation risk. *Id.* Accordingly, Defendants believe that the settlement set forth in the Settlement Agreement is likewise in their best interests. *Id.*

V. SUMMARY OF SETTLEMENT TERMS

The proposed Settlement resolves all disputes between Plaintiffs, Class Members,[5] 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. *Id.* at ¶28.

A. Defendants Will Pay $5,500,000.

Under the proposed Settlement, Defendants shall provide the Settlement amount of $5,500,000 to the Trustee. *See* Settlement Agreement ¶ 20. The Trustee shall then submit $5,300,000[6] to the Claims Administrator for deposit into the Qualified Settlement Fund ("QSF")[7]

[5] This also resolves all of Individual Plaintiffs' individual actions against Defendants. *See* Settlement Agreement ¶4.

[6] Judge Cangilos-Ruiz approved $200,000 of the Settlement amount for payment to the Trustee of the Bankruptcy Case. *In re River Meadows, LLC*, No. 19-30022-5, ECF No. 102.

[7] The Qualified Settlement Fund is the account established by the Claims Administrator into which Defendants will deposit the Settlement Payment necessary to pay the Class Member Payment Settlement Fund, Catastrophic Injury Fund, the Individual Plaintiff Actions Fund, and the Fees, Costs, and Enhancements Settlement Fund.

within fourteen days of the Effective Date.[8] Settlement Agreement ¶ 20. By no later than ten 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. *Id.*

Class Members' individual payments will be determined by the Settlement Claims Administrator pursuant to the following formula: Class Members' Settlement Check equals the 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. *Id.* at ¶ 20(e). Setting aside payments to Class members with more valuable claims (e.g., participants in the Catastrophic Injury Fund and/or plaintiffs with individual claims, *see infra*), the average participating Class Member will recover $1,108.38, and the most any participating Class Member without catastrophic injuries will recover is $6,357.27. *See* Affidavit of Project Manager Alex Mouton ("Mouton Aff.") ¶ 15.

In addition to their participation as Class Members, the Individual Plaintiffs will each receive $50,000 for their claims, and Named Plaintiffs Michael Farruggio and Susan Karpen will

[8] The "Effective Date" is the date the Settlement Agreement shall become effective. The Settlement Agreement will become effective 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, and (iv) the entry by the New York Supreme Court of the Final Approval Order, on a final and non-appealable basis. *See* Settlement Agreement § 14.

each receive $25,000. *See* Settlement Agreement ¶¶ 20(e), (d). Class Counsel may petition the Court for an award of attorney's fees of no more than $1,833,330 and for expenses of no more than $75,000. *Id.* ¶ 20(a). The Claims Administrator will receive $90,414.13, and the administrator of the Catastrophic Injury Fund will receive up to $50,000 for costs. *See* Mouton Aff. ¶ 15. *See also* Melnick Aff. ¶ 15.

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. *See* Settlement Agreement ¶ 20(f)(ii). 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. *Id.* 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. *Id.* Class Members will have ninety (90) days from the date of mailing to cash or deposit their Settlement Checks (the "Acceptance Period"). *Id.* ¶ 20(f)(vi). Class Members will be informed of the Acceptance Period in the Notice Form and on the Settlement Checks. *Id.*

B. The Catastrophic Injury Fund Of Approximately $1,845.767.31 Provides Elevated Payments To Class Members Who Suffered Catastrophic Injuries.

The Catastrophic Injury Fund is 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 in the QSF after the claims period expires. *See* Settlement Agreement ¶ 20(g)(i). The Claims Administrator anticipates that the Catastrophic Injury Fund will contain approximately $1,845,767.31. *See* Mouton Aff. ¶ 16.

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.[9] *Id.* ¶ 20(g)(ii). The Settlement Master shall, using their expertise and acting in their sole discretion, determine how the funds in the Catastrophic Injury Fund should be distributed. *Id.* ¶ 20(g)(iii). They 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. *Id.* All moneys in the Catastrophic Injury Fund, minus any costs of administration or money that the Individual Plaintiffs privately contract to pay to their counsel, shall be distributed to Class Members participating in the Catastrophic Injury Fund.

C. Class Members Release Their Claims.

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, 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. *Id.* ¶ 19(d)(iv). 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 releasing parties now has,

[9] "Settlement Master" means Jed Melnick, Esq. and Simone K. Lelchuk and anyone with whom they associate to evaluate how the Catastrophic Injury Fund should be distributed (Mr. Melnick requested that Ms. Lelchuk serve as co-administrator as a result of her substantial work on this case). *See* Melnick Aff. ¶ 15. Mr. Melnick was originally the Settlement Master, but, in light of Ms. Lelchuk's contributions and her availability to confer with class members and their counsel, Plaintiffs hereby move for Ms. Lelchuk to also be appointed as Settlement Master. *See id.*

claims to have, or has had at any time from the beginning of time, to and including the date hereof, against the released parties. *Id.* ¶ 4.10.

D. Minor Modifications To The Settlement Agreement Are Necessary

As is often the case with complex class actions, particularly cases where some Class Members have involvement with Medicare and government agencies, it is necessary to modify the Settlement in a few respects, none of which are material or in any way affect the money recovered by Class Members or paid by Defendants. Frei-Pearson Aff. ¶ 28.

First, Plaintiffs respectfully request that Simone Lelchuk be appointed as co-Settlement Master, as Ms. Lelchuk has done extensive work with the settlement to date and will continue to work diligently with Mr. Melnick on implementing the catastrophic injury fund. Frei-Pearson Aff. ¶ 29; Melnick Aff. ¶ 15.

Second, in order to comply with Medicare rules and regulations, some payments to Class Members may not be able to be issued during the time periods contemplated by the Settlement agreement. Frei-Pearson Aff. ¶ 30. Accordingly, Plaintiffs respectfully request that the Settlement Agreement be modified to require payments to be issued during the time period dictated by the Settlement or as soon as practicable while complying with all applicable rules and regulations.

Third, some Class Members submitted claims forms after the deadline in the Settlement Agreement. *Id.* at ¶ 31. Plaintiffs respectfully submit that any Class Member that submits a valid claim form up until April 21, 2021 should be able to participate in the Settlement, as certain

[10] 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. *See* Frei-Pearson Aff. ¶ 32. The Parties so confirmed. *Id.* ¶ 32.

elderly Class Members should not be penalized for being unable to comply with deadlines that have been made more onerous due to the challenges of operating in a pandemic. Defendants has no objection to any of these modifications, which are routinely approved in similar class actions. *See, e.g.*, *Legg v. Lab'y Corp. of Am.*, No. 14-61543, 2016 WL 3944069, at *4 (S.D. Fla. Feb. 18, 2016) (granting final approval to a class action settlement and modifying the preliminarily approved settlement to allow class members who submitted late claims forms to participate); *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 133 (S.D.N.Y. 2009), *aff'd sub nom. Priceline.com, Inc. v. Silberman*, 405 F. App'x 532 (2d Cir. 2010) (same).

VI. LEGAL ARGUMENT

A. The Proposed Settlement Should Be Finally Approved.

The Settlement should be finally approved. It is the product of extensive, arm's-length negotiations and contains no obvious deficiencies. It is favorable to all parties, agreed to by all parties, including Class Counsel, and has been approved (in prior stages of litigation) by Judge Cangilos-Ruiz and Justice Paris. *See* Frei-Pearson Aff. ¶ 33.

B. The Applicable Standard

New York has a well-established public policy favoring compromises of litigation, especially class litigation. *See, e.g.*, *Hallock v. State of N.Y.*, 64 N.Y.2d 224, 230 (1984) (recognizing that settlements are favored by courts and not lightly cast aside); *In re New York Cty. Data Entry Worker Prod. Liab. Litig.*, 616 N.Y.S.2d 424, 427 (Sup. Ct. N.Y. Cnty. 1994) (recognizing the policy favoring settlement is particularly compelling in the context of class actions); *In re Veeco Instruments Inc. Sec. Litig.*, No. 05-01695, 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007) ("There is a strong judicial policy in favor of settlements, particularly in

the class action context.") (internal quotations omitted).[11] CPLR 908 specifies that the Court must approve any reasonable proposed "compromise" of a class action. Courts examine "the fairness of the settlement, its adequacy, its reasonableness and the best interests of the class members." *Fiala v. Metro. Life Ins. Co.*, 27 Misc. 3d 599, 537 (Sup. Ct. N.Y. Cnty. Mar. 3, 2010) (citing *Klein v. Robert's Am. Gourmet Food, Inc.*, 28 A.D.3d 63, 73 (2d Dep't 2006)); *see also Karic v. Major Auto. Companies, Inc.*, No. 09-5708, 2015 WL 9433847, at *7 (E.D.N.Y. Dec. 22, 2015); *Rosenfeld v. Bear Stearns & Co.*, 237 A.D.2d 199 (1st Dep't 1997); *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir. 2000).

New York courts agree that determining whether a settlement is fair, adequate, and reasonable requires an analysis of: (1) the value of the benefits to the class in relation to the likelihood that plaintiffs will succeed on the merits; (2) the extent of support from the parties; (3) the judgment of counsel; (4) the presence of good faith bargaining; and (5) the complexity and nature of the issues and whether further litigation would be protracted. *See In re Colt Indus. S'holder. Litig.*, 155 A.D.2d 154, 160 (1st Dep't 1990); *Klurfeld v. Equity Enter., Inc.*, 79 A.D.2d 124, 133 (2d Dep't 1981). An analysis of these factors favors approving the Settlement.

1. The Value Of The Benefits Offered To The Class Outweighs The Likelihood Of Plaintiffs' Success On The Merits.

The first factor to determine fairness, adequacy, and reasonableness of a settlement is to "balanc[e] the value of th[e] settlement against the present value of anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation." *Klein*, 28 A.D.3d at 73.

[11] New York courts regularly refer to the federal standards in evaluating class action litigation and settlements, in recognition that New York class action law and federal class action law are similar. *See Fiala v. Metro. Life Ins. Co.*, 27 Misc. 3d 599, 606-607 (Sup. Ct. N.Y. Cnty. Mar. 3, 2010) (collecting cases).

This is easily the largest settlement of any PHL § 2801-d nursing home reform class action. Defendants are contributing $5.5 million pursuant to the Settlement, and many members of the Class participated the First Settlement, in which the current owners contributed $495,000 towards resolving Class Members' claims, for a total value of nearly $6 million. This dwarfs all other similar settlements that courts have approved. *See, e.g., Flemming v. Barnwell*, 56 A.D.3d 162, 164 (3d Dep't 2008) (approving class settlement of $950,000 in a similar PHL § 2801-d nursing home class action).

This excellent result is especially notable given the remaining obstacles to success on the merits. While Plaintiffs believe their claims are meritorious, Plaintiffs recognize that Defendants are ably represented and, absent settlement, would continue to litigate for years using scorched earth tactics. *See* Frei-Pearson Aff. ¶ 34. Before settlement, Defendants had perfected an appeal of Justice Paris's class certification order; if the Fourth Department granted that appeal, the Class would recover far less than the instant settlement. *Id.* ¶ 35. Moreover, Defendant River Meadows had an insurance policy that decreased with the cost of defense. *Id.* ¶ 36. If the Parties continued to litigate, River Meadows would likely have spent that entire policy in defense -- reducing the amount of money available to Class Members (possibly to zero in the event that River Meadows was the only party against whom the Class could recover). *Id*. Instead, River Meadows can now contribute the entire $2.1 million remaining on the policy to the Settlement. *Id.* And the remaining individual defendants would all have appealed Justice Paris's order holding them in the case; if any of those appeals were granted, the moneys available would be yet further reduced or potentially eliminated. *Id.*

Even if Plaintiffs overcame the above hurdles, they would still have to complete discovery, prevail at a lengthy class trial, survive numerous appeals, and recover assets from

individual defendants -- a process that would take many years. *Id.* ¶ 37. Indeed, lengthy litigation is routine in class cases, and this case would be lengthier than most. *See, e.g.*, *Rodriguez v. West Pub'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009) ("Inevitable appeals would likely prolong the litigation, and any recovery by class members, for years."). In *Flemming*, a similar nursing home reform class action that settled prior to trial, the Third Department noted that six years of litigation was necessary because such cases are "complex" and involve many "difficult[ies]." 56 A.D.3d at 166. Here, lengthy litigation would be exceptionally detrimental to the interests of this Class, as the Class members are by definition elderly and do not have years to wait for a recovery. If the Court approves this Settlement, then this case will be concluded less than four years after filing -- a result that is more favorable to the Class than additional years of continued litigation. Accordingly, as Judge Cangilos-Ruiz said, the settlement "is certainly in the interest of your clients [the Class]." *In re River Meadows, LLC*, ECF No. 101, Hr'g Recording at 11:39-12:48, 14:07-14:29; ECF No. 102, Order Approving Settlement.

2. The Settling Parties And Class Members Overwhelmingly Support The Settlement.

Under New York law, support for a proposed settlement by class members demonstrates its fairness and reasonableness. *See, e.g.*, *Hibbs v. Marvel Enters.*, 19 A.D.3d 232, 233 (1st Dep't 2005) (ruling the settlement was reasonable because no objectors meant the class supported the settlement); *Alleyne v. Time Moving & Storage Inc.*, 264 F.R.D. 41, 44 (E.D.N.Y. 2010) (approving the settlement despite several objectors). Class Counsel have spoken with many Class Members and can report that the Class supports the Settlement. *See* Frei-Pearson Aff. ¶ 38.

In class action settlements, typically many members of the class opt out and object. *See, e.g., In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 511 (E.D.N.Y. 2003), *aff'd sub nom. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir. 2005) ("[A] certain number of objections are to be expected in a class action with an extensive notice campaign and a potentially large number of class members. If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.") (additional citations omitted). This is not an obstacle for final settlement approval if the majority of the class approves and the settlement is fair. *See, e.g., Fiala,* 27 Misc. 3d at 608 (approving settlement when small fraction of class members objected or opted out).

Here, the Class's reaction to the settlement was overwhelmingly positive, as not a single Class Member objected or submitted a valid request for exclusion.[12] Moreover, the Parties have expressed their support for the settlement by signing the Settlement Agreement. These factors counsel strongly in favor of approving the settlement. *See, e.g., Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 177 (W.D.N.Y. 2011) (class reaction favorable where eleven members opted out and three objected); *Charron v. Weiner*, 731 F.3d 241 (2d Cir. 2013) (approving a class action settlement despite 118 objectors); *Behzadi v. Int'l Creative Mgmt. Partners, LLC*, No. 14-4382, 2015 WL 4210906, at *2 (S.D.N.Y. July 9, 2015) (holding that "the Settlement Class's reaction to the settlement was positive" where "only 24" class members opted out); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 457 (S.D.N.Y. 2004) (noting that there were 12 objectors and 9 opt-outs and holding that "[t]hese extremely low numbers of objectors and opt-outs strongly support settlement approval").

[12] One individual submitted an untimely exclusion request that was not signed by the Class Member himself.

3. Counsel Supports The Settlement And Considers It Favorable To The Class.

In evaluating a class settlement, courts may also consider the opinion of counsel. *See, e.g.*, *Fiala*, 27 Misc. 3d at 607; *Lowenschuss v. Bluhdorn*, 613 F.2d 18, 19 (2d Cir. 1980). Class Counsel have carefully evaluated the merits of the case and the proposed Settlement and consider the Settlement favorable to the Class. *See* Frei-Pearson Aff. ¶ 39. The proposed Settlement was reached only after arm's-length negotiations between the parties and their counsel, who considered the advantages and disadvantages of continued litigation. *Id.* Class Counsel recognize that, even if this case were to proceed to trial, the apparent strengths of Plaintiffs' claims are no guarantee against a complete or partial defense verdict. *Id.* Accordingly, Class Counsel believe that this Settlement achieves all of the objectives of the litigation -- namely, compensating the Class Members who were subjected to Defendants' allegedly inadequate operation of the Facility. *Id.*

4. The Proposed Settlement Stems From Arm's-Length Negotiations.

A class settlement's fairness, adequacy, and reasonableness are presumed when "a class settlement is reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005).

This Settlement is the result of extensive, arm's-length negotiations. *See* Frei-Pearson Aff. ¶ 40. These negotiations were hard fought and have produced a result that Class Counsel believes to be in the best interests of the Class Members in light of the costs and risks of continued litigation. *Id.*

Furthermore, Jed Melnick is an experienced and highly-qualified mediator who produces fair settlements. As Judge McMahon explained, Mr. Melnick's assistance militates particularly strongly in favor of approving class action settlements:

> Mr. Melnick's role in the settlement negotiations overcomes any hesitation this court might have about approving a settlement reached prior to any discovery. According to his published JAMS biography, Mr. Melnick "has mediated over 750 disputes, published articles on mediation, founded a nationally ranked dispute resolution journal and taught young mediators." Jed D. Melnick, Esq.—JAMS, www.jamsadr.com/melnick/ (last visited July 15, 2014). He also has specific experience in the area of Chinese securities litigation and assisted the Hon. Daniel Weinstein (Ret.) in the successful mediation that led to the settlement approved by this Court in the action *In re Telik, Inc. Securities Litigation*, 576 F.Supp.2d 570 (S.D.N.Y.2008). *Id.* The participation of this highly qualified mediator strongly supports a finding that negotiations were conducted at arm's length and without collusion.

Yang v. Focus Media Holding Ltd., No. 11-9051, 2014 WL 4401280, at *5 (S.D.N.Y. Sept. 4, 2014).

Mr. Melnick testifies as to the Settlement's fairness:

> [B]ased on my knowledge of this matter, my review of the relevant materials submitted to me, the litigation risks, the benefits obtained, and the arms'-length negotiation and diligent efforts of accomplished counsel – the settlement represents a fair, reasonable, and adequate resolution of all of the claims the Class Action asserts. I believe that the Settlement provides fair and adequate compensation to Class members as well as the benefits of avoiding the litigation proceedings and/or appeals that would inevitably occur if not for this settlement. I also believe the Settlement flows from the parties' assessment of the litigation risks. I respectfully recommend that the Settlement be approved on a final basis.

Melnick Aff. ¶ 14.

5. This Case Is Complex And Continued Litigation Would Be Protracted.

The final factor courts consider is whether continued litigation would be "expensive and protracted." *Lowenschuss*, 613 F.2d at 19. "When the prospect of ongoing litigation threatens to

impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened." *Klein v. O'Neal, Inc.*, 705 F.Supp.2d at 632, 651 (N.D. Tex. 2010) (citing *Ayers v. Thompson*, F.3d 356, 369 (5th Cir. 2004)).

Class action cases are inherently complex and institutional reform class actions are typically even more complex. *See, e.g.*, *N.Y. State Ass'n for Retarded Children v. Carey*, 706 F.2d 956, 970 n.17 (2d Cir. 1983) (noting that institutional reform actions are complex). Thus, in *Flemming*, a similar nursing home reform class action that settled prior to trial, the Third Department noted that six years of litigation was necessary because such cases are "complex" and involve many "difficult[ies]." 56 A.D.3d at 166. This case's docket reflects 620 docket entries. Absent settlement, litigation would have taken many more years, including through summary judgment, trial, and appeals. Frei-Pearson Aff. ¶ 41. Few cases in New York's court system are as complex as this one, and the instant Settlement concludes litigation that would otherwise be protracted.

VII. THE REQUESTED FEES AND COSTS ARE REASONABLE.

A. The Requested Attorneys Fees And Costs Are Reasonable.

PHL § 2801-d(6) and § 2801-d(2) require that Class Counsel be awarded reasonable attorneys' fees and costs. Indeed, in reform class actions, attorneys' fee awards are especially necessary to incentivize attorneys to act as "vindicator[s] of public policy," providing legal services to those whose claims may otherwise be too small to justify the retention of counsel. *Washington Federal Savings & Loan Ass'n v. Village Mall Townhouses, Inc.*, 394 N.Y.S.2d 772, 774-75 (Sup Ct. Queens Cnty. 1977) (citations omitted).

Class Counsel requests an award of $1,833,330 in attorneys' fees and $74,067.13 in reimbursement of costs. Class Counsel has billed over $2,712,765.65 in attorneys' fees and has incurred $74,067.13 in costs.[13] *See* Frei-Pearson Aff. ¶ 42.

The attorneys' fees and costs requested here are fair and reasonable, particularly in light of the effort expended to successfully prosecute this case.

B. The Applicable Standard

Reasonableness is the touchstone for determining attorneys' fees. *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297 (E.D.N.Y. 2010). New York courts often look to federal law and precedent to assess reasonableness, as New York state law tends to track law developed in federal courts. *Id.* at 357 (citing *Sternberg v. Citigroup Credit Servs., Inc.*, 110 Misc.2d 804, 810 (Sup. Ct. N.Y. Cnty. 1981)). New York courts typically consider the six *Goldberger* factors in determining the reasonableness of fee applications:

(1) the requested fee in relation to the settlement
(2) the time and labor expended by counsel
(3) the magnitude and complexities of the litigation;
(4) the risk of the litigation;
(5) the quality of the representation; and
(6) public policy considerations.

See Goldberger v. Integrated Res., Inc., 209 F.3d 43, 50 (2d Cir. 2000) (citations omitted); *Friedman v. Northville Industries Corp*, No. 2085/88, 1991 WL 11764344 (Sup. Ct. N.Y. Cnty. Dec. 4, 1991) (approving final settlement using some *Goldberger* factors). Here, all of the *Goldberger* factors weigh in favor of granting Class Counsel's fee request.

[13] Class Counsel will continue to incur fees in finalizing the settlement, attending the final approval hearing, and in numerous communications with Class members, the Claims Administrator and the Settlement Master. Frei-Pearson Aff. ¶ 45. Class Counsel estimates that its fees will be over $2,750,000 by the time this case concludes. *Id.*

1. The Requested Fee Is Reasonable In Proportion To The Settlement.

Class Counsel's negotiated fee request is reasonable in light of the excellent settlement terms achieved. The fee request of $1,833,330 is one-third of the cash settlement fund and falls well-within the range of class counsel fees approved in comparable cases. *See, e.g.*, NYSCEF Doc. No. 340 (approving attorneys' fees of one-third of the settlement fund of the First Settlement); *Fernandez v. Hospitality*, No. 152208/2014, 2015 N.Y. Misc. LEXIS 2193, at *11 (Sup. Ct. N.Y. Cnty. June 20, 2015) (same), *Ryan v. Volume Servs. Am.*, No. 652970/2012, 2013 N.Y. Misc. LEXIS 932, at *11 (Sup. Ct. N.Y. Cnty. Mar. 7, 2013) (same), *Milton v. Bells Nurses Registry & Emp't Agency, Inc.*, No. 502303/2015, 2015 N.Y. Misc. LEXIS 4604, at *13 (Sup. Ct. Kings Cnty. Dec. 14, 2015) ("Here, Class Counsel seeks one-third of the settlement fund as attorneys' fees pursuant to their retainer agreement with the class representative. This is well within the range of reasonableness and within the percentage regularly approved in class action and wage and hour suits."), *Hernandez v. Merrill Lynch & Co., Inc.*, No. 11-8472, 2013 WL 1209563, at *8 (S.D.N.Y. Mar. 21, 2013) (awarding attorney's fees in the amount of "$2,310,000 which is 33% of the settlement fund," plus costs); *Beckman v. KeyBank, N.A.*, No. 12-7836, 2013 WL 1803736, at *12 (S.D.N.Y. Apr. 29, 2013) (awarding attorneys' fees equal to 33% of the $4.9 million settlement fund, plus costs); *Hayes v. Harmony Gold Mining Co.*, No. 08-03653, 2011 WL 6019219, at *1 (S.D.N.Y. Dec. 2, 2011) (awarding attorneys' fees equal to 33.3% of $9 million settlement fund), *aff'd*, 509 F. App'x 21 (2d Cir. 2013); *Willix v. Healthfirst, Inc.*, No. 08-7670, 2011 WL 754862, at *6 (E.D.N.Y. Feb. 18, 2011) (awarding class counsel one-third of $7,675,000 settlement fund); *Clark v. Ecolab Inc.*, No. 07-8623, 2010 WL 1948198, at *8-9 (S.D.N.Y. May 11, 2010) (awarding class counsel 33% of $6 million settlement fund); *Khait v. Whirlpool Corp.*, No. 06-6381, 2010 WL 2025106, at *8 (E.D.N.Y. Jan. 20, 2010) (awarding class counsel 33% of $9.25 million settlement fund); *In re March Erisa Litig.*, 265 F.R.D. 128,

146 (S.D.N.Y. 2010) (awarding attorney's fees equal to 33.33% of $35 million settlement, plus costs); *Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, No. 06-4270, 2009 WL 5851465, at *5 (S.D.N.Y. 2009) (noting that "Class Counsel's request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit"); *Gilliam v. Addicts Rehab Ctr. Fund*, No. 05-3452, 2008 WL 782596, at *5 (S.D.N.Y. Mar. 24, 2008) (fee equal to one-third of the settlement fund is reasonable and "consistent with the norms of class litigation in this circuit") (citing cases).

As Judge Peck stated, "[c]ourts in this Circuit have routinely granted requests for one-third of the fund in cases with settlement funds substantially larger than this one." *Flores v. One Hanover, LLC*, No. 13-5184, 2014 WL 2567912, at *4 (S.D.N.Y. June 9, 2014) (approving award of one-third of settlement fund).

2. Class Counsel Expended Significant Time And Labor.

Class Counsel expended significant time and effort before attaining the Settlement. Class Counsel has devoted over 4,780 hours of time and has incurred significant costs in prosecuting this matter. *See* Frei-Pearson Aff. ¶ 43. These hours are reasonable and were compiled from contemporaneous time records maintained individually be each attorney, paralegal, and staff member participating in the case. *Id.* Class Counsel made every effort to coordinate work to avoid duplication of efforts. *Id.* ¶ 43.

Prior to filing the present lawsuit, Class Counsel conducted a thorough investigation into the merits of the Class's claims and the likelihood of class certification. *Id.* ¶ 46. Since the initiation of the action, Plaintiffs have diligently litigated their claims and the Class's claims. *Id.*

Class Counsel spared no effort in maximizing the Class' recovery. Indeed, for appellate work, Class Counsel co-counseled with Rachel Bloomekatz, a preeminent appellate practitioner who clerked for Justice Breyer on the United States Supreme Court. *Id.* ¶ 47. Ms. Bloomekatz

incurred an additional 107.3 hours, at her customary hourly rate of $575.00 for a total of $61,697.50 in fees. *Id.* *See also* Ex. 4 to Frei-Pearson Aff. Ms. Bloomekatz' fees will be paid from Class Counsel's fee award. Frei-Pearson Aff. ¶ 47. In addition, Class Counsel have spent many hours speaking with Class Members, conducting discovery, and litigating all aspects of this case. *Id.*

3. The Litigation Risk Was Substantial.

Class Counsel undertook great risk agreeing to prosecute the case. Courts have recognized that the risk involved in prosecuting a class action is an important consideration in determining an appropriate fee award. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974). This factor is intended to recognize that cases taken on a contingent fee basis entail risk of non-payment for the attorneys that prosecute them, and it embodies an assumption that contingency work is entitled to greater compensation than non-contingency work. *See In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 592 (S.D.N.Y. 2008).

Before the Class's settlement with Defendants, Class Counsel received no compensation whatsoever, while incurring the risks of the litigation. Moreover, there was no way to know whether Class Counsel would ever be compensated for its substantial commitment to these actions. In fact, the case law is littered with unsuccessful class actions that provided no relief to the putative class and no fee for class counsel. *See In re Veeco Instruments Inc. Sec. Litig.*, No. 05-MDL-01695, 2007 WL 4115808, at *6 (S.D.N.Y. 2007) ("[T]he risk of non-payment in complex cases, such as this one, is very real. There are numerous class actions in which counsel expended thousands of hours and yet received no renumeration whatsoever despite their diligence and expertise. There is no guarantee of reaching trial, and even a victory at trial does

not guarantee recovery.") (collecting cases).[14] Indeed, as Defendant River Meadows pointed out in its opposition to Plaintiffs' motion for class certification, class certification has been denied in similar nursing home cases. *See* NYSCEF Doc. No. 194.

Class Counsel incurred all of the risk, devoting their time and labor to gather evidence of Defendants' alleged wrongdoing, evaluating Defendants' potential liability, analyzing potential legal theories, drafting the complaint, and engaging in substantial motion practice, discovery, and settlement negotiations. Throughout, there was no assurance or success or compensation. The requested fee award is entirely reasonable in light of the risks incurred by Class Counsel.

4. Class Counsel Provided High Quality Representation.

Class Counsel has substantial experience successfully litigating complex class action and has been found adequate in all such cases where the Court considers Class Counsel's adequacy. *See, e.g.*, NYSCEF Doc. No. 340; *Bellaspica v. PJPA*, No. 13-3014, Transcript of Final Settlement Approval Hearing Before Honorable Judge Timothy A. Rice at 14 (E.D. Pa. June 22, 2016) (finally approving a class action settlement and describing Mr. Frei-Pearson as "a great example to the bar of what zealous advocacy really means"); *Yoeckel v. Marriott International, Inc.*, No. 703387/2015 (Sup. Ct. Queens Cnty. May 3, 2017) (finding that "Jeremiah Frei-Pearson of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP is experienced counsel who has provided exceptional representation to the Class and certified him as Class Counsel"); *see*

[14] In numerous class actions, plaintiffs' counsel has been awarded no fee despite investing thousands of hours in the litigation. *See, e.g.*, *In re Apollo Group, Inc. Sec. Litig.*, No. 04-2147, 2008 WL 3972731 (D. Ariz. Aug. 4, 2008) (setting aside jury verdict of $277 million based on insufficient evidence); *In re JDS Uniphase Corp. Sec. Litig.*, No. 02-1486, slip op. (N.D. Cal. Nov. 27, 2007); *Robbins v. Koger Props.*, 116 F.3d 1441 (11th Cir. 1997) (reversing jury verdict of $81 million and entering judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning verdict in favor of plaintiff class based on subsequent change in law).

also Exhibit 3, FBFG Firm Resume. And, when appellate work was required, Class Counsel co-counseled with a highly qualified appellate attorney. *See* Frei-Pearson Aff. ¶ 47.

Moreover, the quality of Class Counsel's representation is reflected in the manner in which they prosecuted this action from pleadings, through motion practice and discovery, to the settlement negotiations. The settlement terms reached are favorable for the Class, and are the direct result of Class Counsel's creativity, diligence, hard work, and skill at every stage of the proceedings. By putting Class Members' best interests ahead of its own, Class Counsel negotiated the most favorable settlement terms possible. Class Counsel's exemplary prosecution of this class action weighs strongly in favor of the proposed fee award.

5. Public Policy Considerations Support The Fee Request.

Fee awards are designed in part to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and thereby discourage future misconduct of a similar nature. *MetLife*, 689 F. Supp. 2d at 356 (citing, *e.g.*, *Michael v. Phoenix Home Life Mut. Ins. Co.*, No. 95-5318, 1997 WL 1161145, at *31 (Sup. Ct. N.Y. Cnty. Jan. 3, 1997) ("[G]enerous fee awards in cases such as this serve the dual purpose of encouraging plaintiffs' attorneys to act as private attorney general and discouraging wrongdoing.")).

"Where relatively small claims can only be prosecuted through aggregate litigation, and the law relies on prosecution by 'private attorneys general,' attorneys who fill [that role] must be adequately compensated for their efforts." *Flores*, 2014 WL 2567912, at *8 (quoting *Reyes v. Altamarea Grp. LLC*, No. 10-6451, 2011 WL 4599822, at *7 (S.D.N.Y. Aug. 16, 2011)); *see also Parker Hannifin Corp. v. N. Sound Properties*, No. 10-6359, 2013 WL 3527761, at *4 (S.D.N.Y. July 12, 2013) ("common-fund awards are designed to encourage litigation by 'private attorneys general' as a means of implementing the policies embodied in those statutes"); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("In order to attract well-

qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives.").

When PHL § 2801-d was passed, the State Executive Department noted that "a class action is the most feasible, and perhaps the only feasible, way for [nursing home residents] effectively to assert their common rights vis-à-vis the institution which controls virtually their entire existence." McKinney's 1975 Session Laws of New York, Memoranda of the State Executive Department, pp.1685-86. Likewise, in this case, many Class Members lack the time and financial resources necessary to be able to individually pursue long and protracted litigation at their own expense. Thus, public policy favors the granting of attorneys' fees sufficient to reward counsel for bringing these actions and to encourage them to bring additional such actions.

6. The Fee Agreement Is Particularly Fair And Reasonable In Light Of Class Counsel's Lodestar.

Courts also sometimes consider Class Counsel's lodestar when approving fee requests to ensure than an otherwise reasonable percentage would not lead to a windfall. *See, e.g.*, *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014). Under the lodestar approach, attorneys' fees are calculated by multiplying the number of hours reasonably expended in litigating the claim by the reasonable hourly rate ("lodestar amount"). *See, e.g.*, *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). "A properly calculated lodestar amount is itself strongly presumed to be reasonable." *Galdames v. N & D Inv. Corp.*, 432 F. App'x 801, 806 (11th Cir. 2011) (internal quotations and citations omitted).[15]

[15] In addition, fees awarded to class counsel are often multiples of the lodestar in order to fairly compensate for the inherent risk and contingent nature of the litigation, the result obtained, and the quality of work. *See, e.g.*, *City of Detroit*, 495 F.2d at 470 ("No one expects a lawyer those compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended."); *Hernandez*, WL 1209563, at *9 (Awarding

Class Counsel have accumulated an aggregate lodestar of over $2,700,000 to date (over $2,800 if Ms. Bloomekatz's time is included). *See* Frei-Pearson Aff. ¶ 44. Yet Counsel's request is for an award of $1,833,330, which reflects a negative multiplier of 0.68. As set forth above, Class Counsel has expended considerable effort on this complex litigation. And Class Counsel's 4,789.54 hours worked (4,896.84, including Ms. Bloomekatz) is reasonable based on the "complex" nature of this litigation. *Flemming*, 56 A.D at 166 (2008); *accord, e.g., Cmty. Ass'n for Restoration of the Env't, Inc. v. Cow Palace, LLC*, No. 13-3016, 2016 WL 3582754, at *16 (E.D. Wash. Jan. 12, 2016) (finding it reasonable for class counsel to work approximately 10,000 hours in prosecuting a class action for three years). Accordingly, Class Counsel's lodestar is not excessive and does not reflect duplicative or unnecessary work.

Class Counsel's hourly rates, which range from $850 to $130, are also reasonable. Counsel are entitled to their requested hourly rates if those rates are within the range of rates charged by and awarded to attorneys of comparable experience, reputation, and ability for similar work, i.e., complex class action litigation. *See, e.g., Farbotko v. Clinton Cty. Of N.Y.*, 433 F.3d 204, 208 (2d Cir. 2005). Here, Class Counsel's hourly rates have been approved by many other courts and are consistent with those of other attorneys engaged in similar complex

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lodestar multiplier of 3.8, holding it "well within the range of multipliers that have been granted by courts in this Circuit and elsewhere" and noting that "Courts regularly award lodestar multipliers of up to eight times lodestar, and in some cases, even higher multipliers."); *Spicer v. Pier Sixty LLC*, No. 08-10240, 2012 WL 4364503, at *4 (S.D.N.Y. Sept. 14, 2012) ("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts.") (quoting *In re Telik*, 576 F. Supp. 2d at 590); *deMunecas v. Bold Food, LLC*, No. 09-00440, 2010 WL 3322580, at *10 (S.D.N.Y. Aug. 23, 2010) ("Courts regularly award lodestar multipliers from 2 to 6 times lodestar."); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d at 359; *see also In re Interpublic Sec. Litig.*, No. 03-1194, 2004 WL 2397190, at *12 (S.D.N.Y. Oct. 26, 2004) (finding a multiplier of 3.96 "reasonable in light of the Goldberger factors" and noting that in recent years, multipliers of between 3 and 4.5 have been common in certain class actions); *Michels v. Phoenix Home Life Mut. Ins.*, No. 95/5318, 1997 WL 1161145, at *32 (Sup. Ct. N.Y. Cnty. Jan. 7, 1997) (approving multiplier of 3.3, noting range of 6 to 12).

class litigation. *See, e.g., Coleman v. Boys Town Nat'l Research Hosp.*, No. D01CI180008162 (Neb. Dist. Ct. Aug. 20, 2020) (finally approving settlement and FBFG's hourly rates), *Spano v. V & J Nat'l Enterprises, LLC*, No. 16-06419, ECF No. 86 (W.D.N.Y. Sept. 10, 2018) (same); *Castillo v. Seagate Tech., LLC*, No. 16-01958, at *3-4 (N.D. Cal. Mar. 14, 2018), ECF No. 85 (holding that Class Counsel's rates, including FBFG's rates, "are consistent with market rates and reasonable in light of [Class Counsel's] skill, experience, and expertise" and granting the requested fee award); *Bellino v. JPMorgan Chase Bank, N.A.*, No. 14-03139, at 9 (S.D.N.Y. Nov. 9, 2017) (approving FBFG's rates), ECF No. 141; *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.*, No. 13-3073 (S.D.N.Y. Nov. 1, 2018) (same), ECF No. 132; *Reed v. Friendly's Ice Cream*, LLC, No. 15-298 (M.D. Pa. Jan. 31, 2017), ECF No. 105; *Yoeckel*, 2017 No. 703387/2015. Indeed, when approving the First Settlement, Justice Paris approved Class Counsel's rates. NYSCEF Doc. No. 340 (granting preliminary approval of settlement which "reflects a reasonable request for attorneys' fees in light of the value of the settlement with Class Counsel's hourly rates and hours also being reasonable").

Although Class Counsel's rates are high for the region, the hourly rates charged by counsel are reasonable in comparison with other firms engaging in complex class litigation. As noted more than a decade ago, "the American Lawyer recently reported that the median billing rate for partners at many leading law firms exceeds $900 per hour." *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-3400, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010).

Finally, comparing the lodestar with the requested award yields a "negative multiplier" of approximately 0.68, which is very modest considering the excellent results achieved and the fact that courts in New York often give class counsel a positive multiplier. *See, e.g., Flag Telecom*, 2010 WL 4537550, at *26 ("Under the lodestar method, a positive multiplier is typically applied

to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors."). Accordingly, the lodestar cross-check here confirms that the fee requested by Class Counsel is reasonable and should be approved.

C. Class Counsel's Costs Are Reasonable.

Class Counsel has incurred out-of-pocket expenses incidental and necessary to representation, and customarily charged to clients, of $74,067.13 to date. Frei-Pearson Aff. ¶ 42. "Courts typically allow counsel to recover their reasonable out-of-pocket expenses." *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 482 (S.D.N.Y. 2003) (awarding class counsel its request for unreimbursed expenses, including court and service fees, postage, transportation, and electronic research costs) (citing *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003)); *see also, e.g.*, *Yang v. Focus Media Holding Ltd.*, No. 11-9051, 2014 WL 4401280, at *18, (S.D.N.Y. Sept. 4, 2014) (citing *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *1 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class."). In complex class actions, class counsel often incur expenses of well over $100,000. *See, e.g.*, *Story v. SEFCU*, No. 18-764, 2021 WL 736962 (N.D.N.Y. Feb. 25, 2021) (approving expense reimbursement $168,029.71), *Simerlein v. Toyota Motor Corp.*, No. 17-1091, 2019 WL 2417404 (D. Conn. June 10, 2019) (approving $370,972.29 in litigation costs), *Ebbert v. Nassau Cty.*, No. 05-5445, 2011 WL 6826121 (E.D.N.Y. Dec. 22, 2011) (approving in $128,789.00 costs), *In re Longwei Petroleum Inv. Holding Ltd. Sec. Litig.*, 2017 U.S. Dist. LEXIS 85004, at *9 (S.D.N.Y. May 22, 2017) (approving $115,000 in costs).

Class Counsel's expenses were reasonably incurred in connection with the prosecution of this action and of a type that law firms typically bill to their clients, such as expert costs,

electronic research on Westlaw, filing fees, PACER charges, and postage. *See* Frei-Pearson Aff. ¶ 48. All of these expenses are typical and necessary expenses in complex class actions, and therefore merit reimbursement. *Id.* For example, Class Counsel hired multiple nursing home experts -- including an expert who assisted in improving conditions in the Facility and an expert who assisted in litigation. *Id.*

D. Mr. Farruggio's and Ms. Karpen's Service Awards Are Reasonable.

Class Counsel respectfully move this Court to approve a service award for Plaintiffs Susan Karpen and Michael Farruggio of $25,000 each. Providing service awards (also known as incentive awards or enhancement awards) to individuals who come forward to represent a class is a necessary and important component of any class action settlement. "Service awards are common in class action cases and serve to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a named plaintiff, and any other burdens sustained by the plaintiffs." *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming award of $25,000 to named plaintiff); *accord, e.g.*, *Downing v. First Lenox Terrace Associates, LLC*, No. 100725/2010, 2020 WL 6469307, at *3 (Sup. Ct. N.Y. Cnty. July 1, 2020) (awarding a total of $130,000 in service awards to the class representatives); *Godshall v. Franklin* Mint Co., No. 01-6539, 2004 WL 2745890, at *6 (E.D. Pa. Dec. 1, 2004) (granting special award of $20,000 to each named plaintiff for their work as class representatives); *In re Linerboard Antitrust* Litig., No. 98-5055, 2004 WL 1221350, at *18-19 (E.D. Pa. June 2, 2004) (awarding $25,000 for each of the five class representatives).

Ms. Karpen and Mr. Farruggio worked diligently on the Class's behalf. *See* Frei-Pearson Aff. ¶ 49. They met with Class Counsel and spoke with Class Counsel on numerous occasions; provided testimony in support of Plaintiffs' class certification motion; were prepared to be deposed; and were involved in helping Class Counsel negotiate this Settlement. *Id.* Members of

the Karpen and Farruggio families have attended all -- or virtually all -- of the hearings in this matter. *Id.* These efforts alone would more than justify the requested service award. *See, e.g.*, *Bd. Of Trs. Of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 090686, 2012 WL 2064907, at *3 (S.D.N.Y. June 7, 2012) (awarding $50,000 to each of the three named class representatives who only helped with settlement negotiations).

Ms. Karpen is especially deserving of a service award as she had the courage to serve as a named plaintiff despite living in the Facility and potentially risking retaliation far more severe than a typical class plaintiff. *Cf., e.g.*, *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005) (explaining that service awards are "particularly appropriate in the employment context" because of the risk of retaliation). Indeed, Ms. Karpen feared retaliation prior to filing this lawsuit, but ultimately determined that she was willing to take substantial personal risks to improve conditions in the Facility. Frei-Pearson Aff. ¶ 50. Mr. Farrugio and Ms. Karpen provided substantial value to the Class and should be awarded for their service.

E. The Cost To Administer The Settlement Is Reasonable.

Courts also routinely grant part of the Settlement Fund to pay for the administrative costs for allocating the settlement to the Class Members. *See, e.g.*, *In re Longwei Petroleum*, 2017 U.S. Dist. LEXIS 85004, at *15 (allocating $143,620.15 for the claims administrator); *Vasco v. Power Home Remodeling Grp. LLC*, No. 15-4623, 2016 WL 5930876 (E.D. Pa. Oct. 12, 2016) (approving $1.2 million in notice and administrative costs).

The Class Administrator's fee of $90,414.13 and the Settlement Master's expenses of up to $50,000 are especially reasonable here due to the individual complexity of each of the Class Members' claims. To fairly and properly allocate the funds, the Class Administrator is "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[.]" Settlement ¶ 18. The Settlement Master will distribute the Catastrophic Injury Fund "using [their] expertise and acting at [their] sole discretion. Settlement ¶ 20(g). Settlement Masters Melnick and Lelchuck are not charging for their time; however, they seek reimbursement for up to $50,000 in expenses they incur, such as consulting with experts who have expertise in evaluating the merits of certain rare claims. *See* Melnick Aff. ¶ 15.

All of the administration costs are reasonable and necessary to administer this settlement.

VIII. CONCLUSION

For the reasons set forth above, Plaintiffs and the Class respectfully request that the Court finally approve the Settlement and enter the Proposed Order.

Dated: April 14, 2021
White Plains, New York

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WORD COUNT CERTIFICATION

I hereby certify pursuant to 22 NYCRR 202.8-b(c) that the total number of words in this document, inclusive of point headings and footnotes and exclusive of the caption, table of contents, table of authorities, signature block, and this certification, is 13,540.

Dated: April 14, 2021
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