

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CA No. 2085-CV-00971D

JOEL BURMAN as the Legal Representative of
the Estate of Mary Burman, on behalf of Ms.
Burman and all others similarly situated,

Plaintiff,

v.

CONTINUING CARE MANAGEMENT LLC;
WHITNEY PLACE AT SHARON LLC;
WHITNEY PLACE AT SHARON LIMITED
PARTNERSHIP, d/b/a WHITNEY PLACE AT
SHARON; WHITNEY PLACE AT SHARON
MANAGEMENT LLC; SALMON HEALTH
AND RETIREMENT; and SHI II WHITNEY
PLACE SHARON, LLC.,

Defendants.

PLAINTIFF'S UNOPPOSED
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Now comes Joel Burman, personal representative of the estate of Mary Burman (“Plaintiff” or “Burman”), by and through counsel (“Class Counsel”), and hereby presents *Plaintiff's Unopposed Motion for Final Approval of the Class Action Settlement* as set forth in the *Class Action Settlement Agreement* (“*Settlement Agreement*”) preliminarily approved by this Court.¹ In support of this motion, Plaintiff attaches herewith a memorandum of law in support.

WHEREFORE, for the reasons set forth in the attached and incorporated memorandum of law, Plaintiff respectfully requests this Court grant final approval of the *Settlement Agreement* and

¹ The Settlement Agreement is attached hereto as **Exhibit A**.

enter the *[Proposed] Final Order and Judgment*, attached to the memorandum of law as **Exhibit**

E.

Respectfully submitted,
Plaintiff by his Counsel:

/s/ Michael C. Forrest

Michael C. Forrest, Esq. (BBO #681401)

Forrest, Mazow, McCullough,

Yasi & Yasi, P.C.

2 Salem Green, Suite 2

Salem, MA 01970

(617) 231-7829

DATED: May 1 , 2023.

CERTIFICATE OF SERVICE

I, Michael C. Forrest hereby certify that a true copy of the above document was served upon the attorney(s) of record for each party on 1st day of May 2023.

/s/ Michael C. Forrest

Michael C. Forrest, Esq.

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Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S UNOPPOSED
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Now comes Joel Burman, personal representative of the estate of Mary Burman (“Plaintiff” or “Burman”), by and through counsel (“Class Counsel”), and hereby presents this Memorandum in support of the *Plaintiff’s Unopposed Motion for Final Approval of the Class Action Settlement* as set forth in the *Class Action Settlement Agreement* (“*Settlement Agreement*”) preliminarily approved by this Court.¹ The proposed settlement resolves the claims of Burman against Continuing Care Management LLC; Whitney Place at Sharon LLC; Whitney Place at Sharon Limited Partnership, D/B/A Whitney Place at Sharon; Whitney Place at Sharon Management LLC; Salmon Health and Retirement; and Shi-II Whitney Place Sharon, LLC (collectively “Defendants” or “Salmon Health”).

The *Settlement Agreement* presented to the Court for Final Approval is an outstanding result for Class Members. Here, the *Settlement Agreement* provides direct relief to the Class Representative and all Class Members who: (1) entered into contracts with Defendants; (2) paid an upfront Community Fee; and/or (3) paid Defendants a Security Deposit, Last Month’s Charges, and/or Prepaid Final Fees at or before the inception of their tenancy.

Plaintiff has concluded, in light of the benefits of the Settlement, along with the costs, risks, and delay of litigation, that this Settlement is fair, reasonable, adequate, and in the best interests of all members of the Class.

Accordingly, and as set forth herein, Plaintiff has concluded, in light of the costs and delay of litigation, that he seeks to settle this Action on the terms and conditions set forth in the *Settlement Agreement*.

¹ The Settlement Agreement is attached hereto as **Exhibit A**.

I. PROCEDURAL BACKGROUND

On or about September 9, 2020, Mary Burman commenced this action in the Worcester County Superior Court. See, Docket Ref. No. 1. On November 12, 2020, Mary Burman passed away. On January 20, 2021, Joel Burman was appointed the legal representative of the estate of Mary Burman. On February 17, 2021, this Court allowed the requested substitution of Joel Burman as the legal representative of the estate of Mary Burman. On September 22, 2021, the Parties mediated this action with the Hon. Hinkle, J. (Ret.), however, said mediation was unsuccessful. On October 8, 2021, Plaintiff filed a *Motion to Amend*. On October 14, 2021 the Court allowed the proposed amendment to the operative complaint.

On January 28, 2022, Plaintiff filed her *Motion to Amend*, to include claims for Breach of Contract based upon allegations that despite the plain and unambiguous language in its Residency Agreements, Defendants purportedly did not utilize any portion of the Community Fees for the express purposes it promised and represented to its ALR tenants in the Residency Agreements. On February 8, 2022 the Court allowed the proposed amendment to the operative complaint.

On April 14, 2022 Plaintiff file her *Motion for Class Certification*. On June 2, 2022 the Court heard argument on Plaintiff's *Motion for Class Certification*. On August 9, 2022 the Court denied Plaintiff's *Motion for Class Certification* holding that, *inter alia*, the resolution of over 100 claims was not impracticable; and further, that an individual assessment of harm would be required. See, Docket No. 22; but see, In re TJX Cos. Retail Sec. Breach Litig., 246 F.R.D. 389, 398 (D. Mass. 2007) ("Need for individualized damages decisions does not ordinarily defeat predominance requirement for class certification where there are disputed common issues as to liability."); and Campbell v. Glodis, 2011 WL 2736502, *5 (Mass. Super. Ct. May 27, 2011) ("the presence of individual questions does not, *per se*, contraindicate class action treatment.").

On February 23, 2023, the Court allowed preliminary Approval and certified a settlement class for the purposes of class-wide settlement.

II. THE SETTLEMENT CLASS

For the purposes of Settlement only, the Court certified (for the purposes of Class settlement only) a “Class” defined as follows:

All current and former residents during the Class Period, as defined, of ALRs in Massachusetts managed, owned, and/or operated by Salmon Health who:

- A. Paid a Community Fee; and/or
- B. Paid an amount in consideration of Last Month’s Charges; and
- C. Has not previously entered a settlement with Salmon Health regarding claims concerning Community Fees and/or Last Month’s Charges.

III. SUMMARY OF SETTLEMENT PROVISIONS, SETTLEMENT CLASS RELIEF, AND NOTICE.

A. Settlement Agreement Terms and Relief

The Settlement provides a compromise that considers the strengths and weaknesses of the Parties’ respective positions, as well as, the risks and costs associated with continued litigation, including a trial and potential additional appeals.

The following summary of the Settlement provides an outline of principal terms but is subject to and does not alter the provisions set forth in the Settlement Agreement.

In consideration of a full, complete, and final settlement of this Action, and in consideration of dismissal of the Action with prejudice, and the Releases as set forth in the Settlement Agreement (and subject to the Court’s approval), Defendants agree to provide significant financial compensation to Settlement Class Members, as well as instituting remedial measures going forward.

1. Class Claim Fund

Salmon Health shall make a total settlement, in accordance with the claims procedures set forth herein, of one million dollars (\$1,000,000.00) ("Claim Fund"). The Claim Fund shall cover all payments to be made to participating Settlement Class Members, as well including the costs of Notice, administration, Plaintiff's incentive award and Plaintiff's Counsel's costs and fees. The Claim Fund class payments shall be distributed to:

- A. Any former resident Settlement Class Member who paid a Community Fee or Last Month's Charges during the Class Period. Said Settlement Class Member shall be entitled to their *pro rata* share of the Claim Fund, which amount shall be distributed by the Claims Administrator in the manner set forth herein.
- B. Any Settlement Class Member who, as of the time of Final Approval, is a current resident Settlement Class Member of a Salmon Health ALR and who paid a Community Fee or Last Month's Charges during the Class Period. Said Class Member shall be entitled to their *pro rata* share of the Claim Fund, which amount shall be distributed by the Claims Administrator in the manner set forth herein. Current resident Settlement Class Members shall not be required to submit a Claim Form to be entitled to their *pro rata* share of the Claim Fund.
- C. The cost of Class Notice, administration, incentive award and attorney fees shall be funded by the Claim Fund.

2. Unclaimed Funds:

The checks issued by the Claims Administrator shall be valid for ninety (90) days following their issuance or receipt after return as undeliverable. The Parties agree that should any Settlement Class Member fail to cash their check within ninety (90) days of its issuance, and after reasonable efforts to locate such persons for whom such checks were returned, such unclaimed funds shall be

re-distributed to class members who submitted claims or qualify as current residents. Should any Settlement Class Member fail to cash the second distribution check within ninety (90) days of its issuance then any such unclaimed funds shall be paid to the Massachusetts IOLTA Committee as the *cy pres* beneficiary.

3. Remedial Measures/ Equitable Relief

A. Last Month's Charges Fee. Going forward, for all prospective residents at ALRs owned, operated, and/or managed by Salmon Health in Massachusetts, Salmon Health shall deposit any Last Month's Charges collected from such residents in an interest-bearing account; and further, shall credit, or pay, accrued interest on the Last Month's Charges to residents on an annual basis or, should a residency agreement terminate prior to its one year anniversary, shall pay interest within thirty (30) days of the date of the termination of said residency agreement.

1. For all current residents who paid Last Month's Charges, upon termination of their tenancy Salmon shall credit the resident's account in the amount deposited plus 5% per annum and apply it to outstanding charges and return any balance.

B. Community Fees. Going forward, Salmon Health shall deposit Community Fees collected from such residents in a separate account and allocate such funds solely for ALR-distinctive services.

C. Subsequent Legal Confirmation. The remedial measures described above shall continue to the earlier of: (i) judicial, legislative, or regulatory guidance confirming that such an approach is not necessary to comply with M.G.L. §15B and or M.G.L 19D, § 1; or (ii) a five-year period which commences upon the anticipated date of the final approval of the Settlement.

B. Notice to Settlement Class Members

Subject to the Court's Order allowing Preliminary Approval, the Claims Administrator provided the Settlement Class with notice in accordance with the order of the Court. See, Exhibit B (Affidavit of Claim Administrator).

More precisely, in accordance with the timetable established, the Claims Administrator: (a) issued Notice and Claim Forms by first-class mail, postage prepaid, to the most current address available for each Settlement Class Member; and (c) Posted the Notice and claim information on a designated Settlement Administration website (www.salmonhealthlrsettlement.com). Id.

Finally, in accordance with the Settlement Agreement, the Claims Administrator followed the procedures to be be instituted with regard to Undeliverable Notices and Best Notice Practicable, in order to ensure that the Notice procedures satisfy the requirements of the Massachusetts Rules of Civil Procedure, the Constitution of the Commonwealth of Massachusetts, the United States Constitution, and any other applicable law or rule.

As of this Motion, the Claims Administrator has received 68 Claim Forms and 40 Online Claim Forms from former resident Class Members; in addition to the direct payment of all Current Resident Settlement Class Members. Id.

C. Effect of Settlement Agreement

Pursuant to the Settlement Agreement, the following will become effective upon the Final Effective Date and the Releasees shall be bound as follows:

- 1) Be bound by this Settlement Agreement; and
- 2) Have recourse exclusively to the benefits, rights, and remedies provided by the Agreement; and
- 3) Be barred from pursuing any other action, demand, suit, or other claim against the

Releasees with respect to the Released Claims unless brought as a result of breach of this Agreement.

See, EXHIBIT A, Art. VII.

IV. ARGUMENT

A. Final Approval of The Settlement Is Appropriate.

In Massachusetts there is a “well-established public policy favoring the private settlement of disputes.” Cabot Corp. v. AVX Corp., 448 Mass. 629, 638 (2007); see also, Moloney v. Boston Five Cents Sav. Bank FSB, 422 Mass. 431, 435 (1996)(noting that [s]ettlement is favored because it minimizes the transaction costs of litigation”); and Williams v. First Nat’l Bank, 216 U.S. 582, 595 (1910)(“Compromises of disputed claims are favored by the courts.”).

In determining final approval, a court must determine whether the proposed settlement is “fair, reasonable and adequate.” Sniffin v. Prudential Ins. Co. of America, 395 Mass. 415, 421 (1985)(citation omitted). In addition, when making determinations regarding a proposed settlement, the court must analyze whether the interests of the class are better served by settlement than by further litigation. See, In re Relafen Antitrust Litigation, 360 F. Supp. 2d 166 (D.Mass. 2005).²

1. The Class continues to Meet the Requirements for Certification.

The Court certified the present Class for the purposes of settlement on February 24, 2023. See, Docket No. 26. Here, as these claims involve the same parties, form agreements, and legal

² The Massachusetts Supreme Judicial Court (“SJC”) has recognized that although Mass. R. Civ. P 23 is independent from its Federal counterpart, in most cases the same standards of legal analysis apply. See, Waldman v. American Honda Motor Co., Inc., 413 Mass. 320 (1992)(the Supreme Judicial Court stating that where it has, “adopted comprehensive rules of civil procedure in substantially the same form as the earlier Federal Rules of Civil Procedure, the adjudged construction theretofore given to the Federal rules is to be given to our rules, absent compelling reasons to the contrary or significant differences in content.”).

analysis; the Class representatives and Class continue meet the requirements of numerosity, commonality, typicality, adequacy, predominance, and superiority all which are necessary for class certification pursuant to Mass. R. Civ. P. Rule 23; and M.G.L. c. 93A.

2. Class Members Received Proper and Adequate Notice.

In accordance with the terms of the Notice requirements set forth in the *Settlement Agreement* and order of the Court, the Claims Administrator effectuated the comprehensive notice plan in accordance with the terms of the Agreement and order of the Court. See, **Exhibit B**. Notice to Class Members included: (1) Notice by First Class Mail to all current resident Class Members; (2) Notice by First Class Mail to all former residents who provided new forwarding information; and (3) a class settlement website. See, **Exhibit B**.

As of the filing of this motion, 1,087 Notices Packets were distributed *via* first-class mail informing Class Members of the terms of settlement. See, **Exhibit B**. Additionally, BrownGreer emailed a notification and link to the Settlement website and Settlement Class Notice to 85 individuals for whom we had a valid email address. Id. After the initial distribution, 182 Notices were returned as undeliverable and were researched for updated addresses. Id. The Claims Administrator remailed Notices with Address Corrections based upon information from the LexisNexis. Id. Further, the Claim Administrator operated a claim website, as of filing there have been over 1,500 site views since the Settlement Website went live.

To, date the claim administrator has received 68 completed Claim Forms mailed to BrownGreer, and at least 40 Claim Forms (for a total of 108 Claim Forms) submitted online through the Settlement Website from Settlement Class Members. This presently represents 13% of the former resident Settlement Class members who were mailed the Settlement Notice. Former resident Settlement Class members have until 28 days after the date of Final Approval to submit

Claim Forms.

Finally, as of the filing of this Motion, there have been no objections to the proposed *Settlement Agreement* from any Class Member. See, **Exhibit C** (*Affidavit of Michael C. Forrest*).

Accordingly, and for these reasons, Plaintiff submits that the Notice procedures effectuated by the Parties complied with the requirements of Due Process and the standards of fairness, completeness, and neutrality required under the authority of the Court, the law of Massachusetts and the requirements of the Constitution of the United States.

3. The Terms of the Settlement Agreement are Fair and Reasonable.

Before granting final approval of a proposed class action settlement, the Court must find that the proposed settlement is fair, reasonable, and adequate. See e.g., MASS. R. CIV. P. 23(c); see also, Sniffin, supra at 421.

Although no set standard exists for determining the fairness, reasonableness and adequacy of a proposed class settlement, courts will often look at the following: (1) the complexity, expense, and duration of litigation; (2) the amount of the proposed settlement compared to the amount at issue; (3) reaction of the class to the settlement; (4) the stage of proceedings and the amount of discovery completed; (5) Plaintiff's likelihood of success on the merits and recovering damages on his claims; (6) whether the agreement provides benefits which Plaintiff could not achieve through protracted litigation; (7) good faith dealings and the absence of collusion; (8) the settlement's terms and conditions. See, e.g., Sniffin, supra at 420-422; Rolland v. Patrick, 562 F. Supp. 2d 176 (D. Mass. 2008); In re Relafen Antitrust Litig., 231 F.R.D. 52, 72 (D. Mass. 2005); In re Lupron Mktg. & Sales Practices Litig., 228 F.R.D. 75, 93 (D. Mass. 2005); Celluci, 191 F.R.D. 3, 8-9 (D. Mass. 2000); M. Berenson Co. v. Faneuil Hall Marketplace, Inc., 671 F. Supp. 819, 822-833 (D. Mass. 1987).

Further, when deciding whether to approve a class action settlement, a court must determine whether the settlement “is fair, reasonable, and adequate.” See, Sniffin, supra at 421.

Among the factors a court may consider are:

- (a) Whether the proposed settlement was fairly and honestly negotiated;
- (b) Whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;
- (a) Whether the value of the proposed settlement outweighs the mere possibility of future relief after protracted and expensive litigation; and
- (d) Whether the settlement is fair and reasonable.

Fortin v. Ajinomoto USA, Inc., 2005 WL 3739852, *2 (Mass. Super. Ct. Dec. 15, 2005); see also, Sniffin, 395 Mass. at 421 (most important factor is “strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement”).

A “strong initial presumption” of fairness arises where the parties can show that “the settlement was reached after arm’s-length negotiations, that the proponents’ attorneys have experience in similar cases, that there has been sufficient discovery to enable counsel to act intelligently, and that the number of objectors or their relative interest is small.” Rolland v. Cellucci, 191 F.R.D. at 6; see also, City P’ship Co. v. Atlantic Acquisition Ltd. P’ship, 100 F. 3d 1041, 1043 (1st Cir. 1996). In the case *sub judice*, the terms of the *Settlement Agreement* were the product of arm’s-length negotiations between experienced attorneys; and moreover, are fair and reasonable and have achieved the best result for all the Parties.

That is, an examination of each of the factors required for certification demonstrates that the *Settlement Agreement* provides fair, reasonable, and adequate relief to all members of the Class.

First, with respect to complexity, expense, and duration of litigation; further prosecution

of this case shall require significant additional time and expense. That is, in the event that this Settlement Agreement is not approved, the Parties shall in all likelihood face additional lengthy and costly legal disputes involving, among other things: (a) additional discovery and depositions; (c) likely dispositive motion practice; (d) a renewed *Motion for Class Certification* and (e) a lengthy and complicated trial.

The Court has already entertained numerous motions, and in the context of discovery it is likely that there would be exorbitant expense to be incurred in relation to the production of class-wide merits-based discovery, should a renewed certification motion be allowed.

Barring settlement, this case shall continue for many years. Protracted litigation would likely result in the expenditure of substantial additional costs and legal fees (by both Parties) before reaching a final resolution, including exhaustion of all appeals. Moreover, further prolonging of the case will adversely impact Settlement Class Members, who are elderly and infirm.

As it stands, the proposed Settlement faces challenges posed by the advanced age and declining health of the Settlement Class Members. Such challenges only increase if the case extends for years of continued litigation.

Second, with respect to the amount of the Settlement compared to the amount potentially at issue, the Parties agree that the value of the Settlement is fair and reasonable given the various challenges facing Plaintiff.

Specifically, each Settlement Class Member shall be entitled to his/her *pro rata* share of the Claim Fund. In sum, the significant compensation to be paid to Settlement Class Members is reasonable considering the risks of litigation, the uncertainty of likely appeals, and delay posed to each Settlement Class Member. See, In re Lupron Mktg. & Sales Practices Litig., 345 F. Supp. 2d 135, 138 (D. Mass 2004) (finding the proposed settlement warranted preliminary approval

because, *inter alia*, “the proposed settlement amount is sufficiently within the range of reasonableness”).

Moreover, the reasonableness of the recovery achieved is evidenced by a comparison of a similar claim settled on a class-wide basis in Massachusetts. That is, in a similar class-wide settlement, a class of plaintiffs was successful in recovering a portion of the elderly residences collected Community Fee. See, <https://www.benchmarkmassachusettsalrsettlement.com/Secure/Index> (last visited, April 3, 2023). Here, Plaintiff and the Settlement Class shall be entitled to their share of the Claim Fund which shall fairly compensate class members for a portion of the funds paid.

In sum, the significant compensation to be paid to Settlement Class Members is reasonable considering the risks of litigation, the uncertainty of likely appeals, and delay posed to each Settlement Class Member.

Accordingly, the Settlement Agreement fairly and adequately resolve the claims at issue based upon consideration of “the terms of the compromise with the likely rewards of litigation.” See, *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414,424-25 (1968).

Third, the Parties expect that given the extent of the individual compensation, the Settlement will satisfy all members of the Settlement Class. Furthermore, each Settlement Class Member has been provided an opportunity to express any objections to this settlement; and to date, not Class Member has provided an objection.

Fourth, as above, the Parties engaged in extensive arms-length negotiations, which eventually led to the settlement terms now presented to the Court.

Further, with respect to the stage of proceedings, and the amount of discovery completed,

Plaintiff's Counsel has thoroughly investigated the claims represented. Likewise, Defendants conducted an extensive internal review to assess and identify Settlement Class Members. In addition, Plaintiff confirmed the accuracy of representations made by Salmon Health through formal confirmatory discovery, which was conducted during the Notice period. This confirmatory discovery included the production of documents evidencing the identities of all putative Class Members.

Fifth, with respect to Plaintiff's likelihood of success, Defendants contend to possess certain defenses which may limit the amount of recovery owed to each Settlement Class Member; including challenging the percentage of Community Fees utilized for non-ALR services. In such an event, there exists a real possibility that the majority of the settlement Class may be left with no alternative other than to file hundreds of individual claims.

Likewise, Defendants recognize the costs associated with further litigating the action, as well as the risk of an ultimate judgment and potential award of multiple damages for Plaintiff and the Settlement Class that exceeds the amount agreed-to by way of the Settlement Agreement.

Sixth, with respect to whether the Settlement Agreement provides benefits which Plaintiff and the Settlement Class could not achieve through protracted litigation, the Settlement provides significant compensation to members of the Settlement Class compared to their best potential full actual damages. Further, settlement at this time avoids further delay of any such compensation and payments to Settlement Class Members and/or their representative estates.

More precisely, the settlement provides an excellent result with respect to both the return of a portion of the Community Fee and Last Month's Charges. Here, Class members shall be entitled to their *pro rata* share of the Claim Fund. See, *Settlement Agreement*.

Further, the agreement shall lead to systematic and equitable changes in Defendants up-

front collection policies as addresses above.

Seventh, the Settlement was reached as the result of good faith dealings and the absence of collusion. Plaintiff and Defendants are represented by experienced and competent counsel familiar with class action litigation. Settlement Class Counsel has obtained other significant court-approved settlements of class action cases.³ Likewise, Defendant's counsel is experienced and highly competent in the defense of complex litigation and class action claims, including associated class actions involving Massachusetts ALRs and the theories of recovery set forth in this Action.

The experience and reputation of counsel weighs heavily in favor of the Settlement Agreement's approval. See e.g., Cotton v. Hinton, 559 F.2d 1326 (5th Cir. 1977); In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions, 410 F.Supp. 659, (D. Minn. 1974) ("The recommendation of experienced antitrust counsel is entitled to great weight."); and Fisher Brothers v. Phelps Dodge Industries, Inc., 604 F. Supp. 446, (E.D. Pa. 1985) ("The professional judgment of counsel involved in the litigation is entitled to significant weight.").

Finally, the Settlement Agreement was not reached as the product of collusive dealings, but, rather, was informed by the vigorous representation by experienced and qualified counsel. The determination to agree to the terms of the Settlement Agreement was made by experienced counsel who reached the Settlement terms only after significant arm's-length negotiation.

These circumstances further support the Court's final approval of the Settlement. See Lyons v. Marrud, Inc., No. 66 Civ. 415, 1972 U.S. Dist. LEXIS 13401, at *5 (S.D.N.Y. June 6, 1972)

³ Settlement Class Counsel has successfully represented numerous classes throughout the Commonwealth and in Federal Courts. See e.g., O'Hara et al. v. Diageo Beer Co., et al, CA No. 1:15-cv-14139-MLW (Allowed December 2, 2021, Wolf, J.); Moran et al. v. Stonehill College, CA No. 2077-cv-00431A (Allowed August 18, 2022, Dunigan, J.); Hartigan et al. v. The Realty Assoc. fund X LP., et al., CA No. SUCV-2018-00056-BLS1 (Allowed October 5, 2021, Davis, J.); and Gowen et al., v. Benchmark Assisted Living, LLC, CA No. 1684-CV-03972-BLS2 (June 1, 2021, Salinger, J.).

(“Experienced and competent counsel have assessed these problems and the probability of success on the merits. They have concluded that compromise is well-advised and necessary. The parties’ decision regarding the respective merits of their positions has an important bearing on this case.”); Reed v. Gen. Motors Corp., 703 F.2d 170,175 (5th Cir. 1983); and Armstrong v. Bd. Of Sch. Dirs., 616 F.2d 305,325 (7th Cir. 1980).

Accordingly, the Settlement Agreement meets the standards for final approval under MASS. R. CIV. P. Rule 23 and 93A because the *Settlement Agreement* resolves the claims at issue based upon “the terms of the compromise with the likely rewards of litigation.”; and accordingly, these class claims meet the standards for final approval of the *Settlement Agreement*. See, Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414,424-25 (1968).

4. The Relief Obtained through the Settlement Agreement is Fair and Reasonable and Represents an Excellent Result for the Class.

As above, pursuant to and including all additional terms of the *Settlement Agreement*, Salmon Health shall undertake the following: Salmon Health will make payments to participating Settlement Class Members who submit a valid Claim Form (or are paid directly as current residents), in a total amount not to exceed one-million dollars (\$1,000,000.00) (“Claim Fund”). This amount includes consideration for the costs of Settlement Class notice and administration, as well as Plaintiff’s requested incentive awards.

More specifically, upon final; approval of the *Settlement Agreement*, Salmon Health (by way of Claim Administrator) shall issue Claim Fund *pro rata* payments to Class Members who submit a valid claim form (or are current residents).

Finally, in exchange for the relief set forth herein, as of the Effective Date (as defined in the *Settlement Agreement*), the Releasing Parties (as defined in the *Settlement Agreement*) shall be

deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties (as defined in the *Settlement Agreement*) from any and all of the Released Claims (as defined in the *Settlement Agreement*).

B. The Parties Have Complied With Mass. R. Civ. P. 23(e)(3)

Pursuant to Mass. R. Civ. P. 23(e)(3), on February 24, 2023, Class Counsel notified the Massachusetts IOLTA Committee (“the Committee”) of the *Settlement Agreement*,⁴ the preliminary approval of same, and the date of the Fairness Hearing. See, Exhibit D (*Letter to Massachusetts IOLTA Committee- No Exhibits*). IOLTA does not object to the settlement. See, Exhibit B; and Docket No. 27.

C. The Reaction of the Class Supports Final Approval.

As of the date of this Motion for Final Approval, there have been no objections to the *Settlement Agreement* by any Class Member. That is, no Class Member has contacted Plaintiff’s Counsel, Defendants’ Counsel, or the Court to raise objections to the *Settlement Agreement* as they apply to the resolution of the certified Class claims. See, Exhibit B.

Accordingly, Plaintiff submits that the absence of any objection from any Class Member lends further support to the joint request for final approval of the *Settlement Agreement* and the entry of the accompanying [*Proposed*] *Final Order and Judgment* attached hereto as Exhibit E.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests this Court grant final approval of the *Settlement Agreement* and enter the [*Proposed*] *Final Order and Judgment*, attached to this motion for approval as Exhibit E.

⁴ Class Counsel provided IOLTA with a copy of the Settlement Agreement at the time of notice.

Respectfully submitted,
Plaintiff by his Counsel:

/s/ Michael C. Forrest

Michael C. Forrest, Esq. (BBO #681401)
Forrest, Mazow, McCullough,
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2 Salem Green, Suite 2
Salem, MA 01970
(617) 231-7829
DATED: May 1, 2023.

CERTIFICATE OF SERVICE

I, Michael C. Forrest hereby certify that a true copy of the above document was served upon the attorney(s) of record for each party on 1st day of May 2023.

/s/ Michael C. Forrest

Michael C. Forrest, Esq.

Exhibit A

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CA No. 2085-CV-00971D

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SHARON; WHITNEY PLACE AT SHARON
MANAGEMENT LLC; SALMON HEALTH
AND RETIREMENT; and SHI II WHITNEY
PLACE SHARON, LLC.,

Defendants.

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement is entered into by and among: Defendants, Continuing Care Management LLC; Whitney Place at Sharon LLC; Whitney Place at Sharon Limited Partnership, d/b/a Whitney Place at Sharon; Whitney Place at Sharon Management LLC; Salmon Health and Retirement; and SHI II Whitney Place Sharon, LLC (collectively “Salmon Health”) and Joel Burman as the Legal Representative of the Estate of Mary Burman, on behalf of Ms. Burman and all others similarly situated (“Plaintiff”) in the above-captioned action.

ARTICLE I
PREAMBLE

WHEREAS, on September 4, 2020, Plaintiff filed this Action, CA No. 2085-CV-00971, on behalf of the Estate of Mary Burman and a putative class of similarly situated current and former residents of Assisted Living Residences (“ALRs”) in Massachusetts against Salmon Health;

WHEREAS, Plaintiff's claims arise from Salmon Health's: (1) collection of upfront Community Fees at or before the inception of residents' occupancy; and (2) handling of residents' Last Month's Charges and/or Prepaid Final Fees.

WHEREAS, Plaintiff alleges that Salmon Health's conduct in this regard violated M.G.L. c. 186, § 15B (also referred to herein as "Security Deposit Statute"); M.G.L. c. 93A, § 2 (also referred to herein as "Consumer Protection Act"); and further constituted a breach of contract;

WHEREAS, Salmon Health denies the allegations as pled in the Action and all allegations of wrongdoing and liability;

WHEREAS, Plaintiff has concluded, in light of the benefits of the Settlement, along with the costs, risks, and delay of litigation, that this Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class, defined below;

WHEREAS, Salmon Health has concluded, in light of the costs and delay of litigation, that it wishes to settle this Action on the terms and conditions set forth herein;

NOW THEREFORE, it is hereby stipulated and agreed that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, and subject to approval of the Court, this Action shall be fully and finally settled, and thereafter dismissed with prejudice under the terms and conditions included herein.

ARTICLE II
DEFINITIONS

As used in this Agreement, as well as in the related documents attached hereto, the following terms shall have the meanings set forth below:

- (a) "Action" means: Joel Burman as the Legal Representative of the Estate of Mary Burman, et al. v. Continuing Care Management LLC; Whitney Place at Sharon LLC; Whitney Place at Sharon Limited Partnership, d/b/a Whitney Place at Sharon; Whitney Place at Sharon

Management LLC; Salmon Health and Retirement; and SHI II Whitney Place Sharon, LLC, Worcester Superior Court, Civil Action No.: 2085-CV-00971.

- (b) “ALR” means Assisted Living Residence, as defined in M.G.L. c. 19D, §1.
- (c) “Salmon Health” includes the Defendants Continuing Care Management LLC; Whitney Place at Sharon LLC; Whitney Place at Sharon Limited Partnership, d/b/a Whitney Place at Sharon; Whitney Place at Sharon Management LLC; Salmon Health and Retirement; and SHI II Whitney Place Sharon, LLC and all others that own an interest in, in whole or in part, or manage any ALR under the Salmon Health umbrella, including but not limited to those listed as Releasees herein.
- (d) “Claim Form” means the *Class Action Claim and Certification Form*, in the form as attached hereto to as **Exhibit 2**, including any additional information the Claims Administrator may require concerning authority to act on behalf of any Class Member or Estate of a Class Member.
- (e) “Claim Fund” has the meaning as defined in **Article III**, below.
- (f) “Claim Period” shall mean the period beginning on the date of entry of Preliminary Approval and continuing through twenty-eight days (4-weeks) beyond the date of Final Approval.
- (g) “Claims Administrator” shall mean BrownGreer, PLC, the entity employed to facilitate the Notice of Class settlement, the distribution of the Claim Fund, and the distribution of other amounts awarded by the Court by way of its Final Order and Judgment.
- (h) “Settlement Class” is defined as follows:
 - All current and former residents during the Class Period, as defined, of ALRs in Massachusetts managed, owned, and/or operated by Salmon Health who:
 - A. Paid a Community Fee; and/or
 - B. Paid an amount in consideration of Last Month’s Charges; and

C. Has not previously entered a settlement with Salmon Health regarding claims concerning Community Fees and/or Last Month's Charges.

- (i) "Settlement Class Member" means any current or former resident of a Salmon Health ALR in Massachusetts who meets the definition of the Settlement Class.
- (j) "Plaintiff's Counsel" means the attorneys of Forrest, Mazow, McCullough, Yasi, and Yasi, P.C.
- (k) "Settlement Class Notice" or "Notice" means the *Notice of Proposed Class Action Settlement*, in the form as attached hereto to as **Exhibit 1**.
- (l) "Settlement Class Period" or "Class Period" means September 4, 2016, through the date of this Agreement.
- (m) "Plaintiff" means Joel Burman as the Legal Representative of the Estate of Mary Burman.
- (n) "Complaint" means Plaintiff's putative class-action complaint, originally filed on September 4, 2020, as amended.
- (o) "Salmon Health's Counsel" means Louis Ciavarra and other attorneys of Bowditch & Dewey, LLP.
- (p) "Effective Date" means either: the date (i) thirty (30) days after Final Order and Judgment becomes final, if no appeal of said order is filed within that 30-day period; or (ii) the date of the final disposition of any appeal.
- (q) "Fees and Expense Application" means the written application by which Plaintiff shall request that the Court award attorneys' fees, an incentive award to the Plaintiff, and/or litigation expenses in relation to this Action.
- (r) "Final" with respect to the Order and Judgment means the Order and Judgment as entered on the docket by the Court in this Action has not been reversed, stayed, modified, or

amended, and as to which: (1) the time to appeal under the Massachusetts Rules of Civil Procedure has expired and no appeal, further appeal or motion to extend the time for filing an appeal has been timely filed; or (2) any appeal has been resolved by the highest court to which it was appealed, upholding or affirming the Order and Judgment. An appeal pertaining solely to an application for an award of attorneys' fees, costs, and expenses shall not in any way delay or preclude the Order and Judgment from being Final with respect to all other terms.

- (s) "Final Approval Hearing" or "Fairness Hearing" means the hearing at which the Court shall: (1) determine whether to grant final approval to this Agreement; (2) consider any timely objections to this Agreement (and all responses to objections by the Parties); (3) rule on the requested incentive awards for the Plaintiff, and (4) rule on Plaintiff's Fee and Expense Application.
- (t) "Final Approval" means final approval to this Agreement granted at the Final Approval Hearing and as reflected in the Final Order and Judgment.
- (u) "Final Order and Judgment" means the final order and final judgment, entered by the Court after the Final Approval Hearing, approving this Settlement Agreement as binding upon the Parties and the Settlement Class Members, setting and awarding the amounts for the Fee and Expense Award and Incentive Award pursuant to the Settlement Agreement, and dismissing the Action with prejudice.
- (v) "Parties" means Salmon Health and Plaintiff, collectively.
- (w) "Person" or "Persons" means any natural person, firm, corporation, unincorporated association, partnership, or other form of legal entity or government body, including its agents and representatives.

- (x) “Preliminary Approval Order” means the order, substantially in the form attached to the Motion for Preliminary Approval, in which the Court: (1) grants preliminary approval of this Agreement; (2) approves Plaintiff as Plaintiff; (3) preliminarily approves certification of the Settlement Class for settlement purposes only; (4) authorizes dissemination of Notice to the Settlement Class; and (5) enjoins any Settlement Class Member from filing any other actions based upon any of the Released Claims as defined herein.
- (y) “Released Claims” means and includes any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, costs, damages, penalties, prejudgment interest, actions, or causes of action, whether known or unknown, which Plaintiff and all Settlement Class Members have ever had, or hereafter, may claim to have, arising from or relating to Salmon Health’s and/or the Releasees’ collection, handling, processing, and/or use of Community Fees, Last Month’s Charges, security deposits, or any other up-front fees collected from Settlement Class Members, including but not limited to Salmon Health’s and the Releasees’ associated compliance with or alleged violation of: (1) M.G.L. c. 186 § 15B; (2) 940 CMR 3.17; (3) M.G.L. c. 93A, § 2; and/or (4) any other common-law, statutory, or other legal obligation or duty associated with the collection, handling, processing, or use of Community Fees, Last Month’s Charges, security deposits, or any other up-front fee.
- (z) “Releasees” means Salmon Health and all current, former, and future owners of any ALR owned, operated, and/or managed by Salmon Health in Massachusetts; as well as all of their respective current and former parent companies, subsidiaries, affiliates, equity partners, shareholders, officers, directors, employees, attorneys, vendors, agents, insurers, re-insurers successors, and assigns. The Releasees include Salmon Health and Retirement

Group; Beaumont at the Willows LLP; Beaumont / Whitney Place at Westborough LLC; Willows at Westborough, LLP; Whitney Place at Natick, Inc.; Whitney Place at Natick LP; Beaumont Whitney Place Natick Realty LLC; Beaumont Whitney Place at Northborough Realty LLC; Beaumont Whitney Place at Northborough LLC; Whitney Place at Sharon LLC; Whitney Place Sharon Development LLC; SH II Sharon LLC; Whitney Place Medway Realty LLC; WP Medway Opco LLC; Willows at Medway Management LLC; The Willows at Medway LLC; and Salmon Medway Venture Member LLC.

- (aa) “Releasing Parties” means Plaintiff and each actual or potential Settlement Class Member, on behalf of themselves and any of their heirs, legal representatives, successors, predecessors and/or assigns.
- (bb) “Settlement Agreement,” “Settlement” or “Agreement” means this Class Action Settlement Agreement, including attached and incorporated exhibits.
- (cc) “Community Fee” means any fee charged at or before the inception of residency at a Salmon Health ALR apart from the monthly service fee unless said fee is specifically designated for services unique to an ALR.
- (dd) “Last Month’s Charges” means any fee charged at or before the inception of residency at a Salmon Health ALR designated to be held until the termination of the residency and applied to any outstanding charges.

ARTICLE III
SETTLEMENT CLASS RELIEF

- (a) In consideration of a full, complete, and final settlement of this Action, the dismissal of the Action with prejudice, and subject to the Court’s approval, the Parties agree to the following relief for the benefit of the Settlement Class:

- 1) Payments. Salmon Health shall make a total settlement, in accordance with the claims procedures set forth herein, of one million dollars (\$1,000,000.00) (“Claim Fund”). The Claim Fund shall cover all payments to be made to participating Settlement Class Members, as well including the costs of Notice, administration, Plaintiff’s incentive award and Plaintiff’s Counsel’s costs and fees. The Claim Fund class payments shall be distributed to:
 - A. Any former resident Settlement Class Member who paid a Community Fee or Last Month’s Charges during the Class Period. Said Settlement Class Member shall be entitled to their *pro rata* share of the Claim Fund, which amount shall be distributed by the Claims Administrator in the manner set forth herein.
 - B. Any Settlement Class Member who, as of the time of Final Approval, is a current resident Settlement Class Member of a Salmon Health ALR and who paid a Community Fee or Last Month’s Charges during the Class Period. Said Class Member shall be entitled to their *pro rata* share of the Claim Fund, which amount shall be distributed by the Claims Administrator in the manner set forth herein. Current resident Settlement Class Members shall not be required to submit a Claim Form to be entitled to their *pro rata* share of the Claim Fund.
 - C. The cost of Class Notice, administration, incentive award and attorney fees shall be funded by the Claim Fund.
 - D. Unclaimed Funds: Should any Settlement Class Member fail to claim their funds, or should the payment expire, the Parties agree that those funds shall be distributed to the Massachusetts IOLTA Committee as a *cy pres* beneficiary in accordance with provision Art. V(k)(C).

(2) Remedial Measures/ Equitable Relief.

- A. Last Month's Charges Fee. Going forward, for all prospective residents at ALRs owned, operated, and/or managed by Salmon Health in Massachusetts, Salmon Health shall deposit any Last Month's Charges collected from such residents in an interest-bearing account; and further, shall credit, or pay, accrued interest on the Last Month's Charges to residents on an annual basis or, should a residency agreement terminate prior to its one year anniversary, shall pay interest within thirty (30) days of the date of the termination of said residency agreement.
- 1) For all current residents who paid Last Month's Charges, upon termination of their tenancy Salmon shall credit the resident's account in the amount deposited plus 5% per annum and apply it to outstanding charges and return any balance.
- B. Community Fees. Going forward, Salmon Health shall deposit Community Fees collected from such residents in a separate account and allocate such funds solely for ALR-distinctive services.
- C. Subsequent Legal Confirmation. The remedial measures described in Sections (2)A and (2)B above shall continue to the earlier of: (i) judicial, legislative, or regulatory guidance confirming that such an approach is not necessary to comply with M.G.L. 186 , §15B and or M.G.L 19D, § 1; or (ii) a five-year period which commences upon the anticipated date of the final approval of the Settlement.
- D. Subject to Section 1(C) above, Salmon Health shall provide the funding, by way of the Claim Fund, for the costs of a Claims Administrator who shall be responsible for facilitating: (i) Class Notice; (2) distribution of the Claim Fund to Settlement

Class Members; (3) distribution of all other amounts awarded by the Court by way of Final Approval; and (4) determination of whether a Person qualifies as a Settlement Class Member. Provided that Salmon Health complies with its obligations to fund the Claim Fund and the payments to the Settlement Class as contemplated herein, Salmon Health shall have no obligation to participate in disputes concerning whether a Person qualifies as a Settlement Class Member.

- E. Payments to participating Settlement Class Members from the Claim Fund will be pursuant to the procedures set forth in Article V of this Agreement.

ARTICLE IV
CONFIRMATORY DISCOVERY

- (a) Confirmatory discovery shall serve to verify that all Settlement Class Members have been identified. Salmon Health shall provide, and Plaintiff's Counsel shall verify, information concerning Settlement Class Members' identities. Salmon Health shall provide Plaintiff's Counsel with an anonymized list of all potential Settlement Class Members (with each Settlement Class Member assigned a unique identifying number) containing the following information regarding each Settlement Class Member:
- (1) The ALR where such Settlement Class Member lives or lived;
 - (2) Whether the Settlement Class Member is a current or former resident of such ALR.
- (b) For Settlement Purposes Only. The Parties agree that all Confirmatory Discovery provided herein shall be used for settlement purposes only.
- (c) SALMON HEALTH AGREES TO PROVIDE THE ABOVE-DESCRIBED CONFIRMATORY DISCOVERY MATERIALS SUCH THAT CONFIRMATORY DISCOVERY MAY BE COMPLETED WITHIN SIXTY (60) DAYS FROM THE EXECUTION OF THIS SETTLEMENT AGREEMENT.

- (d) Nothing in this Settlement Agreement shall preclude Plaintiff's Counsel or Salmon Health's Counsel from making reasonable inquiries of each other, from time to time, regarding the progress of the administration of this Settlement, and the Parties shall respond promptly to such reasonable inquiries.

ARTICLE V
SETTLEMENT ADMINISTRATION

- (a) Salmon Health's Counsel and Salmon Health agree to reasonably cooperate with Plaintiff's Counsel and Claims Administrator to facilitate the following duties of Plaintiff's Counsel and Claims Administrator under this Settlement Agreement:
- (1) Identifying Settlement Class Members and providing last-known addresses for Settlement Class Members to the Claims Administrator;
 - (2) Notifying Settlement Class Members and providing Claim Forms;
 - (3) Issuing payment to each Settlement Class Member as described below.
- (b) Identification of Settlement Class Members. Salmon Health warrants and represents that it shall use reasonable best efforts to identify from its records all potential Settlement Class Members.
- (c) Settlement Class Member Contact Information. Within ten (10) days after the entry of the Preliminary Approval Order, Salmon Health shall provide the Claims Administrator and Plaintiff's Counsel the most up-to-date residential address and email address Salmon Health has for each Settlement Class Member.
- (d) Notice: Within twenty (20) days after the entry of the Preliminary Approval Order, and in accordance with the timetable established under the Preliminary Approval Order, the Claims Administrator at the direction of Plaintiff's Counsel shall:

- (1) Issue Notice and Claim Forms by first-class mail, postage prepaid, to the most current address available for each Settlement Class Member;
 - (2) Issue Notice and Claim Forms by email to the most current email address available for each Settlement Class Member;
 - (3) Post the Notice on a designated website and phone number for this Settlement Administration.
- (e) Additional forms of notice of the Settlement will be given to the Settlement Class Members as may be ordered by the Court.
- (f) Undeliverable Notices. If a Notice is returned as undeliverable, and a forwarding address is provided by the U.S. Postal Service, the Claims Administrator at the direction of Plaintiff's Counsel shall re-mail the Notice to such forwarding address. If a Notice is returned as undeliverable, and no forwarding address is available, the Claims Administrator shall search for a more current address through a recognized database, and if a more recent address is obtained through this method, re-mail the Notice to such address.
- (g) Best Notice Practicable. Compliance with the procedures described in this Article is the best notice practicable under the circumstances and shall constitute due and sufficient notice to potential Settlement Class Members of the pendency of the Action, the terms of the Settlement, and notice of Final Approval Hearing. Plaintiff's Counsel submits that these procedures satisfy the requirements of the Massachusetts Rules of Civil Procedure, the Constitution of the Commonwealth of Massachusetts, the United States Constitution, and any other applicable law or rule.
- (h) Claims Made. For all Settlement Class Members who do not reside at a Salmon Health ALR at the time of Final Approval of the Settlement ("Non-Resident Settlement Class

Members”), the Settlement shall be administered by the Claims Administrator on a claims made basis. The Claims Period shall run from the date of the Preliminary Approval Order through twenty-eight (28) days beyond the date of Final Approval.

(1) All Non-Resident Settlement Class Members (or their respective estates or authorized representatives) shall be required to provide a completed Claim Form to the Claims Administrator within the Claim Period to be eligible for any payment pursuant to this Agreement. The Claims Administrator shall determine any disputes concerning whether a Person is entitled to payment.

(i) Current Residents: For Settlement Class Members residing in a Salmon Health ALR at the time of Final Approval (“Resident Settlement Class Members”), the Claims Administrator shall pay them the amounts payable under Article III within forty (40) days of the Effective Date and Resident Settlement Class Members shall not be required to take any action to participate in the Settlement.

(1) No later than five (5) days prior to the Final Approval Hearing, Salmon Health will provide Plaintiff’s Counsel and the Claims Administrator with a sworn statement identifying the residents who moved out of a Salmon Health ALR in Massachusetts during the period of time between the signing of this Settlement Agreement and Final Approval, and the amounts already paid to any such residents (or their heirs, estates or authorized representative) pursuant to the Settlement Agreement.

(j) Claims Procedure for Non-Resident Settlement Class Members. For all Non-Resident Settlement Class Members, the Parties have agreed to a reasonable, non-burdensome claims process described in this section and in the Claim Form.

- (1) To receive a Settlement distribution, the Non-Resident Settlement Class Member (or his/her estate or authorized representative) shall submit the Claim Form during the Claim Period.
- (2) Among other things, the Claim Form requires the Non-Resident Settlement Class Member (or his/her estate or authorized representative) to aver that he/she was a resident of a Salmon Health ALR located in Massachusetts during the Settlement Class Period and provide updated contact information to facilitate any potential payment through the Claims Administrator.
- (3) the Claims Administrator shall administer the claims made Settlement procedure set forth in Article V. The Claims Administrator shall promptly provide Plaintiff's Counsel, Salmon Health's Counsel, and Salmon Health copies of all Claims Forms received.

(k) Processing of Payments to the Class.

A. Payments to the Settlement Class. Each Settlement Class Member shall be entitled to relief as set forth in **Article III**.

1. Within forty (40) days of the Preliminary Approval Order, Salmon Health shall fund a Qualified Settlement Fund ("QSF") to be established by the Claims Administrator from the Claim Fund.
2. Within twenty (20) days after expiration of the Claim Period, the Claims Administrator shall calculate total distributions payable to each eligible Resident and Non-Resident Settlement Class Member (who submitted valid Claim Forms - if required - containing any additional information requested by the Claims Administrator) within the Claim Period.

3. Within thirty (30) days after expiration of the Claim Period, the Claims Administrator shall issue a check to each participating Resident and Non-Resident Settlement Class Member in the amount calculated pursuant to **Article III**.
 4. All checks shall be mailed to the address to which the Notice was sent, unless the Notice was returned as undeliverable and/or a more recent address was obtained pursuant to the procedure set forth in **Article IV** above.
 5. For Resident Settlement Class Members, the Claims Administrator shall calculate the total distributions payable to eligible Resident Settlement Class Members as of the date of Final Approval.
- B. If a Settlement Class Member provides a more current address in response to the Notice, the payment shall be mailed to the address provided by the Settlement Class Member.
- C. Unclaimed Funds. The checks issued by the Claims Administrator shall be valid for ninety (90) days following their issuance or receipt after return as undeliverable. The Parties agree that should any Settlement Class Member fail to cash their check within ninety (90) days of its issuance, and after reasonable efforts to locate such persons for whom such checks were returned, such unclaimed funds shall be re-distributed to class members who submitted claims or qualify as current residents. Should any Settlement Class Member fail to cash the second distribution check within ninety (90) days of its issuance then any such unclaimed funds shall be paid to the Massachusetts IOLTA Committee as the *cy pres* beneficiary.

- (l) Default. A default under this Agreement shall be considered to have occurred if Salmon Health fails to make payments to Settlement Class Members or Plaintiff's Counsel within the time periods set forth herein, and in accordance with the terms set forth herein. If Salmon Health is in default, Plaintiff's Counsel shall issue a written notice of default which shall specifically identify the alleged default and afford Salmon Health thirty (30) days to cure such default, unless default cannot reasonably be cured within such period, in which event such default shall be cured as soon as practicable. In the event any party is adjudicated to be in default pursuant to this Agreement beyond any applicable cure period, a default will result in the assessment of interest against any unpaid amount at the statutory rate applicable under Massachusetts law, to be paid by Salmon Health, not its insurers.

ARTICLE VI
PAYMENT OF ATTORNEYS' FEES, EXPENSES, REPRESENTATIVE INCENTIVE
AWARDS, AND SETTLEMENT COSTS

Attorneys' fees, expenses, a representative incentive award, and settlement costs shall be paid from the Claim Fund as follows:

- (a) Costs of Settlement and Notice. All reasonable costs of administering the Settlement and providing Notice to Settlement Class Members as provided herein, including costs of identifying potential Settlement Class Members and costs of printing and mailing the Notice and other necessary documents shall be paid from the Claim Fund.
- (b) Attorneys' Fees and Expenses. Salmon Health agrees to pay attorneys' fees, through the Claim Fund, in an amount not to exceed twenty-five percent (25%) of the Claim Fund subject to Plaintiff's Fee and Expense Application, and the Court's approval of, such a fee award. Salmon Health will not oppose a fee application in an amount not to exceed twenty-

five (25%) of the Claim Fund. The Claims Administrator shall pay the awarded attorneys' fees and expenses within thirty days (30) days after the Effective Date.

- (c) Plaintiff Incentive Award. At the time of Final Approval, Plaintiff shall apply for an Incentive Award for the Named Plaintiff in the amount of twenty-five thousand dollars (\$25,000.00).
- (d) The Incentive Award shall be paid within thirty (30) days after the Effective Date from the Claim Fund.

ARTICLE VII
DISMISSAL AND RELEASES

- (a) In order to effectuate the Parties' desire to fully, finally, and forever settle, compromise, and discharge all disputes arising from or related to the Action by way of compromise rather than by way of further litigation, the Releasing Parties and the Releasees agree that upon entry of the Final Approval Order, the Releasing Parties shall release (and shall be deemed to release) the "Releasees" from any and all Released Claims.
- (b) Preclusive Effect and Covenant Not to Sue. Upon entry of the Final Approval Order, the Releasing Parties shall:
 - 1) Be bound by this Settlement Agreement; and
 - 2) Have recourse exclusively to the benefits, rights, and remedies provided by the Agreement; and
 - 3) Be barred from pursuing any other action, demand, suit, or other claim against the Releasees with respect to the Released Claims unless brought as a result of breach of this Agreement.
- (c) Mistake. In entering into this Settlement Agreement, the Releasing Parties and the Releasees each assume the risk of any mistake of fact or law. If they, or any of them,

should later discover that any fact upon which they relied in entering this Agreement is not true, or that their understanding of the facts or law was incorrect, they shall not be entitled to set aside this Agreement by reason thereof.

ARTICLE VIII
COURT APPROVAL OF SETTLEMENT

The Parties shall use their respective best efforts to obtain Preliminary Approval and Final Approval of this Settlement Agreement. The process for obtaining such approval of this Settlement Agreement shall be as follows:

- (a) Preliminary Approval. No later than seventy-five (75) days after the execution of this Settlement Agreement, and upon completion of Confirmatory Discovery, the Parties shall jointly apply for entry of the Preliminary Approval. The Preliminary Approval Order shall request an order from the Court requesting the following, on a preliminary basis:
- 1) Certification of the Settlement Class for settlement purposes only;
 - 2) Certification of Plaintiff as Class Representative;
 - 3) Certification of Plaintiff's Counsel as Settlement Class Counsel;
 - 4) Approval of this Settlement and finding this Settlement sufficiently fair, reasonable, and adequate to allow Notices and Claim Forms to be disseminated to the Settlement Class;
 - 5) Approval of the form of the Notice and Claim Form;
 - 6) Entry of a schedule for Notice and Final Approval of the Settlement; and
 - 7) A stay of all other proceedings in the Action with respect to Salmon Health, other than such proceedings as are related to the Settlement.
- (b) Objection to Settlement. Any Settlement Class Member wishing to object to the approval of this Settlement, and/or to seeking to oppose the Fee and Expense Application, shall

inform the Court and the Parties in writing of his or her intent to object or oppose by following the procedure set forth in the Notice within forty-five (45) days, or such number of days as the Court shall specify, from the date of entry of the Preliminary Approval Order.

(c) To be effective, any objection must contain:

- 1) A heading which properly refers to the Action;
- 2) The name, address, telephone number, and signature of the Settlement Class Member filing the objection;
- 3) A statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, BBO #, address, and phone number;
- 4) A statement of the legal and factual bases for each objection, and if through counsel, a legal memorandum in support of the objection;
- 5) A description of any evidence the objector intends to offer at the Final Approval Hearing; notification as to whether the objector (or his/her counsel) intends to speak at the Final Approval Hearing; and
- 6) Documentary proof of membership in the Settlement Class.
- 7) If the Settlement Class Member is represented by counsel, counsel must comply with all applicable Massachusetts laws and rules for filing pleadings and documents in Massachusetts courts. The objection, to be effective, also must be sent by the objector or a legally authorized representative on an individual basis and not as part of a group, class, or subclass.
- 8) Any Settlement Class Member who fails to timely file a written statement of his/her or its intention to object or oppose the terms of this Agreement shall be foreclosed from

making any objection to this Settlement Agreement and/or filing any opposition to the Fee and Expense Application, except as permitted by the Court.

- (d) Final Approval Hearing. On the date set forth in the Preliminary Approval Order, the Court shall conduct a Final Approval Hearing to:
- 1) Determine whether to grant final approval to this Settlement Agreement;
 - 2) Consider any timely objections to this Settlement (and all responses to objections by the Parties);
 - 3) Rule on Plaintiff's Fee and Expense Application;
 - 4) Rule on Plaintiff's request for an incentive award; and
 - 5) Determine whether to issue a Final Order and Judgment in relation to this Action.

ARTICLE IX
LIMITATION ON USE OF SETTLEMENT AGREEMENT

The Parties' use of the Settlement Agreement shall be limited as follows:

- (a) No Admission of Liability. Salmon Health has asserted, and continues to assert, many defenses in this Action and expressly denies and continues to deny any fault, wrongdoing or liability arising out of the conduct alleged in this Action. The Parties acknowledge and agree that nothing arising out of this Settlement shall constitute or be construed as an admission by or against Salmon Health or any of the Releasees of any fault, wrongdoing, violation of law, liability, or insurance coverage, or whether a class can be certified outside the context of a settlement. Plaintiff asserts that this Settlement does not constitute an acknowledgment or admission as to defenses raised by Salmon Health. Further, by joining this Settlement, Plaintiff does not take any position as to the validity or merit of Salmon Health's defenses; and expressly denies any fault, wrongdoing or liability arising out of the conduct alleged. The Parties acknowledge and agree that nothing arising out of this

Settlement shall constitute or be construed as an admission by or against Salmon Health, the Releasees, or Plaintiff of any fault, wrongdoing, violation of law, or liability.

- (b) No Evidentiary Use. This Agreement shall not be used, offered, or received into evidence in the Action for any purpose other than to enforce, construe, or finalize the terms of the Settlement Agreement or to obtain the Preliminary and Final Approval by the Court of the terms of the Settlement Agreement. Neither this Agreement nor any of its terms shall be offered or received into evidence in any other action or proceeding, except as provided herein.

ARTICLE X
MISCELLANEOUS PROVISIONS

- (a) Assignment. The Parties each represent, covenant and warrant that they have not directly, or indirectly, assigned, transferred, encumbered, or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, and cause of action or rights being released herein.
- (b) Binding on Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.
- (c) Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.
- (d) Settlement Class Member Signatures. It is agreed that it is impossible or impractical to have each Settlement Class Member execute this Agreement. The Notice will advise all Settlement Class Members of the binding nature of the Settlement Agreement, the Preliminary Approval Order, and the Final Order and Judgment; and each of those

documents shall have the same force and effect as if each Settlement Class Member executed this Settlement Agreement.

- (e) Construction. The Parties agree that the terms and conditions of this Settlement Agreement are the result of arms'-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any of the Parties by reason of the extent to which any of the Parties, or their counsel, participated in the drafting of this Settlement Agreement.
- (f) Counterparts. This Settlement Agreement, and any amendments hereto, may be executed in any number of counterparts, and any of the Parties may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all counterparts taken together shall constitute but one and the same instrument.
- (g) Deceased Settlement Class Members; Incapacitated Settlement Class Members. Claims may be submitted in accordance with Massachusetts law by legally authorized representatives of Settlement Class Members who are incapacitated or the estates of Settlement Class Members who are deceased provided legally authorized representatives submit Claim Forms in accordance with the requirements of this Settlement Agreement.
- (h) Governing Law. Construction and interpretation of the Agreement shall be determined in accordance with the laws of the Commonwealth of Massachusetts, irrespective of the Commonwealth of Massachusetts' choice of law principles.
- (i) Integration Clause. This Settlement Agreement (including the Exhibits referred to herein, which form an integral part hereof) contains the entire understanding of the Parties with respect to the subject matter contained herein. There are no promises, representations, warranties, covenants, or undertakings governing the subject matter of this Settlement

Agreement other than those expressly set forth in this Settlement Agreement. This Settlement Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of this Action. This Settlement Agreement may not be changed, altered, or modified, except in a writing signed by all Parties, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms as set forth herein.

- (j) Invalidation. The voiding, by Court order or otherwise, of any material portion of this Settlement Agreement shall invalidate the Settlement Agreement in its entirety unless the Parties thereafter agree in writing that the remaining provisions shall remain in full force and effect.
- (k) Jurisdiction. The Court shall retain jurisdiction, after entry of the Final Order and Judgment, with respect to enforcement of the terms of this Settlement, and all Parties and Settlement Class Members shall be deemed to submit to the exclusive jurisdiction of the Court with respect to such enforcement and any dispute with respect thereto, except as otherwise set forth herein.
- (l) Modification. If the Court orders any material modification to the Settlement Agreement that has not been previously agreed to by the Parties as a condition of Preliminary Approval or Final Approval of the Settlement Agreement, then the Parties shall have the option to rescind the Settlement Agreement and resume the Action, if all Parties are not willing to accept any such modification. Notwithstanding the foregoing, neither a reduction in the amount of attorneys' fees and/or expenses nor a reduction in the incentive awards for the Plaintiff shall be grounds for rescission of the Settlement.

- (m) Nullification. If for any reason the Court fails to grant Preliminary Approval of this Agreement, or fails to grant Final Approval of this Settlement Agreement, or the approval of the Final Order and Judgment is reversed or rendered void as a result of an appeal, then: (1) this Settlement Agreement shall be considered null and void; (2) neither this Settlement Agreement nor any of the related negotiations shall be of any force or effect; and (3) all Parties to this Settlement Agreement shall stand in the same position, without prejudice, as if the Settlement Agreement had neither been entered into nor filed with the Court.
- (n) Parties' Authority. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to the terms and conditions hereof.
- (o) Tax Obligations. Tax obligations which may arise by virtue of payments made pursuant to this Agreement, if any, are solely the responsibility of the Settlement Class Members or Persons who receive payments and are not the responsibility of the Parties. The Parties do not in any way express any belief or opinion regarding the existence of such tax obligations and do not undertake to provide any advice to any Settlement Class Member regarding any tax obligations which may arise by virtue of any payments made pursuant to this Settlement Agreement.
- (p) Waiver of Compliance. Any failure of any of the Parties to comply with any obligation, covenant, agreement, or condition set forth herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not

operate as a waiver of, or estoppel with respect to, any subsequent or other failure, including but not limited to breach of this Agreement.

[REMAINDER OF THE PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS SETTLEMENT
AGREEMENT AS OF THE DATE FIRST SET FORTH ABOVE:

JOEL BURMAN as the Legal Representative
of the Estate of Mary Burman, on behalf of
Ms. Burman and all others similarly situated,

Joel Burman

ID 3SbpvZ55izPLNQJN8XdizFVv

CONTINUING CARE MANAGEMENT
LLC

By 

WHITNEY PLACE AT SHARON LLC

By 

WHITNEY PLACE AT SHARON LIMITED
PARTNERSHIP, d/b/a WHITNEY PLACE
AT SHARON

By 

WHITNEY PLACE AT SHARON
MANAGEMENT LLC

By 

SALMON HEALTH AND RETIREMENT

By 

SHI II WHITNEY PLACE SHARON, LLC

By 

eSignature Details

Signer ID:	3SbpvZ55izPLNQJN8Xdi2FVv
Signed by:	Joel A. Burman
Sent to email:	jaburm16@comcast.net
IP Address:	174.78.134.48
Signed at:	Jan 30 2023, 10:48 am EST

Exhibit B

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CA No. 2085-CV-00971D

JOEL BURMAN as the Legal Representative of
the Estate of Mary Burman, on behalf of Ms.
Burman and all others similarly situated,

Plaintiff,

v.

CONTINUING CARE MANAGEMENT LLC;
WHITNEY PLACE AT SHARON LLC;
WHITNEY PLACE AT SHARON LIMITED
PARTNERSHIP, d/b/a WHITNEY PLACE AT
SHARON; WHITNEY PLACE AT SHARON
MANAGEMENT LLC; SALMON HEALTH
AND RETIREMENT; and SHI II WHITNEY
PLACE SHARON, LLC.,

Defendants.

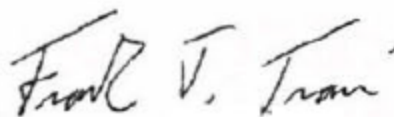
DECLARATION OF FRANK J. TRANI

1. My name is Frank J. Trani. I am of the age of majority and am competent to make this declaration.
2. I am a partner at BrownGreer, which was appointed as Claims Administrator in the above-captioned matter. In that role, I have been involved in the execution of the Court's Order granting Preliminary Approval of this Settlement.
3. Throughout my career, I have served as settlement administrator or otherwise been intimately involved in many class-action settlements. To list a few examples, I was involved in the processing and payments of claims for the NFL Concussion Settlement Fund, the \$800 million One October Settlement (Las Vegas concert shooting incident), the \$4.85 billion Vioxx Settlement Fund, the \$4 billion Diet Drug Settlement, the \$12 billion Deepwater Horizon Economic and Property Damage Settlement, and the Benchmark Senior Living Settlement Program.
4. In the case at hand, BrownGreer's specific duties so far have included (1) distributing the Settlement Class Notice; (2) distributing Claim Forms for Settlement Class Members; (3) establishing an informational website to provide additional information to Settlement Class Members and the public (the "Settlement Website"); (4) establishing a call center to field questions from potential Settlement Class Members and the public; and (5) receiving and analyzing Claim Forms submitted through the mail and through the Settlement Website.

5. Following receipt of the names and mailing addresses of the Settlement Class Members (both current and past residents), BrownGreer conducted an address scrub utilizing LexisNexis to analyze the list and identify any potential recently updated addresses. On March 27, 2023, BrownGreer mailed notice packets, which included the Settlement Class Notice and Claim Form to all 861 past resident Settlement Class Members for whom we had an address. BrownGreer mailed Settlement Class Notice to all 226 current resident Settlement Class for whom we had an address. Additionally, BrownGreer emailed a notification and link to the Settlement website and Settlement Class Notice to 85 individuals for whom we had a valid email address. Of the 1,087 mailed notice packets, 182 have been returned to BrownGreer as undeliverable. We re-mail those notice packets for which the post office has returned a forwarding address. For notice packets returned without a forwarding address, we search LexisNexis for updated addresses (if a LexisNexis address was not already used) and re-mail to those with useable results.
6. Contemporaneous with mailing the notice packets on March 27, 2023, BrownGreer launched the Settlement Website: <http://www.salmonhealthalrsettlement.com>. The website displays general information about the Settlement, as well as the Settlement Notice, Claim Form, and Preliminary Approval Order. The front page of the website include links by which non-resident Class Members can complete and submit their Claim Form online. There have been over 1,500 site views since the Settlement Website went live.
7. BrownGreer established a toll-free telephone number and live call center to field questions related to the Settlement, as well as a dedicated email address. To date, my office has handled 36 phone calls and seven emails.
8. The result of these efforts was a fair process that demonstrated that the Settlement Class Notice was the best practicable under the circumstances. To date, we have received 68 completed Claim Forms mailed to BrownGreer, and 40 Claim Forms submitted online through the Settlement Website from Settlement Class Members. This represents 13%, so far, of the former resident Settlement Class members who were mailed the Settlement Notice. Former resident Settlement Class members have until 28 days after the date of Final Approval to submit Claim Forms.
9. Having worked on many class settlements, the Parties' efforts to give each potential class member adequate notice and an opportunity to submit their settlement claim exceeds the typical class-claims process.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 28, 2023



Frank J. Trani

Exhibit C

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CA No. 2085-CV-00971D

JOEL BURMAN as the Legal Representative of
the Estate of Mary Burman, on behalf of Ms.
Burman and all others similarly situated,

Plaintiff,

v.

CONTINUING CARE MANAGEMENT LLC;
WHITNEY PLACE AT SHARON LLC;
WHITNEY PLACE AT SHARON LIMITED
PARTNERSHIP, d/b/a WHITNEY PLACE AT
SHARON; WHITNEY PLACE AT SHARON
MANAGEMENT LLC; SALMON HEALTH
AND RETIREMENT; and SHI II WHITNEY
PLACE SHARON, LLC.,

Defendants.

**AFFIDAVIT OF MICHAEL C. FORREST, ESQ. IN SUPPORT
OF PLAINTIFF'S MOTION FOR FINAL APPROVAL**

I, Michael C. Forrest, Esq. being duly sworn, hereby depose and state the following:

1. I have been an attorney of record for Plaintiff, Joel Burman, as the Legal Representative of the Estate of Mary Burman in this Action. I make this declaration on personal knowledge in support of Plaintiff's Unopposed Motion for Final Approval.
2. I confirmed that as of this filing no party has received an objection, and no objection has been filed with the Court.
3. I have confirmed that the Claim Administrator has distributed the Notices in accord with the Notice plan and Order of the Court.

4. Plaintiff has complied with Mass. R. Civ. P. 23(e) by notifying the Massachusetts IOLTA Committee about the Final Approval hearing in above captioned matter.

Signed under the pains and penalties of perjury this 1st day of May 2023.

/s/ Michael C. Forrest
Michael C. Forrest, Esq.

Exhibit D



Forrest, Mazow,
McCullough, Yasi & Yasi, P.C.

Consumer Advocacy and Class Action Litigation



February 24, 2023

Massachusetts IOLTA Committee
Jenna Miara – Executive Director
18 Tremont Street, Suite 1010
Boston, MA 02108-2316

RE: Burman, et al. v. Continuing Care Management LLC, et al
Civil Action No. 2085-CV-00971D

**NOTICE OF CLASS ACTION RESIDUAL FUND
DISBURSEMENT PURSUANT TO MASS. R. CIV. P. 23(e)**

Dear Ms. Miara:

Please be advised that this office represents the Plaintiff, Joel Burman as the representative of the estate of Mary Burman, and the Settlement Class, in the above-referenced class action lawsuit. The parties have reached a proposed settlement and achieved preliminary approval of the settlement on February 23, 2023.

Per order of the Court, a Final Approval hearing has been scheduled for May 9, 2023 at 2:00 pm in session D of the Worcester County Superior Court, Worcester, Massachusetts.

Please accept this letter as notification, pursuant to Mass. R. Civ. P. Rule 23(e), to the Massachusetts IOLTA Committee, of the settlement of the above captioned action. The Settlement Agreement contemplates that any unclaimed payments, after *pro rata* distributions, shall revert to the Massachusetts IOLTA Committee.

I have enclosed herewith a copy of the settlement agreement should you have any additional questions

We appreciate your time and attention to this matter. Please feel free to call me if you have any questions.

Sincerely,

/s/ Michael C. Forrest

Michael C. Forrest, Esq.

cc: Louis M. Ciavarra, Esq.

Enc. *Settlement Agreement*

Robert E. Mazow, Esq.
Admitted in MA & NH
RMazow@forrestlamothe.com

Kevin J. McCullough, Esq.
Admitted in MA & NH
KMcCullough@forrestlamothe.com

John R. Yasi, Esq.
Admitted in MA
JYasi@forrestlamothe.com

Paul F.X. Yasi, Esq.
Admitted in MA
PYasi@forrestlamothe.com

Michael C. Forrest, Esq.
Admitted in MA, CA & NH (inactive)
MForrest@forrestlamothe.com

Salem, MA:
2 Salem Green, Suite 2
Salem, MA 01970
(617) 231-7829
(877) 599-8890
(617) 517-3271 Fax

Concord, CA:
3998 Chestnut Avenue
Concord, CA 94519
(415) 579-9481
(877) 599-8890
(617) 517-3271 Fax

**PLEASE ADDRESS ALL
CORRESPONDENCE
TO THE SALEM,
MASSACHUSETTS
ADDRESS**

Exhibit E

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CA No. 2085-CV-00971D

JOEL BURMAN as the Legal Representative of the
Estate of Mary Burman, on behalf of Ms. Burman
and all others similarly situated,

Plaintiff,

v.

CONTINUING CARE MANAGEMENT LLC;
WHITNEY PLACE AT SHARON LLC;
WHITNEY PLACE AT SHARON LIMITED
PARTNERSHIP, d/b/a WHITNEY PLACE AT
SHARON; WHITNEY PLACE AT SHARON
MANAGEMENT LLC; SALMON HEALTH AND
RETIREMENT; and SHI II WHITNEY PLACE
SHARON, LLC.,

Defendants.

[PROPOSED]
FINAL ORDER AND JUDGMENT

WHEREAS, on February 23, 2023, the Court Preliminarily Approved the proposed Settlement of the Action between Plaintiff, Joel Burman, personal representative of the estate of Mary Burman ("Plaintiff" or "Burman"), and Continuing Care Management LLC; Whitney Place at Sharon LLC; Whitney Place at Sharon Limited Partnership, d/b/a Whitney Place at Sharon; Whitney Place at Sharon Management LLC; Salmon Health and Retirement; and SHI II Whitney Place Sharon, LLC. (collectively "Defendants")(Defendants collectively with Plaintiff, the "Parties"), pursuant to the terms of the Settlement Agreement, and directing that notice to be given to the Class Members.

WHEREAS, the Parties' plan for providing notice to the Settlement Class (the "Notice Plan") was set forth in the Settlement Agreement and the Preliminary Approval Order, and the Notice Plan detailed the process by which Class Members would receive Notice.

WHEREAS, the Class Members were notified by of the terms of the proposed Settlement and of a Final Approval Hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate; (2) whether judgment should be entered dismissing the Complaint with prejudice; and (3) whether Class Counsel's application for an award of attorneys' fees and costs should be approved.

WHEREAS, a Final Approval Hearing, was held on May 9, 2023, in order to: (i) determine whether to grant final approval to this Settlement Agreement; (ii) consider any timely objections to this Settlement and all responses to objections by the Parties; and (iii) rule on the Plaintiff's Fee and Expense Application.

NOW, THEREFORE, the Court, having heard the presentations of Class Counsel and Defendants' Counsel, having reviewed all of the submissions presented with respect to the proposed Settlement Agreement, having determined that the Settlement Agreement is fair, adequate and reasonable, having considered the application of Plaintiff for an award of attorneys' fees and cost reimbursements, and having reviewed the materials in support thereof, it is hereby ORDERED, ADJUDGED and DECREED THAT:

1. The Court, for purposes of this Order and Judgment, adopts all defined terms as set forth in the Settlement Agreement and incorporated therein.
2. The Court has jurisdiction over the subject matter of this Action and over all claims raised therein and all Parties thereto, including the Class Members.
3. The Court approves the Settlement of this Action with respect to the claims against Defendants and as set forth in the *Settlement Agreement* as being fair, just, reasonable and adequate to the Class.
4. The Court's findings, as set forth herein, are not deemed to be an admission of liability or fault by Defendants or by any other person or entity, or a finding of the validity of any claims asserted in the litigation or any wrongdoing or any violation of law by Defendants. The Settlement Agreement is not a concession and shall not be used as an admission of any fault or omission by Defendants or any other person or entity. Neither the terms of the Settlement Agreement nor any related document shall be offered or received in evidence in any civil, criminal, or administrative action or proceeding, other than such proceedings which may be necessary to consummate or enforce the terms of the Settlement Agreement, except that Defendants may file this Order in any action that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

5. The Court finds that the Class, as defined in the Settlement Agreement, continues to meet all the prerequisites of Rule 23 of the Massachusetts Rules of Civil Procedure and M.G.L. c. 93A, including numerosity, predominance of common issues, typicality and adequacy of the representative party.
6. The Court reconfirms the appointment of Plaintiff, Joel Burman, as Class Representative of the Class. The Court also reconfirms the appointment of Class Counsel, as defined in the Settlement Agreement, as counsel for the above Class Representative and the Class.
7. The Court finds that the Notice Plan set forth in the Settlement Agreement, and effectuated pursuant to the terms of the allowed *Motion for Preliminary Approval*, constituted the best notice practicable to the Class and satisfied the requirements of the Massachusetts Rules of Civil Procedure and the requirements of Due Process of the Constitution of the Commonwealth of Massachusetts and the United States Constitution and any other applicable law.
8. The Court finds that the Settlement, as set forth in the *Settlement Agreement*, is in all respects, fair, reasonable, adequate and in the best interests of the Class, and it is approved. The Parties shall forthwith effectuate the *Settlement Agreement* according to its terms. The *Settlement Agreement* and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.
9. Upon the Effective Date, the Class Representative and all Class Members shall have, by operation of this Order and Judgment, fully, finally and forever released, relinquished and discharged, to the fullest extent permitted by law, all Released Parties from all Released Claims, as defined in the Settlement Agreement.
10. All Settlement Class Members, including the Class Representative, and the successors, assigns, parents, subsidiaries, affiliates, or agents of any of them, are hereby permanently barred and enjoined from instituting, commencing, participating in or prosecuting, either

directly or in any other capacity, any Released Claim against any of the Released Parties, in any proceeding whatsoever.

11. This Order and Judgment, the *Settlement Agreement*, the Settlement which they reflect, and any and all acts, statements, documents or proceedings related to the Settlement are not, and shall not be construed as, or used as an admission by or against Defendants of any fault, wrongdoing, or liability on their part, or of the validity of any Released Claim or of the existence or amount of damages, nor shall the Settlement Agreement, or any of the negotiations or proceedings connected with it, be offered or received in evidence in any pending or future action or proceeding, other than such proceedings which may be necessary to consummate or enforce the Settlement Agreement.
12. The Claim Administrator shall direct distribution of the Class Relief in the manner set forth in the *Class Action Settlement Agreement*.
13. The Court has received and reviewed *Plaintiffs' Unopposed Application for an Award of Attorneys' Fees and Expenses*.
14. Plaintiffs are awarded the sum of \$ _____ (\$250,000.00) as attorneys' fees.
15. Plaintiffs are awarded the sum of \$ _____ (\$96,670.00) as costs.
16. Plaintiff is awarded a representative stipend for his service to the Class in the amount of \$ _____ (\$25,000.00).
17. All payments and distributions ordered herein shall forthwith be made in the manner and at the times set forth in the *Class Action Settlement Agreement*.
18. Any uncashed claim payments (residual) which remain unclaimed, after a second disbursement, shall revert to the *cy pres* designee the Massachusetts IOLTA Committee.
19. This Action is hereby dismissed in the entirety with prejudice with respect to Defendant. Except as otherwise provided in this Order, the parties shall bear their own costs and attorneys' fees. Without affecting finality of the Judgment hereby entered, the Court

reserves jurisdiction over the implementation of the Settlement and the Settlement Agreement, including distribution of the Settlement benefits, enforcement and administration of the Settlement Agreement, including any releases in connection therewith, breath therewith and/or any other matters related or ancillary to the foregoing, including hearing and determining any application by any Party to the Settlement for a Settlement bar order.

IT IS SO ORDERED.

Dated: _____

Justice of the Superior Court