

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

CASE NO. 21-14098-CV-CANNON/MAYNARD

STEVEN C. BRIGATI, on behalf of
himself and all others similarly situated,
Plaintiff,

CLASS REPRESENTATION

v.

WORCESTER POLYTECHNIC
INSTITUTE, a Massachusetts nonprofit
corporation, and HFM, Inc., a Florida for
profit corporation, Defendants.

**PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENT, PROVISIONAL CERTIFICATION OF CLASS AND OTHER RELIEF,
WITH SUPPORTING MEMORANDUM OF LAW**

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MOTION

Following extensive arms' length negotiations before and during litigation, Plaintiff and Defendants Worcester Polytechnic Institute ("WPI") and HFM, Inc. ("HFM" and with WPI "Defendants") have reached an agreement which, if approved by the Court, would resolve all the claims brought in this litigation. By counsel and on behalf of the settlement class proposed below, Plaintiff Steven Brigati ("Plaintiff") respectfully submits this Unopposed Motion for Preliminary Approval of Settlement, Provisional Certification of Class and Other Relief (the "Motion").

Pursuant to Fed. R. Civ. P. 23, Plaintiff respectfully requests that:

1. The Court enter the attached proposed Order Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement, Certifying Class For Settlement Purposes, Directing the Issuance of Class Notice, and Scheduling a Final Approval Hearing, which provisionally approves the proposed Settlement Agreement (attached as Exhibit 1) and directs the parties to carry out their obligations pursuant to the Agreement;¹

2. The Court provisionally certify the Settlement Class, as defined in the Settlement Agreement, for settlement purposes only;

3. The Court approve the form of and procedures regarding the Class Notice, which is attached as Exhibit B to the Settlement Agreement;

4. The Court provisionally appoint Plaintiff as class representative and provisionally appoint Plaintiff's counsel as class counsel for settlement purposes; and

5. The Court set a date for a final hearing on the fairness, reasonableness, and adequacy of the Settlement Agreement pursuant to Federal Rule of Civil Procedure 23(e).

¹ The proposed Order is attached as Exhibit A to the Settlement Agreement, and also been submitted to the Court by email.

MEMORANDUM OF LAW

BACKGROUND

This is a not a typical class action. Plaintiff did not seek to make Defendants *pay* damages to each class member. Rather, Plaintiff sought the right to *buy* a country club from the Defendants for the benefit of his fellow club members and himself. Plaintiff owns an equity, voting membership in the Legacy Golf and Tennis Club in Port St. Lucie, Florida (the “Legacy Club”) and brought this class action lawsuit to enforce his rights, and the rights of other equity members of the Legacy Club, to own and operate the Club in accord with the Plan for the Offering of Memberships in the Legacy Golf and Tennis Club, Inc. dated September 1, 1996 (the “Plan”). *See* D.E. 5-1. Defendant HFM owns the Legacy Club. In April 2016, Robert Foisie, an alumnus of Defendant WPI, gave 100% of the shares in HFM to WPI, and thereby gave the Legacy Club to WPI. Through HFM, WPI controls the Legacy Club.

The Plan requires HFM to transfer the management, ownership and control of the Club and the Club facilities to the equity members of the Club on the “Turnover Date” and provides a formula for establishing the purchase price, as well as the mechanism for the equity members to obtain financing for the purchase. *Id.* at 7. Although the Parties dispute whether the conditions for Turnover have occurred or have been excused by law, that dispute is immaterial to the proposed Settlement. Defendants have agreed to sell, and Plaintiff has agreed to buy, the Legacy Club for the benefit of the proposed Settlement Class, which includes every entity and individual who,

according to Defendants' records, owns an active equity membership² in the Legacy Club as of the Final Approval Date and who appears on the list of class members. *See* Exhibit 1, ¶ 1.19. Plaintiff and Defendants estimate that the Settlement Class includes at least 206 persons or entities. *Id.*

I. The Proceedings.

After two years of investigation and informal negotiation with Defendants, Plaintiff and six other owners of equity memberships in the Legacy Club filed a class action lawsuit in the St. Lucie County, Florida circuit court, seeking ownership and control of the Legacy Club on behalf of its equity members in accord with the Plan. Plaintiffs believed and therefore averred that the requisite number of equity memberships under the Plan had been sold, triggering Defendants' contractual duty to turn the Legacy Club over to its equity members.

Defendants removed the case to this Court, asserting the Class Action Fairness Act, 28 U.S.C. sections 1332(d), 1453, and 1711–1715 (“CAFA”), as the basis for subject matter jurisdiction. Upon removal, the case was captioned *Brigati v. HFM, Inc., et al.*, and bore case number 2:20-cv-14208-Martinez (“*Brigati P*”).

Plaintiffs amended their Complaint to address issues raised in Defendants' initial motion to dismiss, then later obtained leave to amend the Complaint again in order to make additional allegations based on evidence discovered after the lawsuit commenced. Defendants propounded requests for the

² Active Equity Membership means an equity voting membership in the Legacy Club from which the owner has not resigned and which the owner has not redeemed or transferred pursuant to Article X, section 13 of the By-Laws of the Legacy Club. Exhibit 1, ¶ 1.01.

production of documents and interrogatories on each Plaintiff in *Brigati I*, which timely were answered. Plaintiffs filed a Motion to Certify the Class, which Defendants opposed.

In January 2021, Plaintiffs discovered previously unknown information pertinent to their claims. Torn between seeking leave to amend their complaint again and voluntarily dismissing the case to start a new matter and make more robust, and slightly different, allegations, Plaintiffs dismissed *Brigati I*. A few weeks later, Plaintiff filed the instant complaint, asserting claims for declaratory and supplemental relief, equitable accounting, and injunctive relief (“the Action”), and shortly thereafter filed a Motion to Certify the Class.

Defendants thereafter filed a motion to dismiss in March 2021. Magistrate Judge Maynard issued a report and recommendation that Defendants’ motion be granted in part on November 2, 2021. D.E. 109. In the interim, the parties proceeded with discovery. Plaintiff deposed each Defendants’ corporate representative as well as an employee who manages the Legacy Club. Plaintiffs also lodged, on each Defendant, two sets of comprehensive requests for production and requests for admissions. Defendants deposed Plaintiff and three non-party, equity members of the Legacy Club, who were named plaintiffs in *Brigati I*. The parties devoted several hundreds of hours to discovery and produced thousands of pages of documents.

In late July 2021, the Parties participated in court-ordered mediation with retired Judge Richard Suarez, to no avail. Thereafter, the parties’ agents continued to have informal settlement discussions for several weeks, which culminated in the agreement that the parties memorialized on January 4, 2022.

II. The Settlement.

Before commencing the Action, during the Action and while negotiating the settlement documents, Plaintiff’s Counsel conducted a thorough examination and evaluation of the relevant

law and facts to assess the merits of the claims in the Action and further investigated how to best serve the interests of the Settlement Class in the Action. Based upon the advice of Plaintiff's counsel and Plaintiff's consideration of the risks, delay, and difficulties involved in litigation, Plaintiff believes entering into the Settlement Agreement is in the equity members' best interests and is very desirable.

Similarly, Defendants' counsel have thoroughly analyzed the relevant law and facts and assessed the merits of and defenses to the claims in the Action. Although the Legacy Club is a valuable asset to Defendants, Defendants believe that accepting reasonable compensation for the Legacy Club to settle the Action is in their best interests and will avoid the continued expense, inconvenience, uncertainty and distraction of litigation as well as resolve the claims asserted in the Action.

The Settlement Agreement provides that the most recent appraised value of the Legacy Club is six million two hundred thousand dollars (\$6,200,000) and contemplates that Plaintiff will advance two million dollars (\$2,000,000) ("the Settlement Amount") to Defendants for the Settlement Class Members' joint ownership, management, and control of the Legacy Club and all of its assets. Exhibit 1 ¶¶ 1.18 & 2.17. Over time, the Settlement Amount will be recouped from the Legacy Club's profits. Thus, the purchase of the Legacy Club will be financed, and the proposed class members will not incur out-of-pocket expense for the acquisition, just as the Plan envisions. *See, e.g.*, D.E. 5-1, at 17, ¶ 3. If the Court approves the Settlement, the equity members will own and control the Legacy Club as the Plan contemplates.

The Settlement Agreement also sets forth the Defendants' denial of all allegations and claims asserted against them in the Complaint, denial of any wrongdoing, and opposition to class certification for any purpose other than settlement. *Id.*, at 1.

ARGUMENT

To be eligible for certification, a proposed class must satisfy the prerequisites of “numerosity, commonality, typicality, and adequacy of representation,” and at least one of the alternative requirements of Rule 23(b). Fed. R. Civ. P. 23. *See Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1307-08 (11th Cir. 2008). The Settlement Class satisfies each of the four requirements of Rule 23(a). Moreover, because each class member would jointly own the Legacy Club, the settlement would have the same effect on the whole class, such that the class qualifies for certification under Rule 23(b)(2). The Settlement Agreement is fair and reasonable, and therefore merits preliminary approval from this Court.

I. Provisional Certification of the Settlement Class and Appointment of Plaintiff as Class Representative Are Appropriate.

A. The Proposed Settlement Class Satisfies the Requirements of Rule 23(a).

Any proposed class must meet the following requirements: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2549 (2011). Because class certification is exclusively a procedural issue, when deciding a motion for certification, the scope of the Court’s inquiry is limited to determining whether the proposed class satisfies the requirements of Rule 23. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974).

1. Numerosity – Rule 23(a)(1)

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” While no magic number of class members is necessary to meet the numerosity

standard, the Eleventh Circuit has indicated that more than forty members generally is sufficient to satisfy the rule. *Cox v. Amer. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986). A proposed class of over 200 members meets the numerosity requirement of Rule 23(a)(1), and joining each of over 200 class members individually is impracticable. *See, e.g., Phillips v. Joint Legis. Comm.*, 637 F.2d 1014, 1022 (5th Cir. 1981) (“The proper focus is not on numbers alone, but on whether joinder of all members is practicable in view of the numerosity of the class and all other relevant factors”). With over 200 members, the proposed Settlement Class satisfies the numerosity requirement of Rule 23(a)(1).

2. Commonality – Rule 23(a)(2)

Rule 23(a)(2) requires “questions of law or fact common to the class.” Traditionally, commonality refers to the characteristics of the class as a whole. *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000). However, all questions of law or fact need not be common; a single common question of law or fact, which affects all class members alike, satisfies the commonality requirement. *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 685 (S.D. Fla. 2004). The threshold for meeting the commonality requirement is therefore not high. *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 490 (S.D. Fla. 2003). Indeed, it has been referred to as a low hurdle easily surmounted and requiring only “one issue common to all class members.” *Duhaime v. John Hancock Mut. Life Ins. Co.*, 177 F.R.D. 54, 63 (D. Mass. 1997); *Brown v. Sci Funeral Services of Florida, Inc.*, 212 F.R.D. 602, 604 (S.D. Fla. 2003).

Commonality is satisfied here because the Defendants have “engaged in a standardized course of conduct”—owning and operating the Legacy Club—that uniformly “affects all class members” alike. *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. at 685–86. Moreover, this action involves common questions of fact and law—namely, whether the conditions precedent

to Turnover occurred and when. This question is common to all proposed Settlement Class Members, each of whom the Plan entitles to jointly own the Club after the Turnover Date. *See* D.E. 5-1, at 8. Defendants do not dispute that HFM contractually is obligated to turn over collective control and ownership of the Legacy Club to its equity members at some point. The controversy centered on *when*. Now that Defendants have agreed to transfer ownership and control of the Legacy Club to its equity members and given that all equity members are collectively entitled to the same relief under the Plan, commonality is satisfied for settlement purposes. Indeed, as the Eleventh Circuit has noted, claims like those of the proposed Settlement Class, “arising from interpretations of a ... contract appear to present the classic case for treatment as a class action.” *Klay v. Humana, Inc.*, 382 F.3d 1241, 1264 (11th Cir. 2004).

3. Typicality – Rule 23(a)(3)

Rule 23(a)(3) requires that “the claims or defenses of the representative parties [be] typical of the claims or defenses of the class.” When assessing typicality, the Court determines whether the class representative’s interests are sufficiently aligned with the proposed class members’ interests, such that the Court should allow him to stand in their shoes in a lawsuit and bind them to a judgment on the merits. *General Tel. Co. v. Falcon*, 457 U.S. 147, 156 (1982) (citation omitted). The “typicality requirement may be satisfied even if there are factual distinctions between the claims of the named Plaintiff and those of other class members,” so long as the named representatives’ claims share “the same essential characteristics as the claims of the class at large.” *Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir. 1985) (citations omitted).

As an active equity member of the Legacy Club, Plaintiff has the same claims and interests in joint ownership of the Legacy Club as the other proposed Settlement Class members; his claims are clearly aligned with those of the proposed Settlement Class Members. Moreover, the facts

supporting Plaintiff's claims are straightforward and typical of, indeed identical to, the those supporting the Settlement Class Members' claims. Either all of the equity members are entitled to jointly own the Legacy Club under the Plan, or none of them is. Accordingly, the proposed class satisfies the Rule 23(a)(3) typicality requirement.

4. Adequacy of Representation – Rule 23(a)(4)

The fourth element of the Rule 23(a) analysis requires that the “representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This requirement “involves questions of whether plaintiffs’ counsel are qualified, experienced, and generally able to conduct the proposed litigation, and of whether Plaintiffs have interests antagonistic to those of the rest of the class.” *Griffin v. Carlin*, 755 F.2d 1516, 1533 (11th Cir. 1985).

Plaintiff does not have any interest antagonistic to or in conflict with the interests of the class members he seeks to represent. He and the proposed class share a common goal: to obtain joint ownership of the Legacy Club. Plaintiff will thus fairly and adequately protect the interests of the class. Further, Plaintiff is represented by qualified and competent class counsel with extensive litigation experience, as well as expertise in class actions.

B. The Proposed Settlement Class Satisfies Rule 23(b)(2) .

To obtain class certification under Rule 23(b)(2), Plaintiff must demonstrate that the contemplated claims “are *class* claims ... resting on the same grounds and applying more or less equally to all members of the class.” *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1155 (11th Cir. 1983)(emphasis in original). Plaintiff and the proposed class members are “bound together through ‘pre-existing or continuing legal relationships,’”³ all of which stem from the Plan. *See*

³ *Holmes*, 706 F.2d at 1155 n.8.

D.E. 1, at 16-17. Plaintiff alleged that the delay in obtaining ownership of the Legacy Club uniformly harmed one specific group of people—all equity members of the Legacy Club—each of whom is entitled to the same ownership rights under the Plan. Where, as here, Defendants’ conduct and the injuries alleged to stem from it apply equally to the entire class, the asserted claims fall squarely within the ambit of Rule 23(b)(2). Plaintiff requested remedies for the class’s injuries, and now has achieved a settlement which, if approved, will provide relief to the entire class and will satisfy the strictures of Rule 65(d), rendering certification under Rule 23(b)(2) appropriate.

II. The Settlement Merits Preliminary Approval.

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of the compromise of claims brought on a class basis. “Although class action settlements require court approval, such approval is committed to the sound discretion of the district court.” *In re U.S. Oil and Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992). In exercising that discretion, courts are mindful of the “strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement.” *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). The policy favoring settlement is especially relevant in class actions, where the inherent costs, delays and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. “There is an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation of being the most complex.” *Ass’n for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)).

Review and approval of a class action settlement involve three steps: (1) the Court preliminarily approves the proposed settlement; (2) members of the class are notified of the proposed settlement; and (3) the Court holds a hearing to determine whether the proposed

settlement is fair, reasonable, and adequate. *Manual for Complex Litigation* (Fourth), at 320, § 21.632. The purpose of preliminary evaluation of a proposed class action settlement is to determine whether the settlement is “within the range of reasonableness.” *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 661 (S.D. Fla. 2011) (citing 4 Newberg on Class Actions § 11.26 (4th ed. 2002)). “Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason.” *Smith v. Wm. Wrigley Jr. Co.*, No. 09-60646-CIV, 2010 WL 2401149, at *2 (S.D. Fla. Jun. 15, 2010). When determining whether a settlement is ultimately fair, adequate, and reasonable, courts in the Eleventh Circuit have considered six factors: “(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Bennett*, 737 F.2d at 986.

Settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See In re Checking Account Overdraft Litig.*, 275 F.R.D. at 661-62 (citing *Manual for Complex Litigation*, Third, §30.42 (West 1995)) (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s length negotiations between experienced, capable counsel after meaningful discovery”). The parties’ Settlement Agreement was indeed the product of serious, informed, arm’s-length, and non-collusive negotiations by competent and experienced counsel. Before engaging in settlement negotiations, the parties undertook discovery and briefed several motions. The parties formally mediated, then renewed settlement negotiations and reached this

settlement with the assistance of experienced counsel. There is no indicia of collusion or preferential treatment in this case: each Settlement Class Member will receive exactly the same benefit—the ability jointly to own and operate the Legacy Club as contemplated in the Plan.

The Settlement Agreement is also within the range of reasonableness. Plaintiff primarily sought specific performance of the Plan’s “Turnover” provision and an order from this Court directing Defendants to relinquish ownership, management, and control of the Legacy Club to the proposed class members in exchange for consideration calculated in accord with the Plan. This is precisely what the Settlement Agreement accomplishes, for a reasonable price of two million dollars, which is well less than the Legacy Club’s last appraised value. The value of the Settlement is readily apparent when one considers the risks, costs and uncertainty of litigation and the expense and delay inherent in the appellate process.

Through the Settlement Agreement, the Settlement Class can achieve the primary goal of this lawsuit—ownership of the Legacy Club for a reasonable price. Defendants will benefit by receiving adequate compensation for a valuable asset. The Settlement Class and Defendants will exchange mutual releases, giving all parties certainty that the issues raised in the Action fully and finally have been settled. Considering the asserted claims and defenses of the parties, the problems of proof, and the risks and delays of litigation, the terms of the Settlement Agreement are “within range of reasonableness.”

Accordingly, this Court should find that the proposed Settlement is within the range of reasonableness, such that notice should issue to the Settlement Class, a final Fairness Hearing should be scheduled, and the Settlement Class should be provisionally certified for settlement purposes.

III. The Court Should Approve the Proposed Class Notice.

After the Court determines that a proposed settlement is within the range of reasonableness, notice of a formal Rule 23(e) hearing is given to class members. Manual for Complex Litigation (Fourth), p. 321, § 21.633. Rule 23(e)(1) provides that, in a proposed settlement, the court must “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). The notice of the fairness hearing should advise objectors to file written statements of their objections by a specified date before the hearing and to give notice if they intend to appear at the fairness hearing. Manual for Complex Litigation (4th ed.), at 322.

The proposed Class Notice explains the nature of the controversy, the details of the Settlement Agreement, the eligibility of Class Members to participate in the Settlement, and their right to object to it. The Defendants have reviewed the content of and distribution method for the proposed notice. Plaintiff proposes that the Class Notice be distributed to all Class Members via email and that it be sent via first class mail to the last known address of any member without an email address or from whom the emailed notice is returned as undeliverable. The Court should approve the form and method of notice to the Class.

IV. The Court Provisionally Should Appoint Plaintiff’s Counsel as Class Counsel.

Fed. R. Civ. P. 23(g)(1) provides that “unless a statute provides otherwise, a court that certifies a class must appoint class counsel.” Fed. R. Civ. P. 23(g)(1)(A) outlines the factors relevant to the appointment of class counsel, which include: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel’s knowledge of the applicable law; and (4) the resources that counsel will commit to representing

the class. All these factors militate in favor of provisionally appointing Plaintiff's counsel Elaine Johnson James as class counsel.

Ms. James is a member in good standing of this Court's trial bar, with more than thirty years of experience in business and tort litigation in Florida's federal and state courts; she is adept at class action litigation, particularly in cases involving contractual or statutory claims. Most recently, Ms. James was lead counsel for the Defendants in *Smith v. First Transit*, a class action brought in Miami-Dade Circuit Court under case no. 2016-CA-004697, which was removed to this Court, under case no. 18-23610-cv-Martinez.

Ms. James began to investigate Plaintiff's claims in 2019, after Plaintiff's prior legal counsel had negotiated with Defendants for more than a year in an effort to resolve the claims that ultimately were raised in this case. *See* D.E. 7-1, at 3-4. Ms. James has the experience, personnel and resources needed to effectuate settlement of this Action. *See id.*, at 4. Ms. James has arranged for a well-respected class action administrator to handle the notices and other administrative matters required if the class is certified. *Id.* at 4, ¶ 13. She has sufficient resources that she will commit to representing the class. Plaintiff and Ms. James do not seek special compensation for serving the Settlement Class.

V. The Court Should Schedule A Final Fairness Hearing.

Plaintiff has demonstrated that this matter is eligible for provisional class certification and settlement approval. CAFA requires Defendants to notify federal and state officials of the proposed settlement and mandates a ninety (90) day waiting period between the transmittal of those notices and the fairness hearing. Plaintiff requests that this Court schedule a fairness hearing on the Settlement Agreement after April 21, 2022, so that Defendants can meet their statutory obligations.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily certify the Settlement Class; provisionally approve the Settlement Agreement, provisionally appoint Steven Brigati as Class Representative and Elaine Johnson James as Class Counsel; approve the proposed Class Notice and its distribution; and schedule a Final Hearing under Rule 23(e) as soon as practicable after April 21, 2022.

CERTIFICATION

I CERTIFY that in compliance with Local Rule 7.1(a)(3), I conferred with Defendants' lead counsel Jennifer Chunias, who authorized me to represent to the Court that Defendants do not oppose the relief sought in this Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on January 11, 2022, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which caused it to be served on:

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EXHIBIT 1

EXECUTION VERSION
SETTLEMENT COMMUNICATION, PROTECTED FROM USE IN EVIDENCE BY
EITHER PARTY UNDER FEDERAL RULE OF EVIDENCE 408 AND SECTIONS 44.405
& 90.408, FLORIDA STATUTES

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into as of January 4, 2022 by Plaintiff, Steven Brigati (“Plaintiff”) on behalf of himself and a Settlement Class (as defined below), and Defendants, Worcester Polytechnic Institute (“WPI”) and HFM, Inc. (“HFM” and with WPI, “Defendants”) on the other hand.

RECITALS

WHEREAS, on February 23, 2021, Plaintiff filed a putative class action in the United States District Court for the Southern District of Florida, captioned *Brigati v. Worcester Polytechnic Institute et al.*, No. 2:21-CV-14098-AMC-SMM (the “Action”), asserting claims for declaratory and supplemental relief, equitable accounting, and injunctive relief;

WHEREAS, Plaintiff made all claims against Defendants on behalf of a putative class of owners of equity memberships in The Legacy Golf & Tennis Club, Inc., formerly known as The Reserve Golf & Tennis Club, Inc. (“the Legacy Club”);

WHEREAS, Defendants deny any wrongdoing or liability to Plaintiff and to any Legacy Club Member, as well as the allegations in Plaintiff’s complaint, and contend that their conduct has been entirely lawful and proper;

WHEREAS, Plaintiff, individually and on behalf of the Settlement Class, desires to settle the Action and all matters within the scope of the Releases set forth herein, having taken into account the risks, delay, and difficulties involved in litigation;

WHEREAS, before commencing the Action, during the Action and while negotiating the Settlement provided for in this Agreement, Plaintiff’s Counsel has conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the pending and potential claims in the Action and has conducted a further investigation to determine how to best serve the interests of the Settlement Class in the Action;

WHEREAS, based upon the investigation of Plaintiff’s Counsel and Plaintiff’s consideration of the risks of continuing to litigate this Action, Plaintiff believes entering into this Settlement Agreement is in the best interests of the Settlement Class and is desirable;

WHEREAS, during the Action and while negotiating the Settlement provided for in this Agreement, Defendants’ Counsel have conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of and defenses to the pending and potential claims in the Action. Defendants believe that it is desirable and in their best interests to settle the Action and all matters within the scope of the Releases in the manner and upon the terms and conditions provided for in this Settlement Agreement in order to avoid the continued expense, inconvenience, uncertainty, and distraction of litigation, and in order to put to rest the claims that have been asserted in the Action and/or are within the scope of the Releases;

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WHEREAS, Plaintiff acknowledges that none of the actions Defendants undertake to perform in order to settle the Action is an admission by either Defendant of the viability of any of Plaintiff's claims;

WHEREAS, as permitted by the Plan for the Offering of Memberships in The Legacy Club (the "Plan"), Defendants have elected to relinquish ownership, management and control of the Legacy Club, Inc. to the Settlement Class, in accord with the Plan's procedure for "Turnover," for the sum identified in paragraph 1.18 of this Settlement Agreement;

NOW THEREFORE, in consideration of the foregoing and the covenants and agreements, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, subject to approval by the Court, Plaintiff, individually and on behalf of the Settlement Class, and Defendants agree as follows :

I. DEFINITIONS

In addition to the terms defined above, the following terms are used in this Settlement Agreement:

1.01 "Active Equity Membership" means an equity voting membership in the Legacy Club from which the owner has not resigned and which the owner has not redeemed or transferred pursuant to Article X Section 13 of the By-Laws of the Legacy Club.

1.02 "Agreement" or "Settlement Agreement" means this Settlement Agreement.

1.03 "Class Counsel" or "Plaintiff's Counsel" means Elaine Johnson James of Elaine Johnson James, P.A.

1.04 "Class Member" means a member of the Settlement Class.

1.05 "Class Notice" means the notice of this Settlement to each Class Member that is contemplated by this Agreement.

1.06 "Counsel for the Defendants" includes Jennifer L. Chunias of Goodwin Procter LLP and Noel R. Boeke of Holland & Knight, LLP.

1.07 "Court" includes the Honorable Aileen M. Cannon of the United States District Court for the Southern District of Florida, Judge Cannon's designee and any judge to whom the Action later may be assigned.

1.08 "Defendants" means WPI and HFM.

1.09 "Final Approval" means the date by which the following events have occurred:

(a) The Court has issued all orders required by Federal Rule of Civil Procedure 23 to approve this Settlement Agreement;

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(b) No Party with a right to do so has terminated the Settlement Agreement.

1.10 “Final Approval Date” means the date upon which Final Approval occurs.

1.11 “Final Approval Order” means the order of the Court approving the Settlement Agreement.

1.12 “Party” means Plaintiff or Defendants, and “Parties” means Plaintiff and Defendants, collectively.

1.13 “Plan” means the Plan for the Offering of Memberships in the Legacy Golf and Tennis Club, Inc.

1.14 “Preliminary Approval” means the order or orders of the Court preliminarily approving the terms and conditions of this Agreement.

1.15 “Preliminary Approval Date” means the date on which the order or orders constituting Preliminary Approval are entered by the Court.

1.16 “Representative Plaintiff” means the named plaintiff in the Action, Steven Brigati.

1.17 “Settlement” means the resolution of all claims alleged in the Action and all matters set forth in this Settlement Agreement, and the completion of all conditions for Final Approval and all requirements set forth in the Final Approval Order.

1.18 “Settlement Amount” means Two Million Dollars (\$2,000,000), which is the amount the Representative Plaintiff will be obligated to pay WPI for the Settlement Class to obtain ownership of the Legacy Club if the Court gives Final Approval to the Settlement Agreement.

1.19 “Settlement Class” includes every entity and individual who, according to Defendants’ records, owns an Active Equity Membership in the Legacy Club, as of the Final Approval Date and who appears on the list of class members (the “Class Member List”). Plaintiff and Defendants estimate that the Settlement Class includes approximately 206 holders of Active Equity Memberships.

1.20 “Turnover” means the transfer of ownership, management, control and title to the facilities, personal property and real property of the Legacy Club.

1.21 The plural of any term defined herein includes the singular thereof and *vice versa*, except where the context requires otherwise. All references to days are to calendar days, unless otherwise noted. When a deadline or date falls on a weekend or a legal holiday, the deadline or date shall be extended to the next day that is not on a weekend or legal holiday.

II. SETTLEMENT PROCEDURES

A. Preliminary Approval.

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2.01 This Settlement Agreement must be fully executed on or before January 4, 2022, so that, before the Case Management Conference with Judge Cannon on January 12, 2022, Plaintiff's Counsel can move the Court to enter an order for Preliminary Approval substantially in the form of Exhibit A hereto ("Preliminary Approval Order"), which shall (a) preliminarily approve the Settlement memorialized in this Settlement Agreement as fair, reasonable, and adequate; (b) provisionally approve the Settlement Class, for settlement purposes only; (c) conditionally designate Representative Plaintiff as the representative of the Settlement Class and Plaintiff's Counsel as counsel for the Settlement Class; (d) set a date for a final approval hearing ("Court Approval Hearing"); (e) approve the proposed Class Notice attached hereto as Exhibit B and authorize its dissemination to the Settlement Class members; (f) continue the stay of all proceedings and deadlines in the Action, which are not related to effectuating the Settlement, until the Final Approval hearing; (g) set deadlines consistent with this Agreement for emailing the Class Notice, filing objections, filing motions, and filing papers required for the Final Approval hearing; and (h) prohibit and preliminarily enjoin Representative Plaintiff, all Settlement Class Members, Class Counsel, and Plaintiff's Counsel from commencing, prosecuting, or assisting in any lawsuit against the Released Persons that asserts or purports to assert matters within the scope of the Release during the time between entry of the Preliminary Approval Order and the Court's decision on the request for Final Approval. Defendants agree not to oppose the request the entry of the Preliminary Approval Order, provided it is substantially in the form of Exhibit A attached hereto.

B. Administration.

2.02 On or before January 4, 2022, Defendants shall prepare from the Legacy Club's records and transmit to Plaintiff's Counsel an Excel spreadsheet containing each Settlement Class Member's name, last known address, email address and telephone number.

2.03 No later than three (3) days before the deadline for initial emailing of the Class Notice contemplated under this Agreement, Class Counsel shall advise Defendants' counsel in writing of any objections to the Class Member List, so that such objections can be timely resolved, or an extension of the notice deadline secured, pending the resolution of such objections by the Parties or the Court.

2.04 Within three (3) days after the Preliminary Approval Date, Class Counsel shall email the Class Notice to each Class Member at the email address set forth on the Class Member List.

2.05 Class Counsel shall mail the Class Notice to the mailing address on the Class Member List for any Settlement Class member from whom an email is returned as undeliverable. If the Class Notice is thereafter returned by the Postal Service as undeliverable, Class Counsel shall re-mail the Class Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail within a reasonable time after return. If the returned mail does not reflect a forwarding address, Class Counsel shall have no obligation to re-mail, but shall provide Counsel for the Defendants with the names and addresses of the affected Class Members.

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2.06 Other than as set forth in this Section II of the Agreement, there shall be no other provision for notice of the Settlement.

2.07 Any Class Member who wishes to object to the Settlement must provide a written objection to the Settlement (“Objection”) to Class Counsel and Counsel for the Defendants, and file the Objection with the Court, on or before the deadline set by the Court for filing Objections. Each Objection must (a) set forth the Class Member’s full name, current address, and telephone number; (b) provide proof that the Class Member owns an Active Equity Membership in the Legacy Club; (c) state that the Class Member objects to the Settlement, in whole or in part; (d) set forth a statement of the legal and/or factual basis for the objection; and (e) provide copies of any documents that the Class Member wishes to submit in support of his or her position. Objections may be served and filed by counsel for a Class Member. Any Class Member who does not submit a timely Objection in complete accord with this Agreement, the Class Notice, and any order of the Court shall not be deemed to have made a valid Objection to the Settlement.

2.08 Any Class Member who wishes to appear at the Court Approval Hearing, whether *pro se* or through counsel, must file a Notice of Appearance in the Action, take all other actions or make any additional filings as may be required in the Class Notice, or as otherwise ordered by the Court, and provide the Notice of Appearance and other papers to Class Counsel and Counsel for the Defendants within the time set by the Court. No Class Member shall be permitted to raise matters at the Court Approval Hearing that the Class Member could have raised, but failed to raise, in an Objection or other paper. Any Class Member who fails to comply with this Agreement, the Class Notice, and any other order of the Court shall be barred from appearing at the Court Approval Hearing.

2.09 Settlement administration shall be conducted by Class Counsel, in collaboration with Counsel for the Defendants, except as otherwise provided in this Agreement.

2.10 For a period of forty (40) days after the Preliminary Approval Date, Class Counsel shall maintain an address or email address to receive inquiries with respect to the Settlement. Subject to the provisions of paragraphs 6.08 and 6.09 below and any order of the Court, the Parties and Class Counsel may respond to verbal or written inquiries initiated by individual Class Members concerning the Settlement at any time. Counsel for the Defendants shall also have the right to respond to verbal or written inquires directed to them by individual Class Members. Counsel for the Defendants shall copy Class Counsel on all written communications made to Class Members about the Settlement.

2.11 Defendants timely shall provide notice of the Settlement to the appropriate state and federal officials in accordance with the Class Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1715. The Parties agree that Defendants are permitted to provide such notice as required by law to effectuate the Settlement and that giving such notice shall not be considered a breach of this Agreement.

C. Final Approval.

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2.12 Representative Plaintiff and Class Counsel timely shall move the Court to enter a Final Approval Order substantially in the form of Exhibit C attached hereto, which shall (a) finally approve the Settlement as fair, reasonable, and adequate; (b) give the terms of the Settlement final and complete effect; and (c) find that all requirements of state and federal law necessary to effectuate this Settlement have been satisfied. Defendants agree not to oppose entry of the Final Approval Order, provided it is substantially in compliance with the form of Exhibit C attached hereto.

2.13 The Final Approval Order, or a separate order, shall be entered enjoining Representative Plaintiff and all Class Members from commencing, prosecuting, or assisting in any lawsuit, administrative action, or any judicial or administrative proceeding against the Released Persons that asserts or purports to assert matters within the scope of the Release.

2.14 The Parties understand and agree (and, to the extent necessary, shall advise the Court) that no Final Approval Order may issue until at least ninety (90) days after the date all notices required under paragraph 2.11 above are served upon the appropriate state and/or federal officials under 28 U.S.C. § 1715.

2.15 At the Final Approval Hearing, Class Counsel shall present sufficient evidence to support the entry of a Final Approval Order.

2.16 Class Counsel agrees to provide drafts of any motions, memoranda or other materials to Counsel for the Defendants at least three (3) business days before submitting them to the Court. The Defendants shall have the right to provide whatever reasonable, good-faith comments on such motions, memoranda, or other materials they deem necessary, in their sole discretion, to protect their interests in the Settlement.

2.17 Within ten (10) business days of the entry of a Final Approval Order, (a) Defendants shall transfer ownership, management and control and title to the facilities, personal property and real property of the Legacy Club to Representative Plaintiff or his designee on behalf and for the benefit of the Settlement Class; and (b) to secure the Settlement Class's ownership of the Legacy Club, the value of which was of approximately six million two-hundred thousand dollars (\$6,200,000) when the property was last appraised, Plaintiff shall concurrently cause the Settlement Amount to be paid to Defendants, and Plaintiff shall dismiss the Action with prejudice. Plaintiff and the Class Members shall accept the Legacy Club in as-is condition, provided that Defendants must cause all outstanding loans owed by the Legacy Club and all liens against the Legacy Club or its real property to be satisfied before closing. The transfer documents effectuating the transaction contemplated by this paragraph shall be substantially in the form attached hereto as Exhibit D.

2.18 Each Party shall bear his or its own costs and attorneys' fees.

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III. SETTLEMENT BENEFITS

3.01 Subject to the terms and conditions of this paragraph 3.01 and paragraphs 3.02 to 3.04 below, and except as otherwise provided in this Agreement, each Class Member identified as of the Final Approval Date shall be deemed to be an owner of the Legacy Club pursuant to the terms of the Plan, as though Turnover has occurred pursuant to the Agreement of Turnover contained in the Plan.

3.02 Within ten (10) business days after the Final Approval Date, the sale of the Legacy Club shall be closed. Defendants shall transfer clean, marketable title of the Legacy Club, and all associated inventory, personal property and real property to Plaintiff on behalf of the Class Members. Plaintiff concurrently shall pay the Settlement Amount to Defendants, and Plaintiff shall dismiss the Action with prejudice.

3.03 Defendants agree not to withdraw any sums from any bank account held in the name of the Legacy Club or any of the businesses the Legacy Club operates, effective on December 11, 2021.

3.04 Defendants agree not to seek any sanctions from Plaintiff or any member of the Settlement Class pursuant to the November 2, 2021 Order adopting the Report and Recommendation of Magistrate Judge Shaniek M. Maynard, dated October 19, 2021.

IV. RELEASES

4.01 Upon Final Approval and transfer of ownership of the Legacy Club to Plaintiff on behalf of the Settlement Class, and in consideration of the promises and covenants set forth in this Agreement, Representative Plaintiff and each Class Member, and each of their respective spouses, children, executors, representatives, guardians, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, and each of them (collectively and individually, the "Plaintiff Releasing Persons"), will be deemed to have completely released and forever discharged Defendants, and each and every one of their past, present, and future predecessors, successors, partners, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, insurers, and agents (alleged or actual) (collectively and individually, the "Defendant Released Persons"), from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, including, without limitation, (i) those known or unknown or capable of being known, (ii) those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time, including facts in the possession of and concealed by any of the Defendant Released Persons, and (iii) those accrued, unaccrued, matured or not matured, all from the beginning of the world until the Final Approval Date (collectively, the "Plaintiff Released Rights"), that arise out of and/or concern (a) any Plaintiff Released Rights that were asserted, or attempted to be asserted, in the Action; (b) conduct, acts, and/or omissions (alleged or actual) by any of the Defendant Released Persons arising from or relating in any manner to

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Defendants' ownership and operation of the Legacy Club; (c) any practice, policy, and/or procedure (alleged or actual) of any of the Defendant Released Persons concerning the Legacy Club; (d) conduct, acts and/or omissions (alleged or actual) by any of the Defendant Released Persons relating to the Legacy Club; (e) all claims that were or could have been asserted in the Action arising from or relating in any manner to any conduct, act and/or omissions (alleged or actual) by any of the Defendant Released Persons relating to the Legacy Club; (f) all claims asserted in the Action; (g) any claim or theory that any act or omission by the Defendants (or any of them) arising from or relating to ownership and operation of the Legacy Club violates any statute, regulation, law and/or contract; and (h) any violation and/or alleged violation of state and/or federal law, whether common law or statutory, arising from or relating to the conduct, acts, and/or omissions described in this paragraph.

4.02 Upon Final Approval and transfer of ownership of the Legacy Club to Plaintiff on behalf of the Settlement Class, and in consideration of the promises and covenants set forth in this Agreement, each Defendant and each and every one of their past, present, and future predecessors, successors, partners, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, insurers, and agents (alleged or actual) (collectively and individually, the "Defendant Releasing Persons"), will be deemed to have completely released and forever discharged Representative Plaintiff and the owners of each Active Equity Membership and each of their respective spouses, children, executors, representatives, guardians, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, and each of them (collectively and individually, the "Plaintiff Released Persons"), from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, including, without limitation, (i) those known or unknown or capable of being known, (ii) those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time, including facts in the possession of and concealed by any of the Plaintiff Released Persons, and (iii) those accrued, unaccrued, matured or not matured, all from the beginning of the world until the Final Approval Date (collectively, the "Defendant Released Rights"), that arise out of and/or concern (a) conduct, acts, and/or omissions (alleged or actual) by any of the Plaintiff Released Persons arising from or relating in any manner to Defendants' ownership and operation of the Legacy Club; (b) any claim or theory that any act or omission by the owners of Active Equity Memberships (or any of them) arising from or relating to Defendants' ownership and operation of the Legacy Club violates any statute, regulation, law and/or contract; (c) any violation and/or alleged violation of state and/or federal law, whether common law or statutory, arising from or relating to the conduct, acts, and/or omissions described in this paragraph (d) any practice, policy, and/or procedure (alleged or actual) of any of the Released Persons concerning the Legacy Club; (e) conduct, acts and/or omissions (alleged or actual) by any of the Plaintiff Released Persons relating to the Legacy Club; and (f) all claims that were or could have been asserted in the Action arising from or relating in any manner to any conduct, act and/or omissions (alleged or actual) by any of the Plaintiff Released Persons relating to the Legacy Club.

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4.03 In addition to the provisions of paragraphs 4.01 and 4.02 above, the Releasing Persons hereby expressly agree that, upon Final Approval, each will waive and release any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to the following:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

To the extent that anyone might argue that these principles of law are applicable—notwithstanding that the Parties have chosen Florida law to govern this Settlement Agreement—the Defendants and the Plaintiff agree, and each Settlement Class Member will be deemed to agree, that, to the extent they are found to be applicable herein, all such principles of law or similar federal or state laws, rights, rules, or legal principles are hereby knowingly and voluntarily waived, relinquished, and released. The Defendants and the Plaintiff recognize, and each Settlement Class Member will be deemed to recognize, that, even if he, she, it or they may later discover facts in addition to or different from those which now are known or believed to be true, they nevertheless agree that, upon entry of the Final Approval Order, they fully, finally, and forever settle and release any and all claims covered by these Releases. The Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

V. REPRESENTATIONS AND WARRANTIES

5.01 In addition to the provisions herein, this Agreement and the Settlement shall be subject to judicial approval under Federal Rule of Civil Procedure 23. Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, Representative Plaintiff and Class Counsel represent and warrant to Defendants that they shall take all appropriate steps in the Action necessary to preserve the jurisdiction of the Court, use their best efforts to cause the Court to grant Preliminary and Final Approval of this Agreement as promptly as possible, and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement. This includes the obligation to (a) oppose non-meritorious objections and to defend the Agreement and the Settlement before the Court and on appeal, if any; (b) seek approval of this Agreement and of the Settlement by the Court; (c) move for the entry of the orders identified in paragraphs 2.01 and 2.12 above; and (d) join in requesting the entry of such other orders or revisions of orders or notices, including the orders and notices attached hereto, as are requested by Defendants, subject to Representative Plaintiff's consent, which shall not be unreasonably withheld or delayed.

5.02 Each Party and its Counsel represents and warrants that he, she or it has full authorization and capacity to enter into this Agreement and to carry out the obligations provided for herein. Each person executing this Agreement on behalf of a Party, entity, or other person(s) covenants, warrants, and represents that he or she has been fully authorized to do so by that Party, entity, or other person(s). Each Party and its Counsel represents and warrants that he, she, it, or they intends to be bound fully by the terms of this Agreement.

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5.03 Each Party and his or its Counsel represents and warrants that they have not, nor will they, (a) attempt to void this Settlement Agreement in any way; or (b) solicit or encourage any person (natural or legal) to object to the Settlement.

5.04 All Parties and their Counsel represent and warrant that, following the Final Approval Date, they will comply with the terms of the Protective Order entered by the Court in the Action relating to the return or destruction of all documents and other discovery materials designated as Confidential by Defendants. Representative Plaintiff, Plaintiff's Counsel, Defendants and Counsel for the Defendants further represent and warrant that they will not use or seek to use (a) any confidentially designated discovery obtained from another party in the Action and/or (b) the fact or content of the Settlement in this Action in connection with any other claim, action, or litigation against any Released Person (excepting only actions to enforce or construe this Agreement).

5.05 Defendants represent and acknowledge to Representative Plaintiff that they will not oppose Plaintiff's requests for Preliminary and Final Approval of the Settlement Agreement, provided that the Preliminary Approval Order and Final Approval Order sought by Plaintiff are substantially in the forms of Exhibits A and C hereto.

5.06 The Parties shall jointly request the Court to reserve jurisdiction over the Parties to enforce this Settlement Agreement and afford relief to any Party aggrieved by the breach of a representation and warranty in this Section V.

VI. MISCELLANEOUS PROVISIONS

6.01 Except as specified herein, this Agreement and the Settlement provided for herein shall not be effective until the Final Approval Date. Until that time, and except as otherwise specifically provided for in this Agreement, Plaintiff shall have no obligation to pay or set aside any monies due or potentially due under the terms of this Agreement. Notwithstanding this provision, Defendants agree to be bound to paragraph 3.03 above, and will refrain from diverting any further sums from the Legacy Club, upon the signing of this Settlement Agreement.

6.02 This Agreement is entered into only for the purposes of settlement. Among other things, this Settlement Agreement reflects the compromise and settlement of disputed claims and defenses among the Parties, and nothing in this Agreement or any action taken to effectuate it is intended to be an admission or concession of liability by any Party or of the validity of any claim.

6.03 If the Court does not grant Final Approval of this Settlement Agreement, this Agreement shall become null and void. In that event, the Parties shall be absolved from all obligations under this Agreement, and this Agreement, any draft thereof, and any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions leading to the execution of this Agreement shall have no effect and shall not be admissible in evidence for any purpose. In addition, (i) the status of the Action and the pleadings shall revert to the pre-settlement negotiation status quo; (ii) the agreements contained herein shall be null and void and shall not be cited or relied upon as an admission as to the propriety of class certification; and (iii)

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each Party shall have all rights, claims, and defenses that he or it had was asserting as of the date of this Agreement.

6.04 Each Party waives the right to appeal an order granting Final Approval of the Settlement Agreement, provided such Final Approval does not materially alter the terms of this Settlement Agreement. Each Party retains the right to appeal the denial of Final Approval of this Settlement. The Parties agree jointly to request the Court stay the Action pending any such appeal. The Parties agree to support and advocate for approval of the Settlement on appeal or in post-appeal proceedings to the same extent as they are bound herein to do so while the Action is before the Court. If an order approving the Settlement in a manner substantially consistent with this Settlement Agreement is entered after an appeal, such order shall be treated as a Final Approval Order.

6.05 Either Party may terminate this Agreement if the Court declines to enter the Preliminary Approval Order or the Final Approval Order.

6.06 The Agreement shall be terminable upon the mutual agreement of the Representative Plaintiff and Defendants.

6.07 If this Agreement is terminated, if Final Approval does not occur, or if the Final Approval Order materially alters the terms of this Settlement Agreement, then the Parties jointly shall request that the Court reinstate all orders and judgments vacated or modified as a result of this Agreement *nunc pro tunc*.

6.08 Representative Plaintiff and the Settlement Class Members shall not (a) issue, or otherwise cause to be issued, any press release, advertisement, Internet posting or similar document concerning the Action and/or the facts and circumstances that were the subject of, or disclosed in discovery in, the Action, except documents disbursed as part of the Class Notice or (b) make extrajudicial statements or seek media interviews concerning: (i) the Action; (ii) the facts and circumstances that were the subject of, or disclosed in discovery in the Action; and/or (iii) the Settlement of the Action, except that such statements may be made to individual Class Members in one-on-one communications or as part of the Class Notice. This provision shall in no way limit Class Counsel from discussing the legal issues raised in the Action or marketing legal services in accord with Florida Bar rules.

6.09 The Parties agree that nothing in this Agreement shall be construed to prohibit communications between Defendants and the Defendant Released Persons, on the one hand, and Class Members, on the other hand, in the regular course of business of the Defendants, the Defendant Released Persons or a Class Member.

6.10 This Agreement is intended to and shall be governed and interpreted under the laws of the State of Florida.

6.11 The terms and conditions set forth in this Agreement constitute the complete and exclusive agreement between the Parties and may not be contradicted by evidence of any prior or

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contemporaneous agreement, and no extrinsic evidence may be introduced in any judicial proceeding to interpret this Agreement. Any modification of the Agreement must be confirmed and executed in writing by all Parties and served upon Counsel for the Defendants and Class Counsel.

6.12 This Agreement shall be deemed to have been drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

6.13 The waiver by one Party of any provision, right, or condition of this Agreement shall not be deemed a waiver of any other provision, right, or condition of this Agreement. The waiver by one Party of any remedies or recourse that Party may have in the event of a breach of any provision of this Agreement by another Party shall not be deemed a waiver of any remedy or recourse that Party may have in the event of a breach of any other provision of this Agreement.

6.14 This Agreement, and the Settlement provided for herein, shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding if offered to show, demonstrate, evidence, or support a contention that (a) the Defendants and/or any of the Released Persons acted illegally, improperly, or in breach of law, contract, ethics, or proper conduct; and/or (b) class certification is required or appropriate in any future lawsuit against the Defendants (or any of them) and/or any of the Released Persons.

6.15 This Agreement may be executed in counterparts, and each counterpart shall be deemed to be an original.

6.16 Neither Party has made any representation regarding the tax consequences of this Agreement. The Parties further understand and agree that each Party and each Class Member shall be responsible for his, her, its, or their own taxes, if any, resulting from this Agreement and any payments made pursuant to this Agreement.

6.17 The Parties shall request the Court to retain jurisdiction to enforce this Agreement. In the event any proceeding is brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party damages arising from any breach of the Agreement, and his, her, or its reasonable attorneys' fees and costs.

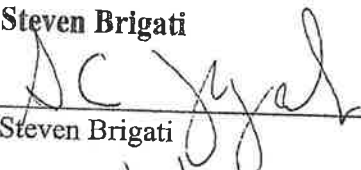
6.18 (i) Defendants and (ii) Representative Plaintiff acknowledge that each has been represented and advised by independent legal counsel throughout the negotiations that have culminated in the execution of this Agreement and that each has voluntarily executed the Agreement. Each Party has negotiated and fully reviewed the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Settlement Agreement on the date first above written, and have executed this Settlement Agreement on the date indicated below each respective signature.

EXECUTION VERSION
SETTLEMENT COMMUNICATION, PROTECTED FROM USE IN EVIDENCE BY
EITHER PARTY UNDER FEDERAL RULE OF EVIDENCE 408 AND SECTIONS 44.405
& 90.408, FLORIDA STATUTES

REPRESENTATIVE PLAINTIFF:

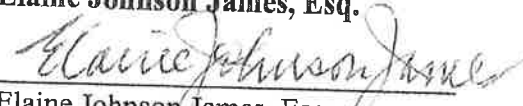
Steven Brigati


Steven Brigati

Date: 1/4/22

PLAINTIFF'S COUNSEL:

Elaine Johnson James, Esq.


Elaine Johnson James, Esq.

Date: Jan. 4, 2022

ELAINE JOHNSON JAMES, P.A.
P.O. Box 31512
Palm Beach Gardens, FL 33420

DEFENDANTS:

WORCESTER POLYTECHNIC
INSTITUTE

David Bunis

By: David Bunis
Title: Senior Vice President and General
Counsel

Date: January 4, 2022

HFM, INC.


David Bunis

By: David Bunis
Title: Senior Vice President and General
Counsel

Date: January 4, 2022

DEFENDANTS' COUNSEL:


Jennifer Chunias, Esq.


Jennifer Chunias, Esq.

Date: January 4, 2022

Jennifer L. Chunias
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, Massachusetts 02210

Noel R. Boeke, Esq.


Noel R. Boeke

Date: 1/4/22

Noel Boeke, Esq.
HOLLAND & KNIGHT, LLP
100 North Tampa Street, Suite 4100
Tampa, FL 33602

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

Case No.: 2:21-cv-14098-AMC

STEVEN C. BRIGATI, on behalf of
himself and all others similarly situated,
Plaintiff,

v.

WORCESTER POLYTECHNIC
INSTITUTE, a Massachusetts nonprofit
corporation, and HFM, Inc., a Florida for
profit corporation, Defendants.

**[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT,
PROVISIONALLY CERTIFYING SETTLEMENT CLASS AND CONCERNING CLASS
NOTICE, SETTLEMENT ADMINISTRATION AND FINAL APPROVAL HEARING**

Upon review and consideration of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion"), the parties' Settlement Agreement and all exhibits to it, having been fully advised in the premises, the Court ORDERS, ADJUDGES and DECREES as follows:

1. The Settlement Agreement and the exhibits to it are incorporated by reference in this Order as if fully set forth herein.
2. As defined in the Settlement Agreement, the Settlement Class includes every entity and individual who, according to Defendants' records, owns an Active Equity Membership in the Legacy Golf and Tennis Club, Inc. (the "Legacy Club"), which is as an equity voting membership in the Legacy Club from which the owner has not resigned and which the owner has not redeemed or transferred pursuant to Article X, section 13 of the By-Laws of the Legacy Club. After considering the relevant factors in Federal Rule of Civil Procedure 23, subject to further

consideration at the Final Approval Hearing described below in paragraph 13, for purposes of the Settlement only, the Court finds that this Settlement Class provisionally meets the relevant requirements of Rule 23(a) and (b)(2).

3. After considering the relevant factors in Rule 23, to further consideration at the Final Approval Hearing described below in paragraph 13, for purposes of the Settlement only, Representative Plaintiff Steven Brigati hereby is provisionally designated as the representative of the Class. After considering the relevant factors in Rule 23, subject to further consideration at the Final Approval Hearing described below in paragraph 13, for purposes of the Settlement only, Elaine Johnson James, of Elaine Johnson James, P.A., P.O. Box 31512, Palm Beach Gardens, FL 33420, is provisionally appointed as Class Counsel.

4. Pursuant to Rule 23, the terms of the Settlement Agreement (and the Settlement provided for in it) are preliminarily found to be (a) fair, reasonable, and adequate in light of the relevant factual, legal, practical and procedural considerations of the Action, (b) free of collusion to the detriment of Class Members, and (c) subject to further consideration thereof at the Final Approval Hearing described at paragraph 13 of this Order, within the range of possible final judicial approval. Accordingly, the Court finds that the Settlement Agreement and the Settlement are sufficient to warrant notifying the proposed class members of their terms and convening a full and final hearing on the Settlement.

5. Pursuant to the terms of the Settlement Agreement, within three (3) days after the Preliminary Approval Date, Class Counsel shall email the Class Notice to each Class Member at the email address set forth on the Class Member List substantially in the form of the document attached to the Agreement as Exhibit B. Before mailing, Class Counsel shall conform all applicable dates and deadlines in the Class Notice to the dates and deadlines in this Order.

6. The Court finds that the Settlement Agreement's plan for emailing notice directly to Class Members is the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23. That plan is accepted and approved. This Court further finds that the proposed Class Notice complies with Rule 23 and is an appropriate part of the notice plan and the Settlement, and thus the Class Notice hereby is approved, adopted and authorized for dissemination. This Court further finds that no notice to Class Members other than that identified in the Settlement Agreement is reasonably necessary in the Action.

7. Class Counsel shall mail the Class Notice to the mailing address on the Class Member List for any Settlement Class member who does not have an email address or from whom an email is returned as undeliverable. If the Postal Service returns the Class Notice as undeliverable, Class Counsel shall mail the Class Notice to the forwarding address, if any, provided by the Postal Service on within a reasonable time. If the returned mail does not reflect a forwarding address, Class Counsel shall not be obligated to re-mail the notice but shall provide the names and addresses of the affected Class Members to Counsel for the Defendants.

8. Any Class Member who desires to object to the Settlement must provide a written objection to the Settlement ("Objection") to Class Counsel and Counsel for the Defendants and file the Objection with the Court at least [INSERT] days before the Final Approval Hearing. Each Objection must (a) set forth the Class Member's full name, current address, and telephone number; (b) provide proof that the Class Member owns an Active Equity Membership in the Legacy Club; (c) state that the Class Member objects to the Settlement, in whole or in part; (d) state the legal or factual basis for the objection; and (e) include copies of any documents that the Class Member desires to submit in support of his, her or its position. Any Class Member who does not submit a

timely Objection in complete accord with this Order, the Class Notice, and the Settlement Agreement shall not be treated to have submitted a valid Objection to the Settlement.

9. A hearing (the “Final Approval Hearing”) shall be held before Honorable Aileen M. Cannon in the United States District Court for the Southern District of Florida, 101 South U.S. Highway 1, Fort Pierce, Florida 34950, on [DATE], at [TIME], to determine, among other things, (a) whether the proposed Settlement should be approved as fair, reasonable and adequate, (b) whether, for purposes of the Settlement, the Settlement Class meets the relevant requirements of Rule 23(a) and (b)(2), (c) whether the Plaintiff should dismiss the Action with prejudice in accord with the terms of the Settlement Agreement, (d) whether Class Members should be bound by the Release set forth in the Settlement Agreement, and (e) whether Class Members should be subject to a permanent injunction that, among other things, bars Class Members from commencing, prosecuting, or assisting in any lawsuit against the Defendant Released Persons that asserts or purports to assert matters within the scope of the Release.

10. Representative Plaintiff’s Motion for Final Approval of the Settlement, as well as any other submissions by Plaintiff or Defendants concerning the Settlement shall be filed no later than [INSERT] days before the Final Approval Hearing.

11. A Class Member need not appear at the Final Approval Hearing. However, any Class Member who desires to appear at the Final Approval Hearing, whether *pro se* or through counsel, must file a Notice of Appearance in the Action, and provide the notice to Class Counsel and Counsel for the Defendants not later than [INSERT] days before the Final Approval Hearing.

12. No Class Member shall be permitted to raise matters at the Final Approval Hearing that the Class Member could have raised, but failed to raise, in an Objection.

13. Any motion and supporting documentation, which a Class Member desires to file in the Action, must be filed with the Court, and contemporaneously provided to Class Counsel and Counsel for the Defendants not later than [INSERT] days before the Final Approval Hearing.

14. Any Class Member who fails to comply with this Order, the Class Notice or the Settlement Agreement shall be barred from appearing at the Final Approval Hearing.

15. The Settlement Agreement shall govern all other events referenced in it, which would occur after the entry of this Order and before the Final Approval Hearing, provided that any event inconsistent with this Order is not permissible.

16. Defendants' provision of notices of the Settlement pursuant to 28 U.S.C. section 1715 ("Section 1715") shall be governed by that statute.

17. All proceedings and deadlines in the Action, other than such as may be necessary to effectuate the Settlement Agreement or the obligations related to it, are stayed and suspended until further order of this Court.

18. If the Court does not grant Final Approval of the Settlement or if the Settlement Agreement is terminated, the Settlement and all proceedings related to it shall be without prejudice to the *status quo ante* rights of the parties to the Action, and all orders issued pursuant to the Settlement may be vacated upon a motion or stipulation from the Parties. In such an event, the Settlement and all negotiations concerning it shall not be used or referred to in this Action for any purpose.

19. If the Court does not grant Final Approval, this Order shall be void and of no further force or effect, and nothing in this Order shall be construed or used as (a) an admission, concession, or declaration by or against any Defendant of any fault, wrongdoing, breach or liability; (b) a

finding that any claim of the Representative Plaintiff or a Class Member lacks merit; (c) an indication that the relief requested in this Action is inappropriate, improper, or unavailable; (d) a waiver by any Party of any claims or defenses he, she or it might have; or (e) evidence that certification of one or more classes would be required or appropriate if the Action were to litigated rather than settled.

20. The Court reserves the right to approve the Settlement with any modifications to which Representative Plaintiff and Defendants agree without further notice to the Class Members.

21. Pending this Court's decision on whether to finally approve the Settlement in this Action, Representative Plaintiff, all Class Members, and Class Counsel and Plaintiff's Counsel are preliminarily enjoined from commencing, prosecuting, or assisting in any lawsuit, administrative action, or any judicial or administrative proceeding against the Defendant Released Persons that asserts or purports to assert matters within the scope of the Release.

22. Except as expressly authorized by this Order or the Agreement, Representative Plaintiff shall not (a) issue, or otherwise cause to be issued, any press release, advertisement, Internet posting or similar document concerning the Action or the facts and circumstances that were the subject of or disclosed in the Action, except documents disbursed as part of the Class Notice or (b) make extrajudicial statements or seek media interviews concerning: (i) the Action; (ii) the facts and circumstances that were the subject of or disclosed in the Action; or (iii) the Settlement of the Action, except that such statements may be made to individual Class Members in one-on-one communications or as part of the Class Notice. This Order in no way limits Class Counsel from discussing the legal issues raised in the Action or marketing her legal services in accord with Florida Bar rules.

23. The Parties shall meet and confer in good faith to resolve any dispute concerning the Settlement Agreement or this Order and, if they cannot resolve any such dispute, present the matter to this Court for resolution.

24. The Parties shall adhere to the following deadlines:

<i>Class Notice emailed to class members:</i>	Three (3) days after entry of this Order
<i>Class Member Objections Deadline:</i>	[INSERT] days before the Final Approval Hearing
<i>Motion for Final Approval:</i>	[INSERT] days prior to the Final Approval Hearing
<i>Other submissions by Plaintiff's or Defendants:</i>	[INSERT] days prior to the Final Approval Hearing
<i>Final Approval Hearing:</i>	_____, 2022

Dated: _____, 2022

HONORABLE AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

EXHIBIT B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

Case No.: 2:21-cv-14098-AMC-SMM

STEVEN C. BRIGATI, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WORCESTER POLYTECHNIC
INSTITUTE, a Massachusetts nonprofit
corporation, and HFM, Inc., a Florida for
profit corporation,

Defendants.

**NOTICE OF PENDENCY OF CLASS
ACTION, PROPOSED SETTLEMENT,
AND FINAL APPROVAL HEARING**

TO: All owners of active equity memberships in the Legacy Golf & Tennis Club, Inc. (the “Legacy Club”).

THIS IS A COURT NOTICE. PLEASE READ THIS NOTICE CAREFULLY, AS THE PROPOSED SETTLEMENT DESCRIBED BELOW MAY AFFECT YOUR LEGAL RIGHTS AND PROVIDE YOU POTENTIAL BENEFITS. THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU OR A SOLICITATION FROM A LAWYER.

I. WHAT IS THE PURPOSE OF THIS NOTICE?

The purpose of this Notice is (a) to advise You of a proposed settlement (referred to as the “Settlement”) of a lawsuit (the “Action”) against Defendants in the United States District Court for the Southern District of Florida (the “Court”); (b) to summarize Your rights under the Settlement; and (c) to inform You that the Honorable Aileen M. Cannon, a federal district court judge in the United States District Court for the Southern District of Florida, will convene a hearing on [DATE] to consider whether to finally approve the Settlement. (the “Final Approval Hearing”). The Court will determine whether the hearing will be held via Zoom or at the federal courthouse located at 101 South U.S. Highway 1, Fort Pierce, FL 34950.

II. WHAT DOES THE ACTION CONCERN?

In the Action, Plaintiff Steven Brigati (“Plaintiff”) alleges that he and other owners of equity memberships in the Legacy Golf and Tennis Club, Inc. (“the Legacy Club”) are entitled to

ownership, management and control of and title to the facilities, personal property and real property of the Legacy Club through the process defined in the Plan of Offering of Memberships in the (the “Plan”) as “Turnover.” Plaintiff alleges that the preconditions to Turnover described in the Plan have occurred and that Defendants breached the Plan by failing to transfer ownership, management and control of and title to the facilities, personal property and real property of the Legacy Club to the owners of equity memberships in the Legacy Club. Plaintiff also alleges that, because Turnover occurred, Defendants violated the Plan by retaining certain funds from the Legacy Club. For these alleged violations, Plaintiff seeks declaratory and supplemental relief, equitable accounting, and injunctive relief for himself and all Class members.

On [DATE], the Court provisionally approved the proposed settlement of the Action for all persons, who meet the criteria set forth below in Section III. The Court will give further, and likely final, consideration to the Settlement at the Final Approval Hearing.

Class Counsel has conducted a thorough investigation into and has engaged in extensive litigation and discovery with respect to, the facts and law relevant to the Action. Plaintiff and Class Counsel have concluded that the proposed Settlement is in the best interests of the Class Members, and that, as with every lawsuit, the outcome of the Action is uncertain.

Defendants deny that they acted unlawfully, deny that they breached the Plan or violated any other law or legal requirement, deny that Plaintiff (or others) are entitled to recover any amounts from them, and deny that Turnover has already occurred. Defendants have contested Plaintiff’s claims and have contested liability to the Class Members.

The Court has not resolved the claims and defenses of the parties in the Action. The Court has not determined whether Plaintiff’s claims have merit or whether Defendants did anything wrong.

This Notice should not be interpreted to be an expression of the Court’s opinion as to the merits of the Plaintiff’s claims or Defendants’ defenses. Plaintiff and Defendants recognize that obtaining rulings from the Court on these and other important issues would be time-consuming and expensive and that the results cannot be predicted.

III. WHO IS PART OF THE PROPOSED SETTLEMENT?

Plaintiff and Defendants have entered into an agreement to settle the Action (the “Settlement Agreement”). The Court has provisionally approved the Settlement in the Settlement Agreement as fair, reasonable, and adequate. The Court will hold the Final Approval Hearing, as described in Section VIII below, to consider whether to make the Settlement final. The Court has provisionally certified a settlement class, which will be the final settlement class (the “Settlement Class”) if the Settlement is approved; it includes all persons and entities who, according to Defendants’ records, own an Active Equity Membership in the Legacy Club, as of the Final Approval Date. An Active Equity Membership is defined as an equity voting membership in the Legacy Club from which the owner has not resigned and which the owner has not redeemed or transferred pursuant to Article X, section 13 of the By-Laws of the Legacy Club.

According to Defendants' data and other records, You might meet these criteria and be a member of the Settlement Class.

IV. WHAT ARE THE PRIMARY TERMS OF THE PROPOSED SETTLEMENT?

The principal terms of the proposed Settlement are as follows:

- A. *SETTLEMENT AMOUNT.* If the Court gives final approval to the Settlement, Plaintiff has agreed to pay Defendants Two Million Dollars (\$2,000,000) to secure the Settlement Class's ownership of the Legacy Club, which, when last appraised, had an appraised value of Six Million Two Hundred Thousand Dollars (\$6,200,000). Defendants concurrently shall transfer the Legacy Club and all its inventory, personal property and real property to Plaintiff on behalf of the Class Members.
- B. *OTHER SETTLEMENT BENEFITS.* Aside from transferring clean, marketable title of the Legacy Club, and all associated inventory, personal property and real property to Plaintiff on behalf of the Class Members, the Settlement secures other benefits for the Class Members. Defendants have agreed to retroactively refrain from withdrawing any further sums from the Legacy Club, as of December 11, 2021.
- C. *RELEASE.* Plaintiff and each Class Member will release certain claims against Defendants. This is referred to as the "Plaintiff's Release." Generally speaking, the Plaintiff's Release will prevent any Class Member from bringing any lawsuit or making any claims that Defendants acted in violation of the Plan in their ownership and operation of the Club. The Plaintiff's Release will also prevent every Class Member, and certain related parties, from suing or bringing such claims against Defendants, companies related to Defendants, Defendants' employees, and certain other third parties. The terms of the Plaintiff's Release, as set forth in the Settlement Agreement, are reproduced in the Addendum appearing at the end of this Notice. Similarly, the Defendants will release the Plaintiff and each Class Member from all claims and counterclaims against Plaintiff or any Class Member, which the Defendants made or could have made in the Action. The terms of Defendants' Release are also included in the Addendum to this Notice.
- D. *DISMISSAL OF THE ACTION.* The Action will be dismissed with prejudice.

If the Settlement is approved by the Court and becomes final, Defendants shall transfer clean, marketable title of the Legacy Club, and all associated inventory, personal property and real property to Plaintiff on behalf of the Class Members. If the Settlement is not approved by the Court or does not become final for any reason, the Action will continue, and Class Members will not obtain ownership of the Legacy Club, or its associated inventory, personal property and real property.

SECTIONS IV(A)-(D) ABOVE PROVIDE ONLY A GENERAL SUMMARY OF THE TERMS OF THE PROPOSED SETTLEMENT. YOU MUST CONSULT THE SETTLEMENT AGREEMENT FOR MORE INFORMATION ABOUT THE EXACT TERMS OF THE SETTLEMENT. THE SETTLEMENT AGREEMENT

IS AVAILABLE FROM CLASS COUNSEL OR FROM THE COURT, AS SET FORTH IN SECTION IX BELOW.

V. WHO REPRESENTS THE SETTLEMENT CLASS?

The Court has provisionally appointed the following attorney to act as lead counsel for the Settlement Class (referred to as “Class Counsel”) for purposes of the proposed Settlement:

Elaine Johnson James
ELAINE JOHNSON JAMES, P.A.
P.O. Box 31512
Palm Beach Gardens, FL 33420
ejames@elainejohnsonjames.com

VI. WHAT ARE THE REASONS FOR THE PROPOSED SETTLEMENT?

Plaintiff and Defendants agreed on all of the terms of the proposed Settlement through extensive arms-length negotiations between Class Counsel and Counsel for the Defendants. Plaintiff has entered into the proposed Settlement after weighing the benefits of the Settlement against the probabilities of success or failure in the Action and considering the expenses that likely would be incurred if the Action proceeded to trial and, after trial, to appeal.

Plaintiff and Class Counsel have concluded that the proposed Settlement provides substantial benefits to the Settlement Class; resolves substantial issues without prolonged litigation; provides the Settlement Class with significant benefits; and is in the best interests of the Settlement Class. Plaintiff and Class Counsel have concluded that the proposed Settlement is fair, reasonable, and adequate.

Although Defendants deny any wrongdoing and any liability whatsoever, Defendants believe that it is in their best interest to settle the Action on the terms set forth in the Settlement Agreement.

VII. WHAT DO YOU NEED TO KNOW NOW?

- A. *YOUR PARTICIPATION IN THE SETTLEMENT.* If the Settlement is approved at the Court Approval Hearing, You will automatically be included as a participant in the Settlement and be eligible to receive the benefits described in this Notice. Your interests as a Class Member will be represented by Plaintiff and Class Counsel. You will not be billed for their services.
- B. *BINDING EFFECT.* You will be bound by any judgment or other final disposition of the Action, including the Release set forth in the Settlement Agreement, and will be precluded from pursuing claims against Defendants separately if those claims are within the scope of the Release.
- C. *YOU CAN OBJECT OR TAKE OTHER ACTIONS IN THE ACTION.*

1) Objections to the Settlement. Any Class Member may object to the approval of the Settlement and to any aspect of the Settlement or the Settlement Agreement. To object, You must mail or hand-deliver any objection to the Clerk of Court, United States District Court for the Southern District of Florida, 101 South U.S. Highway 1, Fort Pierce, Florida 34950, on or before [DATE], and must mail or hand-deliver a copy of the objection to Class Counsel and Counsel for the Defendants at the addresses set forth in Section X below by that same date. To be timely, objections that are mailed must be postmarked by [DATE] and objections that are hand-delivered must be received by the Court, Class Counsel and Counsel for the Defendants by [DATE]. Additionally, to be valid, each objection must (a) set forth the Class Member's full name, current address, and telephone number; (b) provide proof that the Class Member owns an Active Equity Membership in the Legacy Club; (c) state that the Class Member objects to the Settlement, in whole or in part; (d) state the legal and/or factual basis for the objection; and (e) provide copies of any documents that the Class Member wishes to submit in support of his, her or its position. Any Objection that is not timely mailed or timely hand-delivered to the Court, Class Counsel and Counsel for the Defendants, and/or is otherwise invalid shall not be treated as a valid Objection to the Settlement.

2) Other Motions or Submissions Concerning the Action or the Settlement. **It is not necessary for You to submit any motion concerning the Action or Settlement to the Court.** If You want to submit a motion to the Court concerning the Settlement or the Action, then You must mail or hand deliver the motion, with all supporting documents, to the Clerk of Court, United States District Court for the Southern District of Florida, 101 South U.S. Highway 1, Fort Pierce, Florida 34950, on or before [DATE], and must mail or hand-deliver a copy of the motion, with all supporting documents, to Class Counsel and Counsel for the Defendants at the addresses set forth in Section X below by [DATE]. To be considered timely, motions that are mailed must be postmarked by [DATE], and motions that are hand-delivered must be received by the Court, Class Counsel and Counsel for the Defendants by [DATE].

VIII. WHAT WILL TAKE PLACE AT THE FINAL APPROVAL HEARING

Honorable Aileen Cannon, a judge in the United States District Court for the Southern District of Florida, will hold the Final Approval Hearing by Zoom or at the United States Courthouse, located at 101 South U.S. Highway 1, Fort Pierce, Florida 34950, on [DATE] at [TIME]. At that time, the Court will determine, among other things, (a) whether the Settlement should be finally approved as fair, reasonable and adequate, (b) whether Plaintiff should dismiss the Action with prejudice in accord with the terms of the Settlement Agreement, (c) whether Class Members and the Defendants should be bound by the Releases set forth in the Settlement Agreement, and (d) whether Class Members should be subject to a permanent injunction that, among other things, bars Class Members from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any lawsuit, claim, demand or proceeding in any jurisdiction that is based on, or directly or indirectly related to, matters within the scope of the Release.

IX. HOW CAN YOU GET ADDITIONAL INFORMATION ABOUT THE ACTION, THE PROPOSED SETTLEMENT, THE SETTLEMENT AGREEMENT, OR THE NOTICE?

This Notice provides only general summaries of the Action, the Settlement, and the Settlement Agreement. If there is any conflict between the information in this Notice and the Settlement Agreement, please rely on the terms of the Settlement Agreement, which is the actual contract between the Defendants and the Class Members. It takes precedence over this Notice. All papers filed in this case, including the full Settlement Agreement, are available for You to inspect and copy (at Your expense) at the office of the Clerk of Court, United States District Court for the Southern District of Florida, 101 South U.S. Highway 1, Fort Pierce, Florida 34950, during regular business hours. A copy of the Settlement Agreement also may be obtained from Class Counsel by contacting her at the addresses or telephone number set forth in Section X below.

Any questions concerning this Notice, the Settlement Agreement, or the Settlement may be directed to Class Counsel in writing at the address or email or by calling the number listed for her below in Section X.

You may also seek the advice and counsel of Your own attorney, at Your own expense, if You desire.

Additional copies of this Notice can be obtained from Class Counsel upon written request.

DO NOT WRITE OR TELEPHONE THE COURT, THE CLERK'S OFFICE, OR DEFENDANTS IF YOU HAVE QUESTIONS ABOUT THIS NOTICE, THE SETTLEMENT, OR THE SETTLEMENT AGREEMENT.

X. WHAT ADDRESSES AND TELEPHONE NUMBERS MIGHT YOU NEED?

Class Counsel:

Elaine Johnson James
ELAINE JOHNSON JAMES, P.A.
P.O. Box 31512
Palm Beach Gardens, Florida 33420
Tel.: (561) 245-1144
Fax: (561) 244-9580
ejames@elainejohnsonjames.com

Defendants' Counsel:

Jennifer L. Chunias
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, Massachusetts 02210
Tel.: (617) 570-1000
Fax: (617) 523-1231
jchunias@goodwinlaw.com

XI. WHAT INFORMATION MUST YOU INCLUDE IN ANY DOCUMENT THAT YOU SEND REGARDING THE ACTION?

If you send any document to the Court, Class Counsel, or Counsel for the Defendants, it is important that both Your envelope and any documents inside contain the following case name and identifying number: *Brigati v. Worcester Polytechnic Institute, et al.*, No. 2:21-cv-14098-AMC-

SMM. In addition, You must include Your full name, address, and a telephone number at which You can be reached.

XII. WHAT IMPORTANT DEADLINES SHOULD YOU KNOW?

[DATE] All NOTICES OF APPEARANCES AND MOTIONS must be postmarked and mailed or hand-delivered to the Court and postmarked and mailed or hand-delivered to Class Counsel and Counsel for the Defendants.

[DATE] All OBJECTIONS must be postmarked and mailed or hand-delivered to the Court and postmarked and mailed or hand-delivered to Class Counsel and Counsel for the Defendants.

[DATE], [TIME] COURT APPROVAL HEARING

ADDENDUM

4.01 Upon Final Approval and transfer of ownership of the Legacy Club to Plaintiff on behalf of the Settlement Class, and in consideration of the promises and covenants set forth in this Agreement, Representative Plaintiff and each Class Member, and each of their respective spouses, children, executors, representatives, guardians, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, and each of them (collectively and individually, the “Plaintiff Releasing Persons”), will be deemed to have completely released and forever discharged Defendants, and each and every one of their past, present, and future predecessors, successors, partners, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, insurers, and agents (alleged or actual) (collectively and individually, the “Defendant Released Persons”), from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, including, without limitation, (i) those known or unknown or capable of being known, (ii) those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time, including facts in the possession of and concealed by any of the Defendant Released Persons, and (iii) those accrued, unaccrued, matured or not matured, all from the beginning of the world until the Final Approval Date (collectively, the “Plaintiff Released Rights”), that arise out of and/or concern (a) any Plaintiff Released Rights that were asserted, or attempted to be asserted, in the Action; (b) conduct, acts, and/or omissions (alleged or actual) by any of the Defendant Released Persons arising from or relating in any manner to Defendants’ ownership and operation of the Legacy Club; (c) any practice, policy, and/or procedure (alleged or actual) of any of the Defendant Released Persons concerning the Legacy Club; (d) conduct, acts and/or omissions (alleged or actual) by any of the Defendant Released Persons relating to the Legacy Club; (e) all claims that were or could have been asserted in the Action arising from or relating in any manner to any conduct, act and/or omissions (alleged or actual) by any of the Defendant Released Persons relating to the Legacy Club; (f) all claims asserted in the Action; (g) any claim or theory that any act or omission by the Defendants (or any of them) arising from or relating to ownership and operation of the Legacy Club violates any statute, regulation, law and/or contract; and (h) any violation and/or alleged violation of state and/or federal law, whether common law or statutory, arising from or relating to the conduct, acts, and/or omissions described in this paragraph.

4.02 Upon Final Approval and transfer of ownership of the Legacy Club to Plaintiff on behalf of the Settlement Class, and in consideration of the promises and covenants set forth in this Agreement, each Defendant and each and every one of their past, present, and future predecessors, successors, partners, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, insurers, and agents (alleged or actual) (collectively and individually, the “Defendant Releasing Persons”), will be deemed to have completely released and forever discharged Representative Plaintiff and the owners of each Active Equity Membership and each of their respective spouses, children, executors, representatives, guardians, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, and each of them (collectively and individually, the “Plaintiff Released Persons”), from any and all past,

present and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, including, without limitation, (i) those known or unknown or capable of being known, (ii) those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time, including facts in the possession of and concealed by any of the Plaintiff Released Persons, and (iii) those accrued, unaccrued, matured or not matured, all from the beginning of the world until the Final Approval Date (collectively, the “Defendant Released Rights”), that arise out of and/or concern (a) conduct, acts, and/or omissions (alleged or actual) by any of the Plaintiff Released Persons arising from or relating in any manner to Defendants’ ownership and operation of the Legacy Club; (b) any claim or theory that any act or omission by the owners of Active Equity Memberships (or any of them) arising from or relating to Defendants’ ownership and operation of the Legacy Club violates any statute, regulation, law and/or contract; (c) any violation and/or alleged violation of state and/or federal law, whether common law or statutory, arising from or relating to the conduct, acts, and/or omissions described in this paragraph (d) any practice, policy, and/or procedure (alleged or actual) of any of the Released Persons concerning the Legacy Club; (e) conduct, acts and/or omissions (alleged or actual) by any of the Plaintiff Released Persons relating to the Legacy Club; and (f) all claims that were or could have been asserted in the Action arising from or relating in any manner to any conduct, act and/or omissions (alleged or actual) by any of the Plaintiff Released Persons relating to the Legacy Club.

4.03 In addition to the provisions of paragraphs 4.01 and 4.02 above, the Releasing Persons hereby expressly agree that, upon Final Approval, each will waive and release any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to the following:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

To the extent that anyone might argue that these principles of law are applicable—notwithstanding that the Parties have chosen Florida law to govern this Settlement Agreement—the Defendants and the Plaintiff agree, and each Settlement Class Member will be deemed to agree, that, to the extent they are found to be applicable herein, all such principles of law or similar federal or state laws, rights, rules, or legal principles are hereby knowingly and voluntarily waived, relinquished, and released. The Defendants and the Plaintiff recognize, and each Settlement Class Member will be deemed to recognize, that, even if he, she, it or they may later discover facts in addition to or different from those which now are known or believed to be true, they nevertheless agree that, upon entry of the Final Approval Order, they fully, finally, and forever settle and release any and all claims covered by these Releases. The Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

EXHIBIT C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION**

Case No.: 2:21-cv-14098-AMC

STEVEN C. BRIGATI, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WORCESTER POLYTECHNIC
INSTITUTE, a Massachusetts nonprofit
corporation, and HFM, Inc., a Florida for
profit corporation,

Defendants.

[PROPOSED] FINAL ORDER APPROVING SETTLEMENT

This matter having come before the Court on [DATE] for hearing of the unopposed Motion of Representative Plaintiff, individually and on behalf of a class of persons, for final approval of a settlement reached between the Parties (“Plaintiff’s Motion”), and upon review and consideration of the Settlement Agreement dated [DATE] (“Settlement Agreement” or “Agreement”), the exhibits to the Settlement Agreement, the evidence and arguments of counsel presented at the Final Approval Hearing, and any other submissions filed with this Court in connection with the Final Approval Hearing, IT IS HEREBY ORDERED and adjudged as follows:

1. The Settlement Agreement hereby is incorporated by reference into this Order (“Order”) and adopted by the Court.
2. For purposes of Settlement only, the Court finds that the Settlement Class meets the relevant requirements of Fed. R. Civ. P. 23(a) and (b)(2).

3. For purposes of Settlement only, and pursuant to Fed. R. Civ. P. 23, the Court hereby finally certifies the Settlement Class, as that term is defined in the Agreement. If, for any reason, the Settlement does not become effective, this certification shall be null and void and shall not be used or referred to for any purpose in the Action or any other action or proceeding.

4. For purposes of the Settlement only, the Court finally appoints Representative Plaintiff as representative of the Class, and finds that he meets the relevant requirements of Fed. R. Civ. P. 23(a).

5. For purposes of the Settlement only, the Court finally appoints the following lawyer as Counsel to the Class, and finds that counsel meets the relevant requirements of Fed. R. Civ. P. 23(g):

Elaine Johnson James
ELAINE JOHNSON JAMES, P.A.
P.O. Box 31512
Palm Beach Gardens, FL 33420

6. As set forth in the Class Notice, this Court convened the Final Approval Hearing at [TIME] on [DATE].

7. Pursuant to Fed. R. Civ. P. 23, the Court finds that the Settlement of this Action, as embodied in the Settlement Agreement, is fair, reasonable, and adequate in light of the factual, legal, practical, and procedural considerations raised by Representative Plaintiff's claims.

8. The Court finds that the Class Notice previously approved by the Court and given to Class Members in the Action was the best notice practicable under the circumstances and that it satisfied the requirements of due process and Fed. R. Civ. P. 23. The Court further finds that, because (a) adequate notice has been provided to all Class Members and (b) all Class Members have been given the opportunity to object to the Settlement, the Court has jurisdiction over all Class Members. The Court further finds that all requirements of statute (including but not limited

to 28 U.S.C. section 1715), rule, and state and federal constitutions necessary to effectuate this Settlement have been met and satisfied. This Court further finds Defendants have complied with all notice requirements of 28 U.S.C. section 1715 in connection with the Settlement and that more than ninety (90) days elapsed since [DATE], which is the date on which Defendants served the notices required by 28 U.S.C. section 1715 upon the appropriate federal and state officials. Accordingly, no Class Member may refuse to comply with or be bound by the Settlement Agreement or this Order.

9. The Court has given due consideration to the Representative Plaintiff's likelihood of success at trial, the range of the Representative Plaintiff's possible recovery, the complexity, expense, and duration of the litigation, the substance and amount of opposition and objection to the Settlement, the responses of Class Members to the Settlement, the state of the proceedings when the Settlement was achieved, the nature of the negotiations leading to the Settlement, the litigation risks to Representative Plaintiff and the Class Members, all written submissions, and affidavits, and arguments of counsel. After notice and a hearing, this Court finds that the terms of the Settlement and the Agreement, including all exhibits thereto, are fair, reasonable, and adequate, and are in the best interest of the Class. Accordingly, the Settlement Agreement hereby is finally approved and shall govern all issues regarding the Settlement and all rights of the Parties, including the Class Members.

10. In accordance with the Settlement Agreement, to effectuate the Settlement, within ten (10) days of the date of this Order:

a. Representative Plaintiff shall cause Defendants to be paid Two Million Dollars (\$2,000,000.00);

b. Defendants shall concurrently transfer clean, marketable title to the Legacy Club and all of its associated inventory, personal property and real property to Plaintiff on behalf of the Class Members;

c. Representative Plaintiff concurrently shall voluntarily dismiss the Action against Worcester Polytechnic Institute (“WPI”) and HFM, Inc. (“HFM”) with prejudice.

11. Representative Plaintiff, each Class Member, Class Counsel, and Plaintiff’s Counsel shall be forever bound by this Order and the Agreement, including the Release and covenants not to sue set forth in paragraphs 4.01 and 4.03 of the Settlement Agreement providing as follows:

4.01 Upon Final Approval and transfer of ownership of the Legacy Club to Plaintiff on behalf of the Settlement Class, and in consideration of the promises and covenants set forth in this Agreement, Representative Plaintiff and each Class Member, and each of their respective spouses, children, executors, representatives, guardians, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, and each of them (collectively and individually, the “Plaintiff Releasing Persons”), will be deemed to have completely released and forever discharged Defendants, and each and every one of their past, present, and future predecessors, successors, partners, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, insurers, and agents (alleged or actual) (collectively and individually, the “Defendant Released Persons”), from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, including, without limitation, (i) those known or unknown or capable of being known, (ii) those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time, including facts in the possession of and concealed by any of the Defendant Released Persons, and (iii) those accrued, unaccrued, matured or not matured, all from the beginning of the world until the Final Approval Date (collectively, the “Plaintiff Released Rights”), that arise out of and/or concern (a) any Plaintiff Released Rights that were asserted, or attempted to be asserted, in the Action; (b) conduct, acts, and/or omissions (alleged or actual) by any of the Defendant Released Persons arising from or relating in any manner to Defendants’ ownership and operation of the Legacy Club; (c) any practice, policy, and/or procedure (alleged or actual) of any of the Defendant Released Persons concerning the Legacy Club; (d) conduct, acts and/or omissions (alleged or actual) by any of the Defendant Released Persons relating to the Legacy Club; (e) all claims that were or could have been asserted in the Action arising from or relating in any manner to any conduct, act and/or omissions (alleged or actual) by any of the Defendant Released Persons relating to the Legacy Club; (f) all claims asserted in the Action; (g) any claim or theory that any act or omission by the Defendants (or any

of them) arising from or relating to ownership and operation of the Legacy Club violates any statute, regulation, law and/or contract; and (h) any violation and/or alleged violation of state and/or federal law, whether common law or statutory, arising from or relating to the conduct, acts, and/or omissions described in this paragraph.

4.03 In addition to the provisions of paragraphs 4.01 and 4.02 above, the Releasing Persons hereby expressly agree that, upon Final Approval, each will waive and release any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to the following:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

To the extent that anyone might argue that these principles of law are applicable—notwithstanding that the Parties have chosen Florida law to govern this Settlement Agreement—the Defendants and the Plaintiff agree, and each Settlement Class Member will be deemed to agree, that, to the extent they are found to be applicable herein, all such principles of law or similar federal or state laws, rights, rules, or legal principles are hereby knowingly and voluntarily waived, relinquished, and released. The Defendants and the Plaintiff recognize, and each Settlement Class Member will be deemed to recognize, that, even if he, she, it or they may later discover facts in addition to or different from those which now are known or believed to be true, they nevertheless agree that, upon entry of the Final Approval Order, they fully, finally, and forever settle and release any and all claims covered by these Releases. The Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

12. Defendants and Defendants' Counsel shall be forever bound by this Order and the Agreement, including the Release and covenants not to sue set forth in paragraphs 4.02 to 4.03 of the Settlement Agreement providing as follows:

4.02 Upon Final Approval and transfer of ownership of the Legacy Club to Plaintiff on behalf of the Settlement Class, and in consideration of the promises and covenants set forth in this Agreement, each Defendant and each and every one of their past, present, and future predecessors, successors, partners, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, vendors, employees, attorneys, insurers, and agents (alleged or actual) (collectively and individually, the "Defendant Releasing Persons"), will be deemed to have completely released and forever discharged Representative Plaintiff and the owners of each Active Equity Membership and each of their respective spouses, children, executors, representatives, guardians, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, and each of them (collectively and individually, the "Plaintiff Released Persons"), from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, including,

without limitation, (i) those known or unknown or capable of being known, (ii) those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time, including facts in the possession of and concealed by any of the Plaintiff Released Persons, and (iii) those accrued, unaccrued, matured or not matured, all from the beginning of the world until the Final Approval Date (collectively, the “Defendant Released Rights”), that arise out of and/or concern (a) conduct, acts, and/or omissions (alleged or actual) by any of the Plaintiff Released Persons arising from or relating in any manner to Defendants’ ownership and operation of the Legacy Club; (b) any claim or theory that any act or omission by the owners of Active Equity Memberships (or any of them) arising from or relating to Defendants’ ownership and operation of the Legacy Club violates any statute, regulation, law and/or contract; (c) any violation and/or alleged violation of state and/or federal law, whether common law or statutory, arising from or relating to the conduct, acts, and/or omissions described in this paragraph (d) any practice, policy, and/or procedure (alleged or actual) of any of the Released Persons concerning the Legacy Club; (e) conduct, acts and/or omissions (alleged or actual) by any of the Plaintiff Released Persons relating to the Legacy Club; and (f) all claims that were or could have been asserted in the Action arising from or relating in any manner to any conduct, act and/or omissions (alleged or actual) by any of the Plaintiff Released Persons relating to the Legacy Club.

4.03 In addition to the provisions of paragraphs 4.01 and 4.02 above, the Releasing Persons hereby expressly agree that, upon Final Approval, each will waive and release any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to the following:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

To the extent that anyone might argue that these principles of law are applicable—notwithstanding that the Parties have chosen Florida law to govern this Settlement Agreement—the Defendants and the Plaintiff agree, and each Settlement Class Member will be deemed to agree, that, to the extent they are found to be applicable herein, all such principles of law or similar federal or state laws, rights, rules, or legal principles are hereby knowingly and voluntarily waived, relinquished, and released. The Defendants and the Plaintiff recognize, and each Settlement Class Member will be deemed to recognize, that, even if he, she, it or they may later discover facts in addition to or different from those which now are known or believed to be true, they nevertheless agree that, upon entry of the Final Approval Order, they fully, finally, and forever settle and release any and all claims covered by these Releases. The Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Agreement.

13. The Release set forth in paragraph 11 above and in the Settlement Agreement shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits, and other proceedings maintained by or on behalf of Representative Plaintiff, each Class Member or the

Plaintiff Releasing Parties concerning matters and claims that were or could have been asserted in the Action or are encompassed within the scope of the Release.

14. The Release set forth in paragraph 12 above and in the Settlement Agreement shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits, and other proceedings maintained by or on behalf of Defendants or the Defendant Releasing Parties concerning matters encompassed within the scope of the Release.

15. Representative Plaintiff, Plaintiff's Counsel and every Class Member are permanently enjoined from bringing, joining, assisting in, or continuing to prosecute against Defendants or and Defendant Released Person any claim that was brought in the Action or that asserts or purports to assert any matter for which a release and covenant not to sue are being given under the Settlement Agreement.

16. This Court finds that Class Counsel had the authority to execute the Agreement on her behalf and thereby to bind herself to the relevant terms of the Agreement. Class Counsel thus also is bound by this Order.

17. This Order, the Settlement Agreement, any document referenced in this Order, any action taken to effectuate this Order, any negotiations or proceedings related to any such documents or actions and the effectuation and execution of the Agreement shall not be construed, offered or received as, or deemed to be evidence of, impeachment material for, or an admission or concession with regard to any fault, wrongdoing or liability on the part of Defendants whatsoever in the Action or in any other judicial, administrative, or regulatory action or other proceeding, provided, however, this Order may be filed in any action or proceeding against or by Defendants to enforce the Agreement or to support a claim of *res judicata*, collateral estoppel, release, accord

and satisfaction, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18. Other than as set forth in this Order or otherwise necessary to effectuate the terms of the Settlement Agreement or the responsibilities related or incidental thereto, all proceedings and deadlines in this Action shall remain stayed and suspended absent further order of this Court.

19. Subject to the terms of the Agreement, by mutual consent, the Parties may amend or modify the terms of the Settlement Agreement and all exhibits to it.

20. Except as provided in this Order, the Settlement Agreement shall govern all matters incident to the administration of the Settlement until further order of this Court or agreement of the Parties.

21. This Order supersedes this Court's Order Preliminarily Approving Settlement and Provisionally Certifying Settlement Class, and with Respect to Class Notice, Final Approval Hearing and Administration, dated ([DATE]).

Dated: _____, 2022

HONORABLE AILEEN M. CANNON
United States District Judge

EXHIBIT D

BILL OF SALE

The Seller, **HFM, INC.**, a Florida corporation, in consideration of ten dollars and other valuable considerations to it in hand paid by the Purchaser, **[STEVEN BRIGATI]**, the receipt and sufficiency of which are hereby acknowledged, has assigned, sold, conveyed and delivered, and does hereby assign, sell, convey and deliver unto Purchaser, its successors and assigns, all of Seller's right, title and interest, if any, in and to the all personal property (the "**Personal Property**") now attached to or located on that certain real property located in Saint Lucie County, Florida, more particularly described in **Exhibit "A"** attached hereto and made a part hereof (the "**Real Property**"), and all of the Seller's interest in any leases, licenses, permits or similar documents relating to the Real Property and Personal Property.

Seller makes no warranty, express or implied, of any kind. THE PROPERTY IS BEING SOLD BY SELLER AND ACCEPTED BY PURCHASER AS IS, WHERE IS, WITH ALL FAULTS AND SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY DISCLAIMED. THE SALE OF THE PROPERTY HEREUNDER IS WITHOUT RECOURSE TO SELLER AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF THE SELLER AS TO ITEMS, CONDITION, QUANTITY OR ANY OTHER MATTERS WHATSOEVER; SELLER MAKES NO REPRESENTATION AS TO THE VALUE, IF ANY, OF THE PROPERTY BEING TRANSFERRED HEREBY; SELLER MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE POSSIBLE INFRINGEMENT OF ANY TRADEMARKS, TRADE NAME OR PATENT ARISING OUT OF THE USE BY THE BUYER OF ANY OF THE PROPERTY.

Dated this _____ day of _____, 2022

HFM, INC., a Florida corporation

By: _____
Print Name: _____
As Its: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2022, by _____, as _____ of **HFM, INC.**, a Florida corporation, who is personally known to me or who has produced _____ as identification, on behalf of the corporation.

(SEAL)

Printed/Typed Name: _____
Notary Public-State of _____
Commission Number: _____
My Commission Expires: _____

EXHIBIT A

Prepared by and after recording return to:
Noel R. Boeke
HOLLAND & KNIGHT LLP
100 N. Tampa Street, Suite 4100
Tampa, Florida 33601

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made as of the ____ day of _____, 2022, by and between **HFM, INC.**, a Florida corporation, whose address is _____ (“Grantor”), and **[STEVEN BRIGATI]**, whose address is _____ (“Grantee”).

(Wherever used herein the term “Grantor” and “Grantee” include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable considerations, to it in hand paid by Grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto Grantee, and Grantee’s heirs, successors and assigns forever, the parcel of land situate, lying and being in the County of Saint Lucie, State of Florida, and more particularly described as follows (the “Property”):

See **Exhibit “A”**, attached hereto and made a part hereof

TOGETHER WITH all the tenements, hereditaments, and appurtenances, with every privilege, right, title, interest and estate, reversion, remainder, and easement thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same unto Grantee in fee simple, forever.

AND Grantor, for itself and its successors, hereby covenants with Grantee that except with respect to ad valorem taxes not yet due and payable, and all reservations, restrictions, limitations, declarations, easements, encumbrances, and all matters of public record without intending to reimpose any of same, the real property is free and clear of all claims, liens and encumbrances, that Grantor is lawfully seized of the Property in fee simple; that it has good right and lawful authority to sell and convey the Property; and Grantor fully warrants the title to the above-described real property and will defend the same against the lawful claims of all persons claiming by, through or under Grantor, but against none other.

Except as stated above, the Grantor conveys and the Grantee accepts the property and all improvements thereon AS IS, WHERE IS, AND WITH ALL FAULTS, AND WITHOUT THE GRANTOR’S WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY OR HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE).

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed by its duly authorized corporate officer on the date stated above.

Signed, sealed and delivered
in the presence of:

HFM, INC.,
a Florida corporation

Witness Signature: _____
Print Name: _____

By: _____
Print Name: _____
As Its: _____

Witness Signature: _____
Print Name: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 2022, by _____ as _____ of **HFM, INC.**, a Florida corporation, on behalf of the corporation, who is personally known to me.

(SEAL) Notary Public
Sign: _____
Print Name: _____
State and County Aforesaid
My commission expires:

Exhibit "A"

Legal Description