

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

CASE NO. 21-14098-CIV-CANNON/Maynard

STEVEN 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.

**ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT
AND REQUIRING PROPOSED SCHEDULE**

THIS MATTER comes before the Court upon Plaintiff's Unopposed Motion for Preliminary Approval of Settlement and Provisional Certification of Class (the "Motion") [ECF No. 118], which was filed on January 11, 2022.

The parties, Plaintiff Steven C. Brigati and Defendants Worcester Polytechnic Institute and HFM, Inc., through their respective counsel, and subject to the Court's approval, have agreed to resolve this lawsuit via a class action settlement. Following notice to the Class Members and a hearing, the parties seek to resolve this lawsuit (the "Lawsuit") on the terms and conditions set forth in the Settlement Agreement [ECF No. 118-1], which has been filed with the Court. Accordingly, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Motion [ECF No. 118] is **GRANTED** as follows:

1. The Settlement Agreement and the exhibits to it are incorporated by reference in this Order as if fully set forth herein.

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2. Based on the Settlement Agreement and all the files, records, and proceedings in this case, the Court preliminarily finds that the proposed settlement is fair, reasonable, and adequate, and that a Final Approval Hearing should and will be held on **May 9, 2022 at 10:00 a.m.** at the Alto Lee Adams, Sr. United States Courthouse, 101 South U.S. Highway 1, Fort Pierce, Florida 34950, following notice to the Class Members, to confirm that the proposed settlement is fair, reasonable, and adequate, and to determine whether a Final Order and Judgment should be entered in this Lawsuit.
3. Solely for the purpose of settlement in accordance with the Settlement Agreement, and pursuant to Federal Rule of Civil Procedure 23(a) and (b), this Court hereby conditionally certifies the following class (the “Settlement Class”):

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.

[ECF No. 118-1, p. 4 ¶ 1.19].

4. Pursuant to Federal Rule of Civil Procedure 23, the Court appoints Plaintiff Steven C. Brigati as the Named Class Representative. The Court appoints Elaine Johnson James, Esq. of Elaine Johnson James, P.A., P.O. Box 31512, Palm Beach Gardens, Florida 33420, as Settlement Class Counsel under Federal Rule of Civil Procedure 23(g)(1).
5. The Court preliminarily finds that, for purposes of settlement only, the Lawsuit satisfies the applicable prerequisites for class action treatment under Federal Rule of Civil Procedure 23, namely:
 - a) The Class Members are so numerous that joinder of all of them in the Lawsuit would be impracticable;

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- b) There are questions of law and fact common to the Class Members, which predominate over any individual questions;
 - c) The Plaintiffs' claims are typical of the claims of the Class Members;
 - d) The Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of all Class Members; and
 - e) Class treatment of these claims will be efficient and manageable, thereby achieving an appreciable measure of judicial economy, and a class action is superior to other available methods for a fair and efficient adjudication of this controversy.
6. The Court preliminarily finds that the settlement of the Lawsuit, on the terms and conditions set forth in the Agreement is in all respects fundamentally fair, reasonable, adequate, and in the best interest of the Class Members, especially in light of the following factors:
- a) The benefits to the Class Members;
 - b) The strengths and weaknesses of Plaintiff's case;
 - c) The anticipated complexity, duration, and expense of additional lawsuits;
 - d) The risk and delay inherent in possible appeals; and
 - e) The opinion of Class Counsel, who is experienced in class action lawsuits.
7. The form, content, and procedures of notice to the putative Settlement Class Members as set forth in the Settlement Agreement are approved in accordance with this Order. The notice to be provided to the putative Settlement Class Members shall clearly, concisely, and in plain language advise them of, among other things, the nature of the Lawsuit, the proposed Settlement Agreement, the definition of the Settlement Class, any claims the Settlement Class would release, any consideration the Settlement Class would receive, putative Settlement Class Members' right to participate individually or through an attorney and object to the Settlement Agreement or any portion of it, putative Settlement Class

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Members' right to opt out and exclude themselves from the Settlement Agreement, and the binding nature of the Settlement Agreement if it is ultimately approved.

8. The Court finds that the Settlement Agreement's plan for emailing the notice directly to Class Members is the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23. 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.
9. 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.
10. Any Class Member who desires to be excluded from the class must send a written request for exclusion to Class Counsel. To be effective, the written request for exclusion must state the Class Member's full name, address, telephone number, and email address (if available), along with a statement that the Class Member wishes to be excluded. Failure to opt out in strict compliance with the time and manner requirements set forth in the Class Notice shall result in waiver of the right to opt out. All potential Settlement Class Members

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who either do not attempt to or fail to properly and timely opt out shall remain part of the Settlement Class and, to the extent the Settlement Agreement is ultimately approved, be bound by the settlement.

11. Any Class Member who intends to object to the fairness of this settlement must file a written objection with the Court. Specifically, any such Class Member must either (a) electronically file a copy of the objection on the Court's docket; or (b) mail a copy of the objection to Class Counsel at the address listed in the Notice. For the objection to be considered by the Court, the objection must be in writing and include:

- a) The name of the proceeding (S.D. Fla. Case No. 21-14098-CIV-CANNON, *Briganti v. Worcester Polytechnic Institute et al.*, or similar identifying words such as "Club Membership Lawsuit");
- b) The objector's full name, current mailing address, and telephone number;
- c) Provide proof that the Class Member owns an Active Equity Membership in the Legacy Club;
- d) A statement of the specific grounds for the objection, as well as any documents supporting the objection;
- e) A statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
- f) The identity of any attorneys representing the objector;
- g) A statement regarding whether the objector (or his/her attorney) intends to appear at the Final Approval Hearing; and
- h) The signature of the objector or the objector's attorney.

12. 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.

13. The Court will conduct a Final Approval Hearing on **May 9, 2022 at 10:00 a.m.** At that Final Approval Hearing, the Court will review, and rule on, the following issues:

- 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;
 - 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; and
 - f) Any other issues the Court deems appropriate.
14. Attendance by Class Members at the Final Approval Hearing is not necessary. Class Members need not appear at the Hearing or take any other action to indicate their approval of the proposed class action settlement. 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.
15. 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.
16. 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.

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17. 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.
18. 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.
19. 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.
20. 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.
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,

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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. To facilitate the orderly and efficient administration of this case, and mindful of the Final Approval Hearing to be held on **May 9, 2022 at 10:00 a.m.**, the Court directs the parties to jointly file, on or before **January 20, 2022**, a proposed schedule indicating deadlines for Class Notice dissemination, the filing of Class Member Objections, Plaintiff's submission of a Motion for Final Approval of the Settlement Agreement, as well as any other submissions by Plaintiff or Defendants.

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DONE AND ORDERED in Chambers at Fort Pierce, Florida this 18th day of January
2022.

A handwritten signature in black ink, appearing to read 'Aileen Cannon', written in a cursive style.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record