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August 30, 2018

**VIA ECF**

Honorable Cheryl L. Pollak  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: *Caballero et al. v. Senior Health Partners, Inc. et al.*, 1:16-CV-00326;  
*Bucceri et al. v. Zucker et al.*, No. 1:18-CV-02380

Dear Magistrate Judge Pollak,

Pursuant to the instructions of Your Honor's law clerk, we are attaching a proposed order granting Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, Provisional Certification of Settlement Class, Appointment of Class Representatives and Class Counsel, and Approval of Notice to Class Members. The attached proposed order has been agreed to by all parties.

Respectfully submitted,

/s/ Jeffrey J. Amato  
Jeffrey J. Amato

Cc: All Counsel (via ECF)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

OLGA CABALLERO; JIE DU, by her next friend  
MICHAEL TONG; ALEJANDRA NEGRON,  
MARIANO VAZQUEZ, by his next friend  
IRAIDA VASQUEZ; and JUAN SANTOS, by his  
next friend RITA BAEZ, individually and on behalf  
of all others similarly situated,

Plaintiffs,

- against -

SENIOR HEALTH PARTNERS, INC;  
HEALTHFIRST, INC; HF MANAGEMENT  
SERVICES, LLC; HEALTHFIRST HEALTH PLAN,  
INC.; XYZ CORPORATIONS 1-10; and HOWARD  
ZUCKER, as Commissioner of the New York State  
Department of Health,

Defendants.

**16-cv-00326 (CBA) (CLP)**

MADLINE BUCCERI, PATRICIA TRUJILLO, and  
LOURDES LO on behalf of themselves and all others  
similarly situated,

Plaintiffs,

- against -

HOWARD ZUCKER, in his official capacity as  
Commissioner of the New York State Department of  
Health, HF MANAGEMENT SERVICES, LLC,  
SENIOR HEALTH PARTNERS, INC., HF  
ADMINISTRATIVE SERVICES, INC.,  
HEALTHFIRST, INC. and HEALTHFIRST  
HEALTH PLAN, INC.,

Defendants.

**18-cv-2380 (CLP)**

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS, APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL, AND APPROVAL OF NOTICE TO CLASS MEMBERS**

Upon consideration of Plaintiffs’ Motion for Class Certification in Connection with Settlement, Appointment of Class Representatives and Class Counsel, Preliminary Approval of the Parties’ Settlement Stipulation, and Approval of Notice to Class Members (“Motion”), it is hereby **ORDERED** as follows<sup>1</sup>:

1. The Motion is hereby **GRANTED** in its entirety.

**Preliminary Approval of Settlement Stipulation**

2. The terms of the Settlement Stipulation are hereby preliminarily approved, including the releases contained therein, as being fair, reasonable, and adequate for the members of the Settlement Class under the factors set forth in *City of Detroit v. Grinnell Corporation*, subject to a Fairness Hearing. *See* 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). The Court finds that the Settlement Stipulation was entered into at arm’s length by experienced counsel and is sufficiently within the range of reasonableness that notice of the Settlement should be given, pursuant to the plan submitted by Settlement Class Counsel and approved by the Court in this Order.

**Class Certification**

3. The following class is preliminarily approved for settlement purposes (“Settlement Class”)<sup>2</sup>:

**All current and future Medicaid recipients who receive Home Care Services through Healthfirst Defendants.**

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<sup>1</sup>This proposed order is filed in conjunction with *Bucceri v. Zucker, et al.*, 18 Civ. 2380 (E.D.N.Y. CLP), the companion case in this matter, which was transferred from the Southern District of New York on April 23, 2018 and was consolidated with the *Caballero* case (16 Civ. 326, Order Entered on July 19, 2018).

<sup>2</sup>All terms herein have the same meaning as defined in the Settlement Stipulation.

4. The Court preliminarily approves the appointment of Named Plaintiffs Olga Caballero; Michael Tong on behalf of Jie Du; Alejandra Negron; Iraida Vasquez on behalf of Mariano Vazquez; Patricia Trujillo; and Betty Francisco on behalf of Lourdes Lo as Class Representatives.

5. The Court preliminarily approves the appointment of the New York Legal Assistance Group; The Legal Aid Society; Paul, Weiss, Rifkind, Wharton & Garrison LLP; and Winston & Strawn LLP as Settlement Class Counsel.

6. Pursuant to Federal Rule of Civil Procedure (“Rule”) 23(a) and 23(b)(2), and in light of the proposed settlement, the Court hereby finds that the prerequisites for class certification have been met and provisionally certifies the Settlement Class for the reasons that follow:

- (a) The Settlement Class of approximately 14,500 Medicaid-recipient members of Healthfirst MLTC programs is so numerous that joinder is impracticable;
- (b) Proposed Class Representatives’ claims present common issues of law and fact, as they allege improper denials and reductions of Home Care Services deriving from a unitary course of conduct by Defendants;
- (c) Proposed Class Representatives are typical of the Settlement Class in that each Class member’s claim arises from the same course of conduct and evokes similar legal arguments;
- (d) Proposed Class Representatives and Settlement Class Counsel will fairly and adequately represent the Settlement Class; and
- (e) The claims of Plaintiffs and the Settlement Class pertain to policies and practices that are class-wide in scope, and they seek relief that is class-wide in scope, such that “final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2).

7. The Court also finds that the Proposed Class Representatives’ interests are aligned with, and not antagonistic to, the interests of all other members of the Settlement Class.

8. The Court further finds settlement of this action on a class basis to be superior to other means of resolving the matter.

9. As Plaintiffs meet the requirements set forth in Rule 23(a) and the action is one of three types enumerated in Rule 23(b), certification is warranted. *See In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108, 117 (2d Cir. 2013); *Annunziato v. Collecto, Inc.*, 293 F.R.D. 329, 334 (E.D.N.Y. 2013).

**Appointment of Settlement Class Counsel**

10. The Court hereby appoints the New York Legal Assistance Group; The Legal Aid Society; Paul, Weiss, Rifkind, Wharton & Garrison LLP; and Winston & Strawn LLP as Settlement Class Counsel, having considered [1] the work counsel has done in identifying or investigating potential claims in the action, [2] counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action, [3] counsel's knowledge of the applicable law, and [4] the resources that counsel will commit to representing the class, and having determined that the requirements of Rule 23(g) are fully satisfied by this appointment.

11. Each proposed Class Representative, as set forth in Paragraph 4, *supra*, will serve as a class representative on behalf of the Settlement Class.

**Notice to Potential Class Members**

12. Prior to the Fairness Hearing, Settlement Class Counsel shall provide notice of the Settlement Stipulation and the Fairness Hearing to all entities affected by and/or entitled to participate in the settlement, in compliance with the notice requirements of Rule 23 and due process of law.

13. The Court finds that the Class Notice, which is attached to the Settlement Stipulation as Exhibit B, is consistent with the notice procedures agreed upon by the Parties in the Settlement Stipulation.

14. The Court also finds that the form and substance of the proposed Class Notice are "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency

of the action and afford them an opportunity to present their objections” and “express[es] no opinion on the merits of the settlement.” The proposed Class Notice therefore satisfies the notice requirements of Rule 23(e) and *Handschu v. Special Services Division* and is approved by the Court. *See* Fed. R. Civ. P. 23(e)(1); 787 F.2d 828, 832–33 (2d Cir. 1986).

15. Accordingly, within 30 days of entry of this Order, Healthfirst shall mail the Class Notice to all Healthfirst plan participants, *i.e.*, the Settlement Class, in the form provided in Exhibit B to the Settlement Stipulation. Plaintiffs and DOH will also post a copy of the Class Notice on their websites.

#### **Other Provisions**

16. In the event that the Settlement Stipulation is terminated in accordance with its provisions, the Settlement Stipulation and all proceedings held in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Stipulation, and without prejudice to the status quo and rights of the Plaintiff Class Representatives, Defendants, and the members of the Settlement Class.

17. At the request of the Parties, the Court shall exercise its inherent authority to retain jurisdiction over these proceedings with respect to any issue that may arise in connection with enforcement of the Settlement Stipulation, for a period of two years after the Stipulation’s Effective Date. *See* Mot. at 23 n.9; Stipulation § X. This Continuing Jurisdiction Period may be extended only on consent of all Parties.

18. The litigation against the State Releasees and the Healthfirst Releasees is hereby stayed until final approval following the Fairness Hearing, except to the extent necessary to effectuate the Settlement Stipulation.

19. **Fairness Hearing.** A Fairness Hearing will be held before Magistrate Judge Cheryl L. Pollak on \_\_\_\_\_, 2018, at \_\_\_\_\_.m., in Courtroom \_\_\_\_\_, at the United States District Court for the Eastern District of New York Courthouse, Brooklyn, New York.

20. Any Class Member shall have the right to appear and be heard at the Fairness Hearing or to submit a written objection to the Court within \_\_\_\_\_ days before the Fairness Hearing, pursuant to the terms of the Class Notice and Settlement Stipulation.

It is **SO ORDERED**.

Date: \_\_\_\_\_, 2018

\_\_\_\_\_  
CHERYL L. POLLAK  
United States Magistrate Judge