

**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.

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

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

Defendants.

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 **May 9, 2022 at 10:00 A.M.** at the federal courthouse located at 101 South U.S. Highway 1, Fort Pierce, FL 34950 to consider whether to finally approve the Settlement (the “Final Approval Hearing”).

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 January 18, 2022, 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 April 8, 2022 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 April 4, 2022 and objections that are hand-delivered must be received by the Court, Class Counsel and Counsel for the Defendants by April 8, 2022. Objections cannot be emailed to the Court; objections that are emailed must be received by Class Counsel and Counsel for the Defendants by April 8, 2022. 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 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 April 4, 2022 or must e-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 April 8, 2022. To be considered timely, motions that are mailed must be postmarked by April 4, 2022, and motions that are hand-delivered must be received by the Court, Class Counsel and Counsel for the Defendants by April 8, 2022.

3) Opportunity to Opt Out of, and Be Excluded from, the Settlement Class. 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 this Class Notice shall result in a waiver of the right to opt out. Any potential Settlement Class Members, who either do not attempt to or fail to properly and timely opt out, shall remain part of the Settlement Class and, if the Settlement Agreement ultimately is approved, be bound by the Settlement. An Exclusion (or Opt-Out) Form has been included in the email or the mailing envelope by which this Class Notice was sent. An Exclusion or Opt-Out Notice must be received by Class Counsel by 12:00 midnight on April 8, 2022 in order to be effective.

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 May 9, 2022 at 10:00 A.M. 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?

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| April 4, 2022 | If sent by U.S. Mail, All NOTICES OF APPEARANCES AND MOTIONS must be postmarked and mailed to the Court and postmarked and mailed to Class Counsel and Counsel for the Defendants. |
| April 8, 2022 | If hand-delivered, All NOTICES OF APPEARANCES AND MOTIONS must be received by the Court and emailed or hand-delivered to Class Counsel and Counsel for the Defendants. |
| April 4, 2022 | If sent by U.S. Mail, All OBJECTIONS must be postmarked and mailed to the Court and postmarked and mailed to Class Counsel and Counsel for the Defendants. |
| April 8, 2022 | If hand-delivered, All OBJECTIONS must be received by the Court and emailed or hand-delivered to Class Counsel and Counsel for the Defendants. |
| May 9, 2022 at 10:00 A.M. | 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.