

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

\_\_\_\_\_  
SHERARD CLARK, Individually and on behalf of all  
others similarly situated,

**Plaintiff,**

v.

Case No. \_\_\_\_\_

BAY PARK CENTER FOR NURSING AND  
REHABILITATION, LLC d/b/a BAY PARK CENTER  
FOR NURSING AND REHABILITATION;  
BENJAMIN LANDA; BEN PHILIPSON; MAYER  
FISCHL; ELI GRINSPAN; CHANA LAERNER;  
BERISH RUBINSTEIN; NAOMI TESSLER;  
RICHARD BUSELL; SENTOSACARE, LLC, and  
DOES 1-25;

**Defendants.**

**NOTICE OF REMOVAL**

Defendant SentosaCare, LLC, with the consent of all other Defendants, pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446 and 1447, removes this lawsuit to the United States District Court for the Southern District of New York, originally filed in the Supreme Court of the State of New York, Bronx County, Index No. 33378/2018E. Pursuant to 28 U.S.C. § 1446, copies of this Notice of Removal are being served on Plaintiff and filed with the Clerk of the Supreme Court of the State of New York, Bronx County. As grounds for removal of this action, SentosaCare states:

**I. CASE BACKGROUND**

1. On November 27, 2018, Plaintiff Sherard Clark filed the Complaint in this action, captioned *Sherard Clark v. Bay Park Center for Nursing and Rehabilitation, LLC d/b/a/ Bay Park Center for Nursing and Rehabilitation, et al.*, Index No. 33378/2018E, in the Supreme Court of the State of New York, Bronx County. *See* Exhibit A.

2. Plaintiff brings a cause of action for the New York Public Health Law § 2801-d. Plaintiff further alleges a proposed class to be certified. Plaintiff's claims involve his care at the Bay Park Center for Nursing and Rehabilitation nursing home. *See, e.g.*, Compl. ¶¶ 1, 31-33.

3. One of the central allegations in the Complaint is that "Defendants have failed to staff a sufficient number of nurses and aides, thereby depriving the Facility's residents of the level of care required under New York and federal law." Compl. ¶ 2. Plaintiff lists 42 U.S.C. § 1396r(b)(4)(C)(i)(I) and 42 U.S.C. 1395i-3(b)(4)(A)(i) as the federal law that is implicated. Compl. ¶ 2 n. 2. Plaintiff alleges that Defendants contravene "applicable federal and New York state laws, rules, and regulations," and that a "resident's right to sufficient staffing is one of the most important rights protected by New York and federal statutes," again listing the above federal statutes. Compl. ¶¶ 26-27, 27 n. 12. Plaintiff also alleges that Defendants failed "to satisfy its [sic] requirements pursuant to federal and New York law," and deprived residents of "staffing sufficient to satisfy the requirements of New York and federal law." Compl. ¶ 37.

4. Plaintiff's class action allegations allege that this action "seeks to enjoin Defendants from understaffing" and "seeks recovery" from "Defendants failure to meet its [sic] contractual, statutory, and regulatory obligations" Compl. ¶ 42. Plaintiff alleges that common legal and factual questions include the deprivation of rights or benefits created or established "by any applicable federal statute, code, rule, or regulation" and "[w]hether Defendants' conduct violated or violates the federal Nursing Home Reform Act, codified at 42 U.S.C. 1395i-3(a)-(h) and at 42 U.S.C. § 1396r(a)-(h) and at 42 C.F.R. §§ 483.15, 483.20, 483.25, 483.30, 483.40, 483.60 & 483.75." Compl. ¶ 45(a), (h).

5. Plaintiff's cause of action alleges that Defendants are subject to the provisions of "the federal Nursing Home Reform Act," which "impose[s] various obligations on Defendants,

including, among others, a duty to adequately staff the Facility,” that Defendants deprived residents “of rights or benefits” created or established by “federal statutes, rules, and regulations,” and that residents suffered as injuries “staffing sufficient to satisfy the requirements of New York and federal law.” Compl. ¶¶ 57, 60, 65.

## II. BASIS FOR REMOVAL

6. This action is a civil action removable to this Court pursuant to 28 U.S.C. §§ 1331, 1367, and 1441(a). This Court has original jurisdiction over this action because it arises under the laws of the United States. Plaintiff’s claims depend on the definition, interpretation and application of the federal Nursing Home Reform Act. The Complaint also contains repeated allegations concerning the federal Centers for Medicare & Medicaid Services (“CMS”), part of the federal Department of Health and Human Services, regarding a CMS reporting site and associated ratings and the interpretations of those ratings. *See, e.g.*, Compl. ¶¶ 21, 21 n. 9, 28, 28 n. 12-16. To the extent some of Plaintiff’s claims do not depend on the definition, interpretation and application of federal law, this Court has supplemental jurisdiction over these other claims because they form part of the same case or controversy under Article III of the United States Constitution. 28 U.S.C. § 1367.

7. Defendants deny the allegations in Plaintiff’s Complaint. Nevertheless, for removal purposes, this action satisfies the requirements of 28 U.S.C. §§ 1331, 1367, and 1441. This action is properly removed to this Court.

8. SentosaCare, LLC was served with Plaintiff’s Complaint on December 27, 2018. Pursuant to 28 U.S.C. § 1446(b)(3), this Notice has been timely filed within 30 days of SentosaCare, LLC’s service of the Complaint. *See* 28 U.S.C. § 1446(b)(1). Venue is proper in this Court is proper because this Court is “the district court of the United States for the district and

division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). This action is properly removed to the United States District Court for the Southern District of New York, which comprises, among other jurisdictions, Bronx County. 28 U.S.C. § 112(b).

9. The undersigned represents all Defendants in this action and is advised that all Defendants consent to this removal.

10. No previous application has been made for this removal.

11. A copy of this Notice of Removal will be filed with the Supreme Court of the State of New York, Bronx County. The Notice of Filing of Notice of Removal, filed concurrently with the Supreme Court of the State of New York, Bronx County, is attached as Exhibit B.

12. A copy of this Notice of Removal will be served on Plaintiff. Pursuant to 28 U.S.C. § 1446(a), true and legible copies of all process, pleadings, documents, and orders served on SentosaCare, LLC are attached at Exhibits A (Complaint) and C (remaining documents).

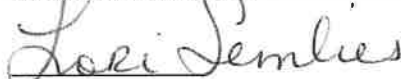
Based on the foregoing, SentosaCare, LLC respectfully requests that this Court accept this Notice of Removal to the United States District Court for the Southern District of New York.

Dated: January 16, 2019

Respectfully submitted,

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP**

By:




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*Attorneys for Defendant SentosaCare, LLC and all  
other Defendants*

**CERTIFICATE OF SERVICE**

I, Lori R. Semlies, an attorney admitted to practice before the Courts of the State of New York, affirm under penalty of perjury that on January 16, 2019, a copy of SentosaCare, LLC's Notice of Removal was served on all parties of record via the NYSCEF system and email.

  
Lori Semlies  
Lori R. Semlies, Esq.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

SHERARD CLARK, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

BAY PARK CENTER FOR NURSING AND  
REHABILITATION, LLC d/b/a BAY PARK  
CENTER FOR NURSING AND REHABILITATION;  
BENJAMIN LANDA; BEN PHILIPSON; MAYER  
FISCHL; ELI GRINSPAN; CHANA LERNER;  
BERISH RUBINSTEIN; NAOMI TESSLER;  
RICHARD BUSELL; SENTOSACARE, LLC; and  
DOES 1-25,

Defendants.

Index No. \_\_\_\_\_

Summons Filed:  
November 27, 2018

**SUMMONS**

**To the above-named Defendants:**

You are hereby summoned and required to answer the attached complaint of the Plaintiff in this action and to serve a copy of your answer upon the attorneys for the Plaintiff at the address stated below.

If this summons was personally delivered to you in the State of New York, you must serve the answer within 20 days after such service, excluding the day of service. If this summons was not personally delivered to you in the State of New York, you must serve the answer within 30 days after service of the summons is complete, as provided by law.

If you do not serve an answer to the attached complaint within the applicable time limitation stated above, a judgment may be entered against you, by default, for the relief demanded in the complaint.

Plaintiff designates Bronx County as the place of trial.

The basis of venue is defendant BAY PARK CENTER FOR NURSING AND REHABILITATION, LLC's place of residence, which is in the County of Bronx: 801 Co-op City Boulevard, Bronx, New York.

Dated: White Plains, New York  
November 27, 2018

**FINKELSTEIN, BLANKINSHIP,  
FREI-PEARSON & GARBER, LLP**

By: /s/Todd S. Garber

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*Attorneys for Plaintiff and the Proposed Class*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

<p>SHERARD CLARK, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>BAY PARK CENTER FOR NURSING AND REHABILITATION, LLC d/b/a BAY PARK CENTER FOR NURSING AND REHABILITATION; BENJAMIN LANDA; BEN PHILIPSON; MAYER FISCHL; ELI GRINSPAN; CHANA LERNER; BERISH RUBINSTEIN; NAOMI TESSLER; RICHARD BUSELL; SENTOSACARE, LLC; and DOES 1-25,</p> <p style="text-align: center;">Defendants.</p>
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Index No. \_\_\_\_\_

**CLASS ACTION COMPLAINT**

Date Index No. Purchased:  
November 27, 2018

Plaintiff Sherard Clark, individually and on behalf of all others similarly situated (also referred to as “Patients,” “Residents,” or the “Class”), by and through his undersigned attorneys, Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, as and for his class action complaint, allege, with personal knowledge as to his own actions and based upon information and belief as to those of others, as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this class action against Bay Park Center for Nursing and Rehabilitation, LLC (“Bay Park LLC”); Benjamin Landa, Ben Philipson, Mayer Fischl, Eli Grinspan, Chana Lerner, Berish Rubinstein, Naomi Tessler, and Richard Busell (the “Individual Defendants”); SentosaCare, LLC; and Does 1-25 (collectively, “Defendants”) -- the owners and operators of Bay Park Center for Nursing and Rehabilitation, a nursing home located at 801 Co-op City Boulevard, Bronx, New York (the “Facility”) -- on behalf of himself and a class of similarly situated nursing home patients who were victimized by unsafe and inadequate care in



the Facility. Defendants' unlawful conduct violates Section 2801-d of New York's Public Health Law ("PHL").<sup>1</sup>

2. Defendants are entrusted to provide care to the elderly and infirm nursing home patients in their custody. Unfortunately, Defendants have betrayed and continue to betray that trust. For example, Defendants fail to sufficiently staff the Facility. Throughout their operation of the Facility, Defendants have failed to staff a sufficient number of nurses and aides, thereby depriving the Facility's residents of the level of care required under New York and federal law.<sup>2</sup> Among many other shocking failures, this understaffing caused Defendants to fail to regularly change patients bandages, clean their wounds, or send patients to their specialist appointments and to leave patients attached to empty IVs, resulting in some patients passing out on the floor or contracting serious life threatening infections.

3. Unsurprisingly, the Nursing Home Compare website operated by the federal Centers for Medicare & Medicaid Services ("CMS") shows that the Facility currently receives a

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<sup>1</sup> PHL § 2801-d provides a cause of action by residents against nursing homes that deprive them of "any right or benefit created or established for the well-being of the patient by the terms of any contract, by any state statute, code, rule or regulation or by any applicable federal statute, code, rule or regulation." *See* PHL 2801-d(1).

<sup>2</sup> *See* 10 N.Y.C.R.R. § 415.13 (mandating that a nursing facility "shall provide sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident"); 42 U.S.C. § 1396r(b)(4)(C)(i)(I) (mandating that a nursing facility "must provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents"); 42 U.S.C. § 1395i-3(b)(4)(A)(i) (mandating that a nursing facility must provide "nursing services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident").

rating of one star (“much below average”) out of a five star scale in staffing, further evidencing the lack of adequate care and staffing at the Facility.<sup>3</sup>

4. As the Facility has approximately 480 beds and is operating at a high occupancy rate (above 90%),<sup>4</sup> there are many other residents currently languishing in an unsafe and inadequate nursing home.

5. Accordingly, Plaintiff, individually and on behalf of the Class, asserts claims against Defendants for violation of PHL § 2801-d and seek monetary damages in an amount to be determined at trial, statutory damages in accordance with PHL § 2801-d(2), and injunctive relief prohibiting further wrongful conduct, as well as any other available relief at law or in equity.

## PARTIES

### **Plaintiff**

6. Plaintiff Sherard Clark was a resident of the Facility from approximately February 16, 2018, to July 13, 2018.

7. Sherard Clark is a citizen and resident of Bronx County, New York.

### **Defendants**

8. Defendant Bay Park Center for Nursing and Rehabilitation, LLC d/b/a Bay Park Center for Nursing and Rehabilitation (“Bay Park LLC”) is a New York limited liability company with its principal place of business in Bronx County, New York.

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<sup>3</sup> See Nursing Home Compare Profile for the Facility (available at <https://www.medicare.gov/nursinghomecompare/profile.html#profTab=-1&ID=335581>) (accessed November 20, 2018) (copy annexed as Exhibit 1).

<sup>4</sup> See New York State Department of Health profile for the Facility (available at [https://profiles.health.ny.gov/nursing\\_home/view/150679](https://profiles.health.ny.gov/nursing_home/view/150679)) (accessed August 30, 2018).

9. Defendants Benjamin Landa, Ben Philipson, Mayer Fischl, Eli Grinspan, Chana Lerner, Berish Rubinstein, Naomi Tessler, Kenneth Tessler, and Richard Busell (the “Individual Defendants”) each hold ownership interests in Bay Park LLC. Benjamin Landa owns a 47.27% interest in Bay Park LLC, Ben Philipson a 37.73% interest, Mayer Fischl a 1.0% interest, Eli Grinspan a 0.5% interest, Chana Lerner a 5.0% interest, Berish Rubinstein a 3.0% interest, Naomi Tessler a 5.0% interest, and Richard Busell a 0.5% interest. On information and belief, the Individual Defendants are citizens and residents of New York State.

10. Defendant SentosaCare, LLC is a New York limited liability company with its principal place of business in Nassau County, New York. SentosaCare, LLC provides administrative services to the Facility,<sup>5</sup> and thus has the ability to influence the operation and management of the Facility. Benjamin Landa and Ben Philipson, the majority owners of Bay Park LLC, are also the principal members of SentosaCare, LLC.

11. In addition to the Defendants identified with particularity, Plaintiff alleges all claims against Doe Defendants 1-25, with addresses and names unknown, who are other persons that have owned, operated, or controlled the Facility during the relevant period.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over all causes of action asserted herein. Defendants are subject to the personal jurisdiction of this Court pursuant to CPLR 301.

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<sup>5</sup> See State of New York Public Health and Health Planning Council Committee Day Agenda for January 28, 2016, at Project #152177-E Exhibit Page 10 (available at [https://www.health.ny.gov/facilities/public\\_health\\_and\\_health\\_planning\\_council/meetings/2016-01-28/docs/exhibits.pdf](https://www.health.ny.gov/facilities/public_health_and_health_planning_council/meetings/2016-01-28/docs/exhibits.pdf)) (last visited October 31, 2018) at (disclosing that “Sentosa Care LLC contracts for administrative services with the following nursing homes . . . : Bay Park Center for Nursing and Rehabilitation; Eastchester Rehabilitation and Health Care Center; Nassau Extended Care Center; Park Avenue Extended Care Facility; Seagate Rehabilitation and Nursing Center”).

13. Defendants have conducted and do conduct business in the State of New York, including through operation of the Facility.

14. Venue is proper in this County pursuant to CPLR 503(c) because defendant Bay Park LLC maintains its principal place of business in Bronx County, New York.

15. Venue is also proper in this County pursuant to CPLR 503(a) because Plaintiff resides in this County.

### **FACTUAL BACKGROUND**

#### **I. The Nursing Home Crisis Leads To Legislation Granting Patients A Right To Bring Class Actions Against Operators For Improper Care And To Federal Databases Tracking Nursing Home Ratings.**

16. In an effort to protect the vulnerable nursing home population, ensure that their rights are enforced, and provide them with a form of legal recourse which would not otherwise be economically feasible, the New York State Legislature enacted PHL §§ 2801-d and 2803-c.

17. Predating the enactment of PHL §§ 2801-d and 2803-c, “the public’s confidence in the State’s ability to protect its most defenseless citizens, the aged and infirm, had been destroyed by a series of dramatic disclosures highlighting the abuses of nursing home care in their State.” *See* Governor’s Memoranda, Nursing Home Operations, McKinney’s 1975 Session Laws of New York, p.1764. In Governor Carey’s letter to the Legislature accompanying the bills for PHL §§ 2801-d and 2803-c, he stated that these bills were “designed to deal directly with the most serious immediate problems which have been uncovered with respect to the nursing home industry.”<sup>6</sup> The Sponsor’s Memorandum relating to PHL § 2803-c and the transcripts of the Senate debates indicate that the purpose of the statute was to establish certain

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<sup>6</sup> *Morisett v. Terence Cardinal Cooke Health Care Ctr.*, 8 Misc.3d 506, 509 (Sup. Ct. N.Y. Cnty. 2005).

minimum standards for the care of nursing home patients. *See* Governor’s Bill Jacket for Chapter 648 of the Laws of 1975; Senate Debate Transcripts, 1975, Chapter 648 Transcripts, pp.4521, 4525. The term “residential health care facility” was intentionally used by the Legislature in an effort to curb abuses in the nursing home industry.<sup>7</sup>

18. The Commission’s Summary Report specifically indicated that PHL § 2801-d creates a cause of action for a patient of a facility which deprived the patient “of rights or benefits created for his well-being by federal or state law or pursuant to contract” which resulted in injury to the patient. The Commission stated that this statute “introduce[s] a degree of equality between nursing homes and their otherwise vulnerable and helpless patients and, through private litigation brought by patients either in individual or class action lawsuit, provides a supplemental mechanism for the enforcement of existing standards of care.”

19. The Legislative Memorandum “Nursing Home–Health Care Facilities–Actions by Patients” relating to PHL § 2801-d observes that nursing home patients “are largely helpless and isolated,” that many are “without occasional visitors,” and that “[m]ost cannot afford attorneys,” and therefore the bill provides nursing home patients “with increased powers to enforce their rights to adequate treatment and care by providing them with a private right of action to sue for damages and other relief and enabling them to bring such suits as class actions.” *See* McKinney’s Session Laws of New York, 1975 pp.1685-86. That memorandum states that the proposed PHL § 2801-d “creates incentives which would encourage private non-governmental parties (*i.e.*, plaintiffs’ attorneys) to help protect the rights of nursing home patients.” *Id.*

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<sup>7</sup> *See Town of Massen v. Whalen*, 72 A.D.2d 838 (3rd Dep’t 1979).

20. This statutory cause of action was created as an additional remedy, separate and distinct from other available traditional tort remedies.<sup>8</sup>

21. In addition, in the wake of an emphasized focus on the adequacy of care provided by skilled nursing home facilities, in December of 2008, the Centers for Medicare & Medicaid Services (“CMS”) enhanced its Nursing Home Compare public reporting site to include a set of quality ratings for each nursing home that participates in Medicare or Medicaid. The primary goal of this rating system is to provide residents and their families with an easy way to assess nursing home quality, in order to make meaningful distinctions between high and low performing nursing homes. The rating system features an overall five-star rating based on facility performance in three areas, each of which has its own five-star rating: (1) health inspections, which is measured based on outcomes from State health inspections; (2) staffing, which is a measure based on the nursing home’s aggregate staffing demand (based ultimately on the residents’ Minimum Data Set (“MDS”) -- a set of metrics used to determine for each resident the amount of staffing needed) and staffing supply (based on payroll records for Registered Nurse (“RN”), Licensed Practitioner Nurse (“LPN”), and nurse aide hours per resident per day); and (3) quality measures.<sup>9</sup>

22. This class action seeks to address the injustices that caused the Legislature to enact PHL § 2801-d. As alleged in more detail below, Defendants have violated and continue to

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<sup>8</sup> See *Kash v. Jewish Home & Infirmary of Rochester, N.Y. Inc.*, 61 A.D.3d 146, 150 (4th Dep’t 2009).

<sup>9</sup> See Centers for Medicare & Medicaid Services, “Design for Nursing Home Compare Five-Star Quality Rating System: Technical User’s Guide” (July 2018 ed.) (the “CMS Technical Guide”) (available at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/usersguide.pdf>) (last visited August 28, 2018).

violate their statutory obligations by failing to provide, among other things, adequate staffing, supervision, treatment, hygiene, and medical attention to the Class.

## **II. Defendants Disregard The Regulatory Framework That Protects Nursing Home Patients.**

23. In 2007, Bay Park Center for Nursing and Rehabilitation, LLC was established as the new operator of the Facility, which had previously been known as Hebrew Hospital Home and would be renamed Bay Park Center for Nursing and Rehabilitation.

24. The Facility is a member of the SentosaCare nursing home network, and SentosaCare provides administrative services for the Facility.<sup>10</sup> As early as October 2015, local news media reported that staffing levels among SentosaCare nursing homes were low.<sup>11</sup>

## **III. The Facility Is Unsafe And The Conditions To Which Its Patients Are Subjected Violate Numerous Statutes.**

25. Conditions at the Facility have been and continue to be unsafe and violative of applicable laws, rules, and regulations, and the care provided to Plaintiff and the Class has been and continues to be inadequate.

26. Defendants failed and continue to fail to promote the care for the Facility's residents in a manner that maintains or enhances each resident's dignity and respect in full recognition of their individuality and in contravention of applicable federal and New York State laws, rules, and regulations.

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<sup>10</sup> See <https://web.archive.org/web/20150427042115/http://www.sentosacare.com:80/bronx> (April 27, 2015 capture of SentosaCare.com webpage listing affiliated facilities in the Bronx) (copy annexed as Exhibit 2).

<sup>11</sup> <https://www.propublica.org/article/new-york-for-profit-nursing-home-group-flourishes-despite-patient-harm> (accessed August 29, 2018).

27. Among other failures, Defendants failed and continue to fail to provide sufficient nursing staff to provide the nursing and related services necessary to attain and maintain the highest practicable physical and psycho-social well-being of the Patients. A resident's right to sufficient staffing is one of the most important rights protected by New York and federal statutes.<sup>12</sup>

28. Indeed, the Facility currently receives a rating of one star ("much below average") out of a five star scale for overall staffing from the Nursing Home Compare website operated by CMS.<sup>13</sup> CMS's star ratings for staffing reflect the relationship of a facility's reported staffing levels to its expected staffing levels (determined by looking at the number of residents and their reported medical conditions).<sup>14</sup> A one-star or two-star rating indicates that the Facility has actual staffing levels below the expected staffing levels, based on the needs of the residents.<sup>15</sup>

Defendants have failed to adequately staff the Facility for years; in all but one quarter since 2013, the Facility has received one and two star ratings for overall staffing and RN staffing.<sup>16</sup>

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<sup>12</sup> See 10 N.Y.C.R.R. § 415.13; 42 U.S.C. § 1396r(b)(4)(C)(i)(I); 42 U.S.C. § 1395i-3(b)(4)(A)(i).

<sup>13</sup> See Exhibit 1, Nursing Home Compare Profile, at pages 1 & 4-5.

<sup>14</sup> See CMS Technical Guide at 1 ("The staffing measures are derived from data submitted each quarter through the Payroll-Based Journal System (PBJ), along with daily resident census derived from Minimum Data Set, Version 3.0 (MDS 3.0) assessments, and are case-mix adjusted based on the distribution of MDS 3.0 assessments by Resource Utilization Groups, version IV (RUG-IV group).") & 7-12. In previous years, CMS used different sources for determining the amount of staffing provided and the expected staffing needs (based on the MDS data for all the residents reported by the Facility to CMS), but the star ratings were still determined based on the relationship of staffing provided to expected staffing needs.

<sup>15</sup> *Id.* at 9-12.

<sup>16</sup> See Exhibit 3 (table reflecting CMS's archived star ratings for overall staffing and RN staffing from 2013Q1 through 2018Q3).



29. Defendants' failure to properly staff the Facility is particularly egregious because understaffing is one of the primary causes of inadequate care and often unsafe conditions in nursing facilities. Numerous studies have shown a direct correlation between inadequate staffing and serious care problems including, but not limited to, a greater likelihood of falls, pressure sores, significant weight loss, incontinence, and premature death. Although the dangers caused by understaffing are common knowledge in the nursing home industry, Defendants nonetheless chose not to provide adequate staffing levels.

30. Defendants have subjected Plaintiff and the Class to indignities and other harms that directly resulted and continue to result from inadequate nurse staffing levels at the Facility, including but not limited to: no response or long response times to call lights; failure to provide adequate showers; lack of assistance with grooming and bathing; medications not being received on time; inadequate attention to toileting needs requiring Plaintiff and the Class to remain in their own urine and fecal matter for extended periods of time; and being confined to their beds without removal for long periods. Indeed, Plaintiff has found no nurses or doctors present on the floor for hours at a time or indeed for an entire evening.

31. For example, in February 2018, due to staffing issues Sherard Clark was left sitting with an open wound while in Defendants' care. There were numerous times Defendants did not change the bandages on his foot. In fact, Mr. Clark overheard one of the doctors reprimanding a nurse for not attending to his bandaged foot. This didn't make a difference as she ignored the warning and left his bandages unchanged. Another doctor told the same nurse a few hours later to change Sherard's bandages -- neither she nor any other nurse attended to his wound. Because of the lack of staffing at the Facility, there were many times he had to change his bandages himself.

32. As a result of the Facility's staffing issues, Sherard's open wound became infected multiple times. In April 2018, Defendants released Mr. Clark from the Facility. Due to their inadequate care, his stiches were left in his foot too long and it became infected. Shortly thereafter when he was readmitted to the Facility in May 2018, Sherard ended up contracting a staph infection -- Methicillin-resistant Staphylococcus aureus (MRSA). Because of the Defendants lack of staff, appropriate measures were not taken in caring for his wound or scheduling an appointment for him to see a Podiatrist.

33. Mr. Clark was also left sitting many times with an empty IV because there was no staff around. On or around June 3, 2018, he was left sitting for almost an hour and even attempted to undo the IV himself. Needless to say, his attempt failed and he ended up passing out, hitting his head on the floor. When Sherard awoke, he had a knot on the back of his head.

34. As a result of Defendants' inadequate care, Sherard Clark has sustained personal injuries and endured conscious pain and suffering.

35. Upon information and belief, as a result of Defendants' inadequate care, the other members of the Class have sustained physical injuries and endured conscious pain and suffering.

36. Defendants' inadequate care also injured Sherard Clark and the other members of the Class by placing them at an increased risk of harm.

37. And Defendants' failure to satisfy its obligations pursuant to federal and New York law -- particularly the obligation to provide sufficient staffing -- economically injured Plaintiff and the other members of the Class by depriving them of the benefit of the services for which they paid Defendants -- namely, a nursing home with, at the least, staffing sufficient to satisfy the requirements of New York and federal law

### CLASS ACTION ALLEGATIONS

38. This action is brought on behalf of the Plaintiff identified above and all similarly situated persons pursuant to Civil Practice Law and Rules 901, *et seq.*<sup>17</sup> The Class is defined as:

All persons who reside, or resided, at the Facility from November 27, 2015, to the present.

39. Plaintiff reserves the right to amend the above definitions, or to propose other or additional classes, in subsequent pleadings and/or motions for class certification.

40. Plaintiff is a member of the Class.

41. Excluded from the Class are: (i) Defendants; any entity in which Defendants have a controlling interest; the officers, directors, and employees of Defendants; and the legal representatives, heirs, successors, and assigns of Defendants; (ii) any judge assigned to hear this case (or any spouse or family member of any assigned judge); (iii) any juror selected to hear this case; (iv) claims for personal injury and wrongful death; and (v) any and all legal representatives of the parties and their employees.

42. This action seeks to enjoin Defendants from understaffing, failing to disclose its understaffing, and making misleading promises about staffing at the Facility. In addition, this action seeks recovery -- including statutory minimum damages -- from the Defendants for their

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<sup>17</sup> PHL § 2801-d explicitly provides for these statutory claims to be brought as a class action. *See* PHL § 2801-d(4) (providing that “[a]ny damages recoverable pursuant to this section, including minimum damages as provided by subdivision two of this section, may be recovered in any action which a court may authorize to be brought as a class action” (emphasis added)). PHL § 2801-d(2) provides that “compensatory damages shall be assessed in an amount sufficient to compensate such patient for such injury, but in no event less than twenty-five percent of the daily per-patient rate of payment established for the residential health care facility under section twenty-eight hundred seven of this article or, in the case of a residential health care facility not having such an established rate, the average daily total charges per patient for said facility, for each day that such injury exists.”

injuries resulting from Defendants' failure to meet its contractual, statutory, and regulatory obligations.

43. Plaintiff and the Class satisfy the requirements for class certification as provided by Civil Practice Law and Rules 901, *et seq.*, for the following reasons:

44. **Numerosity of the Class.** Members of the Class are so numerous that their individual joinder is impracticable. The Class consists of hundreds, if not thousands, of persons and is therefore so numerous that joinder of all members, whether required or permitted, is impracticable. The precise number of persons in the Class and their identities and addresses may be ascertained from Defendants' records. If deemed necessary by the Court, members of the Class may be notified of the pendency of this action.

45. **Common Questions of Fact and Law.** Common questions of law and fact exist as to all members of the Class. These common legal and factual questions include, without limitation:

- a. Whether Defendants violated or violate New York laws, including, but not limited to, PHL 2801-d, by depriving any patient of the Facility of any right or benefit created or established for the well-being of the patient by the terms of any contract, by any state statute, code, rule, or regulation, or by any applicable federal statute, code, rule, or regulation during the Class Period;
- b. Whether Defendants violated or violate New York laws, including, but not limited to, PHL 2803-c, by failing to provide any patient of the Facility with adequate and appropriate medical care, failing to provide courteous, fair and respectful care and treatment, and failing to ensure every patient was free from mental and physical abuse during the Class Period;
- c. Whether Defendants failed or fail to employ an adequate number of qualified personnel to carry out all of the functions of its Facility in violation of PHL 2801-d and 2803-c;
- d. Whether Defendants' decision to understaff the Facility violated or violates any right(s) of residents as set forth in PHL 2801-d and 2803-c;

- e. Whether Defendants' decision to understaff its Facility and failure to provide adequate and appropriate medical care violated or violates any right(s) of residents as set forth in the Patients' Bill of Rights pursuant to PHL 2803-c;
- f. Whether Defendants' conduct violated or violates sections 31.19(a) and 16.19(a) of the New York Mental Hygiene Law;
- g. Whether Defendants' conduct violated or violates section 415 of the New York Code Rules and Regulations, including but not limited to subsections 415.3, 415.5, 415.12, 415.13, 415.14, 415.15, and 415.26; and
- h. Whether Defendants' conduct violated or violates the federal Nursing Home Reform Act, codified at 42 U.S.C. §§ 1395i-3(a)-(h) & 1396r(a)-(h) and at 42 C.F.R. §§ 483.15, 483.20, 483.25, 483.30, 483.40, 483.60, & 483.75.

46. **Typicality.** The claims of Plaintiff are typical of the claims of the proposed Class because Plaintiff's claims are based upon the same legal theories and same violations of New York State law. Plaintiff's grievances, like the proposed Class members' grievances, all arise out of the same business practices and course of conduct by Defendants. Further, Plaintiff's damages arise out of a pattern of uniform and repetitive business practices conducted by Defendants.

47. **Adequacy.** Plaintiff will fairly and adequately represent the Class on whose behalf this action is prosecuted. His interests do not conflict with the interests of the Class.

48. Plaintiff and his chosen attorneys, Finkelstein, Blankinship, Frei-Pearson & Garber, LLP ("FBFG"), are familiar with the subject matter of the lawsuit and have full knowledge of the allegations contained in this Complaint so as to be able to assist in its prosecution. Indeed, FBFG has been appointed as lead counsel in several complex class actions across the country and has secured numerous favorable judgments in favor of its clients. FBFG's attorneys are competent in the relevant areas of the law and have sufficient experience to vigorously represent the Class members. Finally, FBFG possesses the financial resources

necessary to ensure that the litigation will not be hampered by a lack of financial capacity and is willing to absorb the costs of the litigation.

49. **Superiority.** A class action is superior to any other available methods for adjudicating this controversy. The proposed class action is the surest way to fairly and expeditiously compensate so large a number of injured persons, to keep the courts from becoming paralyzed by hundreds -- if not thousands -- of repetitive cases, and to reduce transaction costs so that the injured Class members can obtain the most compensation possible.

50. Class treatment presents a superior mechanism for fairly resolving similar issues and claims without repetitious and wasteful litigation for many reasons, including the following:

- a. Absent a class action, Class members will suffer continuing, ever-increasing damages; violations of Class members' rights will continue without remedy; and the Facility will continue to remain understaffed, resulting in the mistreatment and improper care of its Patients.
- b. It would be a substantial hardship for most individual members of the Class if they were forced to prosecute individual actions. Many members of the Class are not in the position to incur the expense and hardship of retaining their own counsel to prosecute individual actions, which in any event might cause inconsistent results.
- c. When the liability of Defendants has been adjudicated, the Court will be able to determine the claims of all members of the Class. This will promote global relief and judicial efficiency in that the liability of Defendants to all Class members, in terms of money damages due and in terms of equitable relief, can be determined in this single proceeding rather than in multiple, individual proceedings where there will be a risk of inconsistent and varying results.
- d. A class action will permit an orderly and expeditious administration of the Class claims, foster economies of time, effort, and expense, and ensure uniformity of decisions. If Class members are forced to bring individual suits, the transactional costs, including those incurred by Defendants, will increase dramatically, and the courts of New York will be clogged with a multiplicity of lawsuits concerning the very same subject matter, with the identical fact patterns and the same legal issues. A class action will promote a global resolution, and will promote uniformity of relief as to the Class members and as to Defendants.
- e. This lawsuit presents no difficulties that would impede its management by the Court as a class action. The class certification issues can be easily determined

because the Class includes only the residents of the Facility, the legal and factual issues are narrow and easily defined, and the Class membership is limited. The Class does not contain so many persons that would make the Class notice procedures unworkable or overly expensive. The identity of the Class members can be identified from Defendants' records, such that direct notice to the Class members would be appropriate.

### **FIRST CAUSE OF ACTION**

#### **PUBLIC HEALTH LAW § 2801-d**

51. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained above with the same force and effect as if the same were set forth at full length herein.

52. At all relevant times, Defendants conducted business as a licensed nursing home as defined under PHL § 2801(2).

53. At all relevant times, Defendants had possession and control of the Facility's building(s), the nursing home located at 801 Co-op City Boulevard, Bronx, New York 10475.

54. At all relevant times, Benjamin Landa, Ben Philipson, Mayer Fischl, Eli Grinspan, Chana Lerner, Berish Rubinstein, Naomi Tessler, Richard Busell, and SentosaCare, LLC have each had the ability, acting either alone or in concert with others with ownership interests, to direct or cause the direction of the management or policies of the Facility, and are thus controlling persons of the Facility pursuant to PHL § 2808-a.

55. The Facility is a geriatric center, adult living facility, and/or a nursing home, which provides nursing care to sick, invalid, infirmed, disabled, or convalescent persons in addition to lodging and board or health related services pursuant to PHL § 2801(2).

56. The Facility is a residential health care facility as defined in PHL § 2801(3).

57. Defendants are subject to the provisions of PHL §§ 2801-d and 2803-c, as well as the rules and regulations set forth in sections 31.19(a) and 16.19(a) of the New York Mental Hygiene Law, section 415 of the New York Code Rules and Regulations, and the federal

Nursing Home Reform Act. These rules and regulations impose various obligations on Defendants, including, among others, a duty to adequately staff the Facility.

58. Plaintiff and the Class entered the Facility for care, treatment, supervision, management, and/or rehabilitation.

59. Plaintiff and the Class were under the exclusive care, custody, control, treatment, rehabilitation, supervision, and management of Defendants.

60. During the period of Plaintiff's and the Class's residency in the Facility, Defendants, through their officers, employees, agents, and staff, violated PHL § 2801-d by depriving Plaintiff and the Class of rights or benefits created or established for their well-being by the terms of a contract(s) and/or by the terms of state and federal statutes, rules, and regulations.

61. During Plaintiff's and the Class's residency, they sustained personal injuries and suffered mental anguish as a result of Defendants' failure to meet its contractual, statutory, and regulatory obligations, particularly the obligation to adequately staff the Facility.

62. During Plaintiff's and the Class's residency at the Facility, they were and are subjected to indignities and other harms that directly resulted and result from inadequate staffing levels at the Facility, including but not limited to: no response or long response times to a call light; failure to provide adequate showers; lack of assistance with grooming and bathing; medications not being received on time; inadequate attention to toileting needs requiring Plaintiff and the Class to remain in their own urine and fecal matter for extended periods of time; and being confined to their bed without removal for long periods.

63. Plaintiff complained to the Facility's staff regarding the neglectful, improper, and/or inadequate care and treatment of Plaintiff and the other members of the Class.



64. As a result of the foregoing acts and/or omissions, Defendants deprived Plaintiff and the Class of their rights in violation of PHL § 2801-d.

65. Defendants' deprivation of Plaintiff's and the Class's rights in violation of PHL § 2801-d substantially contributed to, created, and/or caused Plaintiff's and the Class's injuries. These injuries include, but are not limited to: being subjected to an increase risk of harm; being forced to undergo unnecessary medical treatment; incurring medical expense; suffering disfigurement, disability, mental anguish, and pain; suffering loss of enjoyment of life; and suffering a loss of the benefit of the bargain for which they contracted with Defendants -- namely, a residency at a nursing home with, at the least, staffing sufficient to satisfy the requirements of New York and federal law.

66. Defendants' responsibilities and obligations to Plaintiff and the Class are non-delegable, and thus Defendants have direct and/or vicarious liability for violations, deprivations, and infringements of such responsibilities and obligations by any person or entity under Defendants' control, direct or indirect, including their employees, agents, consultants, and independent contractors, whether in-house or outside entities, individuals, agencies, or pools, or caused by Defendants' policies, whether written or unwritten, or its common practices.

67. All acts and omissions committed by employees and agents of Defendants were pervasive, omnipresent events that occurred and continued throughout Plaintiff's and the Class's residency at the Facility, and were such that supervisors, administrators, and managing agents of Defendants knew, or should have been aware, of them.

68. Pursuant to PHL § 2801-d(2), Plaintiff and the Class seek compensatory damages in an amount sufficient to compensate each Patient for his or her injury, but in no event less than twenty-five percent of the daily per-patient rate of payment established for the Facility under

PHL § 2807, or, in the event the Facility does not have an established rate, the average daily total charges per patient for the Facility, for each day that such injury existed.

69. In addition to damages suffered by Plaintiffs and the Class as the result of Defendants' deprivation of their rights as nursing home residents, justice requires that Plaintiffs and the Class recover attorney's fees pursuant to PHL § 2801-d(6), punitive damages pursuant to PHL § 2801-d(2), and costs.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and the Class, respectfully requests that the Court grant relief against Defendants as follows:

- a. For a Court Order certifying that the action may be maintained as a class action;
- b. For injunctive relief prohibiting Defendants' violations of PHL §§ 2801-d and 2801-c in the future;
- c. On the First Cause of Action for violation of PHL § 2801-d, damages in an amount to be determined at trial and punitive damages, together with costs, disbursements, and attorney's fees in this action;
- d. For restitution and any other monetary relief permitted by law;
- e. For attorney's fees and costs; and
- f. For such other and further relief as the Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff, individually and on behalf of the Class, demands a trial by jury as to all issues triable of right.

Dated: White Plains, New York  
November 27, 2018

Respectfully Submitted,

**FINKELSTEIN, BLANKINSHIP,  
FREI-PEARSON & GARBER, LLP**

By: /s/Todd S. Garber

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*Attorneys for Plaintiff and the Proposed Class*

**VERIFICATION**

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF WESTCHESTER    )

I, the undersigned, am an attorney admitted to practice in the Courts of the State of New York and say that:

I am the attorney of record for the Plaintiff and proposed Class. I have read the annexed Summons and Class Action Complaint and know the contents thereof, and the same are true to my knowledge, except those matters therein which are based on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based on the contents of the file. The reason I make this affirmation instead of Plaintiff is because Plaintiff resides outside the county in which I have my office.

Dated: White Plains, New York  
November 27, 2018

/s/Todd S. Garber  
Todd S. Garber  
**FINKELSTEIN, BLANKINSHIP,  
FREI-PEARSON & GARBER, LLP**  
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White Plains, New York 10601  
Tel: (914) 298-3281  
Fax: (914) 824-1561  
tgarber@fbfglaw.com

# Exhibit 1

# Medicare.gov | Nursing Home Compare

The Official U.S. Government Site for Medicare

## General information

### BAY PARK CENTER FOR NURSING AND REHAB L L C

**Overall rating** ⓘ: 3 out of 5 stars  
Average

[Learn more about the overall star ratings](#)

801 CO OP CITY BLVD  
BRONX, NY 10475  
(718) 239-6500



### Nursing Home information

480 certified beds ⓘ	Not in a Continuing Care Retirement Community (CCRC) ⓘ
Participates in ⓘ: Medicare and Medicaid	Not in a hospital ⓘ
Automatic sprinkler systems in all required areas ⓘ: Yes	Resident council only ⓘ

[Learn why these characteristics and services are important](#)

### Ownership information

Ownership ⓘ: For profit - Partnership  
Legal business name: BAY PARK CENTER FOR NURSING AND REHABILITATION, LLC

[Get more ownership information](#)

### Star rating categories

<b>Health inspection rating</b> ⓘ	3 out of 5 stars <b>Average</b>
<b>Staffing rating</b> ⓘ	1 out of 5 stars <b>Much Below Average</b>
<b>Quality measures rating</b> ⓘ	5 out of 5 stars <b>Much Above Average</b>

## Health inspections








## BAY PARK CENTER FOR NURSING AND REHAB L L C

**Overall rating** : 3 out of 5 stars  
Average

### Health inspections

Information about a nursing home's health inspections, complaints filed, and any resulting citations. Nursing homes that are certified by Medicare and Medicaid are inspected each year. Health care professionals inspect each nursing home and look for any health and safety citations. [Learn more.](#)

The [health inspection star rating](#) is based off of 2 years of inspections occurring before November 28, 2017.

	BAY PARK CENTER FOR NURSING AND REHAB L L C
<b>Health Inspection rating</b> 	3 out of 5 stars Average
<b>Recent health inspection</b> 	No Health Inspection since 11/28/2017
➤ <b>Number of citations</b>	Not Applicable
➤ <b>Level of harm</b> 	Not Applicable
➤ <b>Residents affected</b> 	Not Applicable
<b>Previous standard health inspection</b> 	07/19/2017 <a href="#">View full report</a>
➤ <b>Total number of health citations</b>	0
<b>Average number of health citations in New York</b> 	4.2
<b>Average number of health citations in the U.S.</b> 	5.8
<b>Date(s) of complaint inspection(s) between 10/1/2017 - 9/30/2018</b>	No Complaint Inspections

	BAY PARK CENTER FOR NURSING AND REHAB L L C
Number of complaints in the past 3 years that resulted in a citation 	2
Number of times in the past 3 years a facility-reported issue resulted in a citation 	0
View all health inspection details	<a href="#">View all health inspection, complaint, and facility-reported issue details</a>

## Fire safety inspections

### BAY PARK CENTER FOR NURSING AND REHAB L L C

Overall rating  3 out of 5 stars  
Average

[Learn more about the overall star ratings](#)

801 COLORED CITY BLVD



#### Fire safety inspections

BRONX, NY 10475

Nursing Home ID: 335581

Nursing homes that are certified by Medicare and/or Medicaid must meet standards set by the government to ensure residents are safe. Fire safety specialists inspect nursing homes to determine if a nursing home meets the Life Safety Code (LSC) requirements, a set of fire safety and emergency preparedness requirements set by the Centers for Medicare & Medicaid Services (CMS). These requirements are aimed at preventing fires, or protecting residents in the event of an emergency like a fire, hurricane, tornado, flood, power failure, or gas leak, etc.

[Learn more about fire inspections.](#)

	undefined
Automatic Sprinkler Systems in All Required Areas 	Yes
Date of most recent standard fire safety inspection	07/19/2017
Total number of fire safety citations 	2
Average number of fire safety citations in NY	3.3
Average number of fire safety citations in the United States	3.0



	<b>undefined</b>
<b>See all fire safety inspection details</b>	<a href="#">View All Fire Safety Inspections</a>

## Staffing

### BAY PARK CENTER FOR NURSING AND REHAB L L C

**Overall rating**  3 out of 5 stars  
Average

[Learn more about the overall star ratings](#)

### Staffing

Higher staffing levels in a nursing home may mean higher quality of care for residents. This section provides information about the different types of nursing home staff and the average amount of time per resident that they spend providing care.

[Get more information about the staffing measures](#)

[Get more information about how to read the staffing chart](#)

## Staffing

The information in this section includes registered nurses (RN), licensed practical/vocational nurses (LPN/LVN), nurse aides, and physical therapists (PT). Physical therapists are not included in the “all staffing” star rating.

The “staffing” star rating takes into account that some nursing homes have sicker residents and may therefore need more staff than other nursing homes whose residents are not as sick.

	BAY PARK CENTER FOR NURSING AND REHAB L L C	NEW YORK AVERAGE	NATIONAL AVERAGE
<b>Staffing rating</b>	1 out of 5 stars Much Below Average		
<b>Average number of residents per day</b>	470.0	167.1	85.9
<b>Total number of licensed nurse staff hours per resident per day</b>	51 minutes	1 hour and 32 minutes	1 hour and 34 minutes

	BAY PARK CENTER FOR NURSING AND REHAB L L C	NEW YORK AVERAGE	NATIONAL AVERAGE
<b>RN hours per resident per day</b>	22 minutes	42 minutes	41 minutes
<b>LPN/LVN hours per resident per day</b>	29 minutes	49 minutes	53 minutes
<b>Nurse aide hours per resident per day</b> ⓘ	1 hour and 48 minutes	2 hours and 15 minutes	2 hours and 20 minutes
<b>Physical therapist staff hours per resident per day</b> ⓘ	5 minutes	8 minutes	7 minutes
<b>Registered Nurse (RN) staffing only</b>			
Registered nurses (RNs) are licensed healthcare professionals who are responsible for the coordination, management and overall delivery of care to the residents. Some nursing home residents who are sicker than others may require a greater level of care, and nursing homes that have more RN staff may be better able to meet the needs of those residents.			
<b>Registered Nurse (RN) staffing rating</b>	2 out of 5 stars Below Average		
<b>Average number of residents per day</b>	470.0	167.1	85.9
<b>RN hours per resident per day</b>	22 minutes	42 minutes	41 minutes
<a href="#">How to read staffing charts</a>   <a href="#">About staff roles</a>			

## Quality of resident care

### BAY PARK CENTER FOR NURSING AND REHAB L L C

**Overall rating** ⓘ: 3 out of 5 stars  
Average

[Learn more about the overall star ratings](#)

### Quality of resident care

Nursing homes that are certified by [Medicare](#) and [Medicaid](#) regularly report clinical information for each of their residents to the Centers for Medicare & Medicaid Services (CMS). For short-stay and long-stay resident quality measures, CMS assigns nursing homes a quality of resident care star rating based on their performance on 16 measures. These, and other measures reflect, on average, how well nursing homes care for their residents. Information is listed for 2 groups of residents:

Short-stay residents - those who spent 100 days or less in a nursing home or residents covered under the [Medicare Part A Skilled Nursing Facility \(SNF\) benefit](#)

Long-stay residents - those who spent over 100 days in a nursing home

[Learn more about what quality of resident care information can tell you about a nursing home](#)



**Quality of resident care** 

5 out of 5 stars  
**Much Above Average**

▼ **Short-stay residents**

[Learn why these short-stay measures are important](#)

[Current data collection period](#)

	BAY PARK CENTER FOR NURSING AND REHABILITATION	NEW YORK AVERAGE	NATIONAL AVERAGE
<b>Quality measures used to calculate the star rating</b>			
<b>Percentage of short-stay residents who were re-hospitalized after a nursing home admission.</b> <i>Lower percentages are better.</i>	16.9%	20.3%	22.4%
<b>Percentage of short-stay residents who have had an outpatient emergency department visit.</b> <i>Lower percentages are better.</i>	4.2%	9.9%	12.3%
<b>Percentage of short-stay residents who got antipsychotic medication for the first time.</b>  <i>Lower percentages are better.</i>	1.2%	1.6%	1.9%
<b>Percentage of short-stay residents with pressure ulcers that are new or worsened.</b>  <i>Lower percentages are better.</i>	0.0%	0.8%	0.9%

	BAY PARK CENTER FOR NURSING AND REHAB L L C	NEW YORK AVERAGE	NATIONAL AVERAGE
<b>Quality measures used to calculate the star rating</b>			
<b>Percentage of short-stay residents who report moderate to severe pain.</b> <i>Lower percentages are better.</i>	1.1%	8.6%	12.8%
<b>Rate of successful return to home and community from a short-stay.</b> <i>Higher percentages are better.</i>	16.6%	54.8%	56.4%
<b>Percentage of short-stay residents who improved in their ability to move around on their own.</b> ⓘ <i>Higher percentages are better.</i>	76.0%	69.4%	67.9%
<b>Flu and pneumonia prevention measures</b>			
<b>Percentage of short-stay residents who needed and got a flu shot for the current flu season.</b> <i>Higher percentages are better.</i>	61.9%	82.6%	81.8%
<b>Percentage of short-stay residents who needed and got a vaccine to prevent pneumonia.</b> <i>Higher percentages are better.</i>	71.5%	80.4%	83.3%
<b>Additional quality measures</b> ⓘ			
<b>Percentage of SNF residents with pressure ulcers that are new or worsened.</b> ⓘ <i>Lower percentages are better.</i>	0.7%	Not Available <sup>8</sup>	1.7%
<b>Percentage of SNF residents who experience one or more falls with major injury during their SNF stay.</b> <i>Lower percentages are better.</i>	0.0%	Not Available <sup>8</sup>	0.9%

	BAY PARK CENTER FOR NURSING AND REHAB L L C	NEW YORK AVERAGE	NATIONAL AVERAGE
<b>Quality measures used to calculate the star rating</b>			
<b>Percentage of SNF residents whose functional abilities were assessed and functional goals were included in their treatment plan.</b> ⓘ <i>Higher percentages are better.</i>	98.6%	Not Available <sup>8</sup>	95.9%
<b>Rate of successful return to home and community from a SNF.</b> <i>Higher rates are better.</i>	Worse than the National Rate	Not Available <sup>14,8</sup>	48.6%
<b>Rate of potentially preventable hospital readmissions 30 days after discharge from a SNF.</b> <i>Lower rates are better.</i>	Not Available <sup>16</sup>	Not Available <sup>14,16,8</sup>	Not Available <sup>16</sup>
<b>Medicare Spending Per Beneficiary (MSPB) for residents in SNFs.</b> ⓘ <i>Displayed as a ratio.</i>	1.28	Not Available <sup>14,8</sup>	1.01

▼ Long-stay residents

[Learn why these long-stay measures are important](#)


[Current data collection period](#)

	BAY PARK CENTER FOR NURSING AND REHAB L L C	NEW YORK AVERAGE	NATIONAL AVERAGE

<b>Quality measures used to calculate the star rating</b>	BAY PARK CENTER FOR NURSING AND REHAB L L C	NEW YORK AVERAGE	NATIONAL AVERAGE
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<b>Quality measures used to calculate the star rating</b>			
<b>Percentage of long-stay residents who got an antipsychotic medication.</b> <i>Lower percentages are better.</i>	5.3%	11.7%	15.0%
<b>Percentage of long-stay residents experiencing one or more falls with major injury.</b> <i>Lower percentages are better.</i>	0.9%	2.9%	3.4%
<b>Percentage of long-stay high-risk residents with pressure ulcers.</b> <i>Lower percentages are better.</i>	2.6%	6.8%	5.6%
<b>Percentage of long-stay residents with a urinary tract infection.</b> <i>Lower percentages are better.</i>	2.4%	2.5%	3.0%
<b>Percentage of long-stay residents who have or had a catheter inserted and left in their bladder.</b> <i>Lower percentages are better.</i>	0.5%	1.3%	1.8%
<b>Percentage of long-stay residents whose ability to move independently worsened.</b> <i>Lower percentages are better.</i>	9.3%	16.4%	18.2%
<b>Percentage of long-stay residents whose need for help with daily activities has increased.</b> <i>Lower percentages are better.</i>	9.8%	13.5%	14.9%
<b>Percentage of long-stay residents who were physically restrained.</b> <i>Lower percentages are better.</i>	0.8%	0.5%	0.3%

	BAY PARK CENTER FOR NURSING AND REHAB L L C	NEW YORK AVERAGE	NATIONAL AVERAGE
<b>Quality measures used to calculate the star rating</b>			
<b>Percentage of long-stay residents who report moderate to severe pain.</b> <i>Lower percentages are better.</i>	0.9%	3.4%	5.8%
<b>Flu and pneumonia prevention measures</b>			
<b>Percentage of long-stay residents who needed and got a flu shot for the current flu season.</b> <i>Higher percentages are better.</i>	96.9%	96.8%	95.2%
<b>Percentage of long-stay residents who needed and got a vaccine to prevent pneumonia.</b> <i>Higher percentages are better.</i>	99.0%	94.5%	93.9%
<b>Additional quality measures</b>			
<b>Number of hospitalizations per 1,000 long-stay resident days.</b> <i>Lower numbers are better.</i>	1.02	1.55	1.69
<b>Percentage of long-stay low-risk residents who lose control of their bowels or bladder.</b> <i>Lower percentages are better.</i>	41.1%	53.1%	48.2%
<b>Percentage of long-stay residents who lose too much weight.</b> <i>Lower percentages are better.</i>	4.7%	6.5%	7.0%
<b>Percentage of long-stay residents who have symptoms of depression.</b> <i>Lower percentages are better.</i>	41.8%	6.3%	4.6%

	BAY PARK CENTER FOR NURSING AND REHAB L L C	NEW YORK AVERAGE	NATIONAL AVERAGE
<b>Quality measures used to calculate the star rating</b>			
<b>Percentage of long-stay residents who got an antianxiety or hypnotic medication.</b>  <i>Lower percentages are better.</i>	6.4%	14.5%	21.6%

## Penalties

### BAY PARK CENTER FOR NURSING AND REHAB L L C

**Overall rating**  3 out of 5 stars  
Average

[Learn more about the overall star ratings](#)

### Penalties

When a nursing home gets a serious citation or fails to correct a citation for a long period of time, this can result in a penalty. A penalty can be a fine against the nursing home or a denied payment from Medicare.

[Search for penalties under state law.](#)

[Learn more about penalties.](#)

<b>Federal fines in the last 3 years</b>	0
<b>Amount(s) and date(s)</b>	This nursing home has not received any fines in the last 3 years.  States may also impose penalties under state law. To search state websites <a href="#">Click here.</a>



<b>Payment denials by Medicare in the last 3 years</b>	0
<b>Date(s)</b>	<p>This nursing home has not received any payment denials in the last 3 years.</p> <p>States may also impose penalties under state law. To search state websites <a href="#">click here</a>.</p>

# Exhibit 2

http://www.sentosacare.com:80/bronx Go

8 captures  
6 Feb 2015 - 27 Apr 2015

FEB APR MAY  
2014 27 2015 2016

About this capture

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Interactive Map

1-877-SENTOSA

HOME OUR MISSION OUR GOALS

AFFILIATE FACILITIES CENTRAL ADMISSIONS CONTACT



## Bronx



### Bay Park Center for Nursing and Rehabilitation

- 801 Co-Op City Blvd • Bronx, NY 10475
- Phone: (718) 239-6500
- <http://www.bayparkcenterfornursing.com/>

### Eastchester Rehabilitation and Healthcare Center

- 2700 Eastchester Road • Bronx, NY 10469
- Phone: (718) 231-5550
- <http://eastchesterrehab.com>



### Throgs Neck Extended Care Facility

- 707 Throgs Neck Expressway • Bronx, NY 10465
- Phone: (718) 430-0003
- No Link

# Exhibit 3

<b>CMS Staffing Ratings for BAY PARK CENTER FOR NURSING AND REHAB LLC (Fed. Prov. No. 335581)</b>		
<b>Time Period</b>	<b>Overall Staffing Rating</b>	<b>RN Staffing Rating</b>
2013Q1	1	2
2013Q2	1	2
2013Q3	1	1
2013Q4	1	1
2014Q1	1	1
2014Q2	1	1
2014Q3	1	1
2014Q4	1	2
2015Q1	1	2
2015Q2	1	2
2015Q3	1	2
2015Q4	1	2
2016Q1	1	2
2016Q2	1	2
2016Q3	1	2
2016Q4	1	1
2017Q1	1	1
2017Q2	1	1
2017Q3	1	1
2017Q4	2	2
2018Q1	3	3
2018Q2	1	2
2018Q3	1	2
Source: <a href="https://data.medicare.gov/data/archives/nursing-home-compare">https://data.medicare.gov/data/archives/nursing-home-compare</a>		

# EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

----- X  
SHERARD CLARK, Individually and on behalf of all  
others similarly situated,

Index No.: 33378/2018E

Plaintiff,

- against -

**NOTICE OF FILING OF  
NOTICE OF REMOVAL**

BAY PARK CENTER FOR NURSING AND  
REHABILITATION, LLC d/b/a BAY PARK CENTER FOR  
NURSING AND REHABILITATION; BENJAMIN LANDA;  
BEN PHILIPSON; MAYER  
FISCHL; ELI GRINSPAN; CHANA LAERNER;  
BERISH RUBINSTEIN; NAOMI TESSLER;  
RICHARD BUSELL; SENTOSACARE, LLC, and  
DOES 1-25;

Defendants.

----- X

**PLEASE TAKE NOTICE** that on January 16, 2019, Defendant SentosaCare, LLC, with the consent of all other Defendants, filed a Notice of Removal, pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446 and 1447, removing this action from this Court to the United States District Court for the Southern District of New York. A true and correct copy of the Notice of Removal is attached as Exhibit 1.

Please take further notice that, upon the filing of the Notice of Removal with the Clerk of the United States District Court for the Southern District of New York, and filing a copy with the Clerk of this Court, SentosaCare, LLC has effected removal and this Court shall proceed no further in this action unless and until this action is remanded pursuant to 28 U.S.C. § 1446(d).

Dated: January 16, 2019

Respectfully submitted,

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP**

By:




Lori R. Semlies, Esq.  
Krystle E. Rodriguez, Esq.  
1133 Westchester Avenue  
White Plains, NY 10604  
Telephone: 914.323.7000  
Facsimile: 914.323.7001  
lori.semlies@wilsonelser.com  
krystle.rodriguez@wilsonelser.com

*Attorneys for Defendant SentosaCare, LLC and all  
other Defendants*



**CERTIFICATE OF SERVICE**

I, Lori R. Semlies, an attorney admitted to practice before the Courts of the State of New York, affirm under penalty of perjury that on January 16, 2019, a copy of SentosaCare, LLC's Notice of Filing of Notice of Removal was served on all parties of record via the NYSCEF system and email.

  
Lori R. Semlies, Esq.

# EXHIBIT C

**AFFIDAVIT OF SERVICE**

<b>Case:</b>	<b>Court:</b> Supreme Court Of The State of New York	<b>County:</b> Bronx	<b>Job:</b> 2871256
<b>Plaintiff / Petitioner:</b> Sherard Clark		<b>Defendant / Respondent:</b> Bay Park Center for Nursing And Rehabilitation, LLC. d/b/a Bay Park Center for Nursing and Rehabilitation	
<b>Received by:</b> Elite Process Serving, INC		<b>For:</b> Finkelstein, Blankinshlp, Frei-Pearso... Frei-Pearson & Garber, LLP FBFG Legal Assistant	
<b>To be served upon:</b> Bay Park Center for Nursing And Rehabilitation, LLC. d/b/a Bay Park Center for Nursing and Rehabilitation			

I, Khidhr Amin, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein


**Recipient Name / Address:** Sue Zouky, NYS Department Of State: 99 Washington Ave Suite 600, Albany, NY 12231

**Manner of Service:** Secretary of State, Dec 5, 2018, 3:01 pm EST

**Documents:** Notice of Electronic Filing, SUMMONS, Class Action Complaint

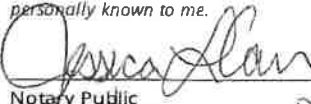
**Additional Comments:**

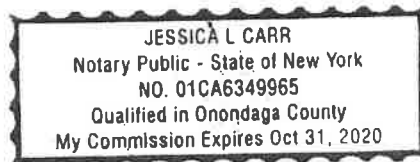
1) Successful Attempt: Dec 5, 2018, 3:01 pm EST at NYS Department Of State: 99 Washington Ave Suite 600, Albany, NY 12231 received by Sue Zouky. Relationship: Business Document Spec 2;

  
 Khidhr Amin  
 12/27/18  
 Date

Elite Process Serving, INC  
 466 North Salina Street Store South  
 Syracuse, NY 13203

Subscribed and sworn to before me by the affiant who is personally known to me.

  
 Notary Public  
 12/27/18  
 Date  
 October 31, 2020  
 Commission Expires



**FILED: BRONX COUNTY CLERK 12/27/2018 05:10 PM**

RECEIVED NYSCEF: 12/27/2018

NYSCEF DOC. NO. 6

**AFFIDAVIT OF SERVICE**

<b>Case:</b>	<b>Court:</b> Supreme Court Of The State of New York	<b>County:</b> Bronx	<b>Job:</b> 2871261
<b>Plaintiff / Petitioner:</b> Sherard Clark		<b>Defendant / Respondent:</b> Bay Park Center for Nursing And Rehabilitation, LLC. d/b/a Bay Park Center for Nursing and Rehabilitation	
<b>Received by:</b> Elite Process Serving, INC		<b>For:</b> Finkelstein, Blankinship, Frei-Pearso... Frei-Pearson & Garber, LLP FBFG Legal Assistant	
<b>To be served upon:</b> Sentosacare, LLC			

I, Khidhr Amin, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

**Recipient Name / Address:** Sue Zouky, NYS Department Of State: 99 Washington Ave Suite 600, Albany, NY 12231

**Manner of Service:** Secretary of State, Dec 5, 2018, 2:59 pm EST

**Documents:** Notice of Electronic Filing, SUMMONS, Class Action Complaint

**Additional Comments:**

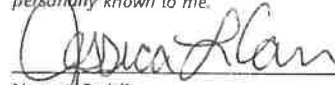
1) Successful Attempt: Dec 5, 2018, 2:59 pm EST at NYS Department Of State: 99 Washington Ave Suite 600, Albany, NY 12231 received by Sue Zouky. Age: 60; Ethnicity: Caucasian; Gender: Female; Height: 5'4"; Relationship: Business Document Spec 2;

  
Khidhr Amin

12/27/18  
Date

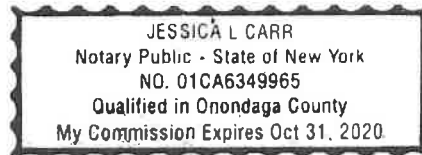
Elite Process Serving, INC  
466 North Salina Street Store South  
Syracuse, NY 13203

*Subscribed and sworn to before me by the affiant who is personally known to me.*

  
Notary Public

12/27/18  
Date

October 31, 2020  
Commission Expires



**FILED: BRONX COUNTY CLERK 12/27/2018 05:10 PM**

NYSCEF DOC. NO. 7

RECEIVED NYSCEF: 12/27/2018

**AFFIDAVIT OF SERVICE**

**State of New York**

**County of Bronx**

**Supreme Court**

Index Number: 33378/2018E  
Date Filed: 11/27/2018

Plaintiff:  
**SHERARD CLARK**

vs.

Defendant:  
**BAY PARK CENTER FOR NURSING AND REHABILITATION, LLC D/B/A  
BAY PARK CENTER FOR NURSING AND REHABILITATION; BENJAMIN  
LANDA; BEN PHILIPSON; MAYER FISCHL; ELI GRINSPAN; CHANA  
LERNER; RICHARD BUSELL; SENTOSACARE, LLC; AND DOES 1-25,**

For:  
FINKELSTEIN, BLANKINSHIP, FRIE-PEARSON & GARBER, LLP  
445 HAMILTON AVENUE  
SUITE 605  
WHITE PLAINS, NY 10601

Received by Direct Process Server LLC on the 20th day of December, 2018 at 11:24 am to be served on  
**BERISH RUBINSTEIN, 951 BROADWAY, WOODMERE, NY 11598-1733.**

I, **CURTIS WARREN**, being duly sworn, depose and say that on the **20th day of December, 2018** at **3:49 pm**, I:

served a **SUITABLE AGE PERSON** by delivering and leaving a true copy of the **NOTICE OF ELECTRONIC FILING, SUMMONS, CLASS ACTION COMPLAINT, VERIFICATION AND EXHIBITS** with **KATRINNA LAMPOTOC** as Co Worker at **951 BROADWAY, WOODMERE, NY 11598-1733**, the said premises being the respondent's place of Work within the State of New York. Deponent completed service by mailing a true copy of the **NOTICE OF ELECTRONIC FILING, SUMMONS, CLASS ACTION COMPLAINT, VERIFICATION AND EXHIBITS** in a postpaid envelope addressed to: **951 BROADWAY, WOODMERE, NY 11598-1733** and bearing the words "Personal & Confidential" by First Class Mail on **12/20/2018** and placed in an official depository of the U.S.P.S. in **New York State**

Said documents were conformed with index number and date of filing endorsed thereon.

**Military Status:** Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

**Marital Status:** Based upon inquiry of party served, they refused to state whether or not the Defendant is married.

**Description of Person Served:** Age: 40, Sex: F, Race/Skin Color: White, Height: 5'5", Weight: 140, Hair: Dark Brown, Glasses: N



**AFFIDAVIT OF SERVICE For 33378/2018E**

I certify that I am over the age of 18, have no interest in the above action. Under penalties of perjury, I declare I have read the foregoing document and the facts stated are true.

Subscribed and Sworn to before me on the 21<sup>st</sup>  
day of Dec, 2018 by the affiant  
who is personally known to me.

Sheila Grant  
NOTARY PUBLIC

SHEILA MARIA GRANT  
Notary Public, State of New York  
No. 01GR6269680  
Qualified in Kings County  
Commission Expires October 01, 2020

CWarren  
CURTIS WARREN

Direct Process Server LLC  
22 Southern Blvd  
Suite 103  
Nesconset, NY 11767  
(631) 408-6989

Our Job Serial Number: DPR-2018003191

FILED: BRONX COUNTY CLERK 12/27/2018 05:10 PM  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

INDEX NO. 33378/2018E  
Job #: 1472768  
RECEIVED NYSCEF: 12/27/2018

Attorney: FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER LLP  
Address: 445 HAMILTON AVE., STE#605 WHITE PLAINS, NY 10601

SHERARD CLARK INDIVIDUALLY AND ON BEHAV OF ALL OTHERS SIMILARLY SITUATED

Index Number: 33378/2018E

vs

Plaintiff

Client's File No.: clark vs. bay park

BAY PARK CENTER FOR NURSING AND REHABILITATION LLC DBA BAY PARK CENTER  
FOR NURSING AND REHABILITATION, BENJAMIN LANDA ET AL

Court Date:

Defendant

Date Filed: 11/27/2018

STATE OF NEW YORK, COUNTY OF QUEENS, SS.:  
NNAMDI ERSKINE, being sworn says:

**AFFIDAVIT OF SERVICE**

Deponent is not a party herein; is over the age of 18 years and resides in the State of .

On 12/27/2018, at 7:51 AM at: 2214 AVENUE I , BROOKLYN, NY 11210 Deponent served the within Summons and Verified Complaint,  
NOTICE OF ELECTRONIC FILING

On: NAOMI TESSLER , Defendant therein named.

#1 AFFIXING TO DOOR

By affixing a true copy of each to the door of said premises which is defendants  
[] actual place of business / employment [X] dwelling house (usual place of abode) within the state. Deponent was unable with due diligence to find  
defendant or person of suitable age and discretion thereat having called there 12/20/2018 9:12 PM, 12/24/2018 1:51 PM

#2 WITNESS FEES

Subpoena Fee Tendered in the amount of

#3 OTHER

#4 MAILING

Deponent completed service by depositing a copy of the said documents in a postpaid properly addressed envelope, bearing the words "Personal  
and Confidential" by first class mail on: 12/27/2018 in an official depository of the United States Postal Service in the State of New York.

Sworn to before me on 12/27/2018

*Dianne Gonzalez*

DIANNE GONZALEZ  
NOTARY PUBLIC, State of New York  
No. 01GO6925521, Qualified in Queens County  
Term Expires, August 3, 2019

*NNAMDI ERSKINE*

NNAMDI ERSKINE  
DCA License # 1376400



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

SHERARD CLARK, Plaintiff(s) – Petitioner(s)

VS. INDEX NO.: 33378/2018E

BAY PARK CENTER FOR NURSING AND REHABILITATION, LLC, Defendant(s) – Respondents(s)

STATE OF NEW JERSEY  
COUNTY OF ESSEX ss.:

Eric Gruboy, the undersigned, being duly sworn, deposes and says that I was at the time of service over the age of 18 years and not a party to this action.

On 12/20/2018 at 9:45 PM, I served a true copy of a NOTICE OF ELECTRONIC FILING, SUMMONS, CLASS ACTION COMPLAINT, EXHIBITS upon ELI GRINSPAN at 11 VIRGINIA AVE, CLIFTON, NJ 07012 in the he manner indicated below:

Suitable age Person [ X ] By delivering a true copy of each and leaving with JOSEPH GRINSPAN who is known to be the FATHER and a competent household member over 14 years of age residing therein. Said premises is recipients [ x ] usual place of abode within the state. [ ] actual place of business

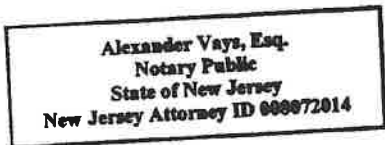
Approximate Description of Receipt Male Sex White Skin Black Hair Color 40s Age 5'9 Height 220 lbs Weight Other

Mailing 12/21/2018 Deponent completed service by depositing a true copy of each properly sealed affixed with first class postage and addressed to the Defendant in an official depository under exclusive care and custody of the U.S. Postal Service. [ X ] The envelope was marked "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from and attorney or concerns an action against the person to be served.

Sworn to before me this 21 day of Dec, 2018

Alexander Vays, Esq. Notary Public

Eric Gruboy PO BOX 25066 Newark, NJ 07102 800-637-1805



WE SERVE NJ LLC, PO BOX 25066, NEWARK, NJ 07102



AFFIDAVIT OF SERVICE

State of New York

County of Bronx

Supreme Court

Index Number: 33378/2018E

Date Filed: 11/27/2018

Plaintiff:

**SHERARD CLARK**

vs.

Defendant:

**BAY PARK CENTER FOR NURSING AND REHABILITATION, LLC D/B/A  
BAY PARK CENTER FOR NURSING AND REHABILITATION; BENJAMIN  
LANDA; BEN PHILIPSON; MAYER FISCHL; ELI GRINSPAN; CHANA  
LERNER; RICHARD BUSELL; SENTOSACARE, LLC; AND DOES 1-25,**

For:

**FINKELSTEIN, BLANKINSHIP, FRIE-PEARSON & GARBER, LLP  
445 HAMILTON AVENUE  
SUITE 605  
WHITE PLAINS, NY 10601****Received by Direct Process Server LLC on the 20th day of December, 2018 at 11:24 am to be served on  
BENJAMIN LANDA, 182 BRIARWOOD CROSSING, LAWRENCE, NY 11559-2708.****I, CURTIS WARREN, being duly sworn, depose and say that on the 20th day of December, 2018 at 4:27  
pm, I:****Served BENJAMIN LANDA INDIVIDUALLY/PERSONALLY by delivering a true copy of the NOTICE OF  
ELECTRONIC FILING, SUMMONS, CLASS ACTION COMPLAINT, VERIFICATION AND EXHIBITS at  
the date and hour of service endorsed above thereon by me, to: BENJAMIN LANDA at the address of  
182 BRIARWOOD CROSSING, LAWRENCE, NY 11559-2708, and informed said person of the contents  
therein, in compliance with state statutes.**

Said documents were conformed with index number and date of filing endorsed thereon.

**Military Status:** Based upon inquiry of party served, Defendant is not in the military service of the United States of America.**Marital Status:** Based upon inquiry of party served. Defendant is married.**Description of Person Served:** Age: 62, Sex: M, Race/Skin Color: White, Height: 5'11", Weight: 190, Hair: Salt & Pepper, Glasses: N

**AFFIDAVIT OF SERVICE For 33378/2018E**

I certify that I am over the age of 18, have no interest in the above action. Under penalties of perjury, I declare I have read the foregoing document and the facts stated are true.

Subscribed and Sworn to before me on the 21<sup>st</sup>  
day of Dec, 2018 by the affiant  
who is personally known to me.

Sheila M. Grant  
NOTARY PUBLIC

SHEILA MARIA GRANT  
Notary Public, State of New York  
No. 01GR6269680  
Qualified in Kings County  
Commission Expires October 01, 2020

C. Warren

CURTIS WARREN

Direct Process Server LLC  
22 Southern Blvd  
Suite 103  
Nesconset, NY 11767  
(631) 406-8989

Our Job Serial Number: DPR-2018003190

**AFFIDAVIT OF SERVICE**

State of New York

County of Bronx

Supreme Court

Index Number: 33378/2018E  
Date Filed: 11/27/2018

Plaintiff  
**SHERARD CLARK**

vs.

Defendant:  
**BAY PARK CENTER FOR NURSING AND REHABILITATION, LLC D/B/A  
BAY PARK CENTER FOR NURSING AND REHABILITATION; BENJAMIN  
LANDA; BEN PHILIPSON; MAYER FISCHL; ELI GRINSPAN; CHANA  
LERNER; RICHARD BUSELL; SENTOSACARE, LLC; AND DOES 1-25,**

For:  
FINKELSTEIN, BLANKINSHIP, FRIE-PEARSON & GARBER, LLP  
445 HAMILTON AVENUE  
SUITE 605  
WHITE PLAINS, NY 10601

Received by Direct Process Server LLC on the 20th day of December, 2018 at 11:24 am to be served on  
**BERISH RUBINSTEIN, 951 BROADWAY, WOODMERE, NY 11598-1733.**

I, CURTIS WARREN, being duly sworn, depose and say that on the 20th day of December, 2018 at 3:49  
pm, I:

served a **SUITABLE AGE PERSON** by delivering and leaving a true copy of the **NOTICE OF  
ELECTRONIC FILING, SUMMONS, CLASS ACTION COMPLAINT, VERIFICATION AND EXHIBITS**  
with **KATRINNA LAMPOTOC** as Co Worker at **951 BROADWAY, WOODMERE, NY 11598-1733**, the  
said premises being the respondent's place of Work within the State of New York. Deponent completed  
service by mailing a true copy of the **NOTICE OF ELECTRONIC FILING, SUMMONS, CLASS ACTION  
COMPLAINT, VERIFICATION AND EXHIBITS** in a postpaid envelope addressed to: **951 BROADWAY,  
WOODMERE, NY 11598-1733** and bearing the words "Personal & Confidential" by First Class Mail on  
**12/20/2018** and placed in an official depository of the U.S.P.S. in **New York State**

Said documents were conformed with index number and date of filing endorsed thereon.

**Military Status:** Based upon inquiry of party served, Defendant is not in the military service of the United  
States of America.

**Marital Status:** Based upon inquiry of party served, they refused to state whether or not the Defendant is  
married.

**Description of Person Served:** Age: 40, Sex: F, Race/Skin Color: White, Height: 5'5", Weight: 140, Hair:  
Dark Brown, Glasses: N



**AFFIDAVIT OF SERVICE For 33378/2018E**

I certify that I am over the age of 18, have no interest in the above action. Under penalties of perjury, I declare I have read the foregoing document and the facts stated are true.

Subscribed and Sworn to before me on the 21<sup>st</sup>  
day of Dec, 2018 by the affiant  
who is personally known to me.

Sheila Grant  
NOTARY PUBLIC

SHEILA MARIA GRANT  
Notary Public, State of New York  
No. 01GR6269680  
Qualified in Kings County  
Commission Expires October 01, 2020

CWarren

CURTIS WARREN

Direct Process Server LLC  
22 Southern Blvd  
Suite 103  
Nesconset, NY 11767  
(631) 406-6989

Our Job Serial Number: DPR-2018003191

**AFFIDAVIT OF SERVICE**

State of New York

County of Kings

Supreme Court

Index Number: 523769/2017  
Date Filed: 11/27/2018

Plaintiff:  
WALTER CHOW, AS ADMINISTRATOR OF THE ESTATE OF LEROY CHOW, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

vs.

Defendant:  
SHOREFRONT OPERATING LLC D/B/A SEAGATE REHABILITATION AND NURSING CENTER; SHADY BERKO; ROCHEL DAVID; LEAH FRIEDMAN; DEENA LANDA; BERISH RUBINSTEIN; DAVID RUBINSTEIN; BRUSCHA SINGER; JOEL ZUPNICK; SHOREFRONT REALTY LLC; SENTOSACARE, LLC; AND DOES 1-25,

For:  
FINKELSTEIN, BLANKINSHIP, FRIE-PEARSON & GARBER, LLP  
445 HAMILTON AVENUE  
SUITE 606  
WHITE PLAINS, NY 10601

Received by Direct Process Server LLC on the 20th day of December, 2018 at 11:24 am to be served on DEENA LANDA, 141 BEACH 2ND STREET, LAWRENCE, NY 11559-2901

I, CURTIS WARREN, being duly sworn, depose and say that on the 20th day of December, 2018 at 4:50 pm, I:

Served DEENA LANDA INDIVIDUALLY/PERSONALLY by delivering a true copy of the NOTICE OF ELECTRONIC FILING, SUMMONS, CLASS ACTION COMPLAINT, VERIFICATION AND EXHIBITS at the date and hour of service endorsed above thereon by me, to: DEENA LANDA A/K/A HERSH at the address of: 141 BEACH 2ND STREET, LAWRENCE, NY 11559-2901, and informed said person of the contents therein, in compliance with state statutes.

Said documents were conformed with index number and date of filing endorsed thereon.

**Military Status:** Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

**Marital Status:** Based upon inquiry of party served, Defendant is married.

**Description of Person Served:** Age: 34, Sex: F, Race/Skin Color: White, Height: 5'5", Weight: 130, Hair: Light Brown, Glasses: N



**AFFIDAVIT OF SERVICE For 523769/2017**

I certify that I am over the age of 18, have no interest in the above action. Under penalties of perjury, I declare I have read the foregoing document and the facts stated are true.

Subscribed and Sworn to before me on the 21<sup>st</sup>  
day of Dec, 2018, by the affiant  
who is personally known to me.

Sheela M. Grant  
NOTARY PUBLIC

SHEELA MARIA GRANT  
Notary Public, State of New York  
No. 01GR6269680  
Qualified in Kings County  
Commission Expires October 01, 2020

C Warren  
CURTIS WARREN

Direct Process Server LLC  
22 Southern Blvd  
Suite 103  
Nesconset, NY 11767  
(631) 406-6989

Our Job Serial Number: DPR-2018003195

AFFIDAVIT OF SERVICE

State of New York

County of Kings

Supreme Court

Index Number: 523769/2017  
Date Filed: 11/27/2018

Plaintiff:  
WALTER CHOW, AS ADMINISTRATOR OF THE ESTATE OF LEROY CHOW, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

vs.

Defendant:  
SHOREFRONT OPERATING LLC D/B/A SEAGATE REHABILITATION AND NURSING CENTER; SHAIKY BERKO; ROCHEL DAVID; LEAH FRIEDMAN; DEENA LANDA; BERISH RUBINSTEIN; DAVID RUBINSTEIN; BRUSCHA SINGER; JOEL ZUPNICK; SHOREFRONT REALTY LLC; SENTOSACARE, LLC; AND DOES 1-25,

For  
FINKELSTEIN, BLANKINSHIP, FRIE-PEARSON & GARBER, LLP  
445 HAMILTON AVENUE  
SUITE 605  
WHITE PLAINS, NY 10601

Received by Direct Process Server LLC on the 20th day of December, 2018 at 11:24 am to be served on BERISH RUBINSTEIN, 951 BROADWAY, WOODMERE, NY 11595.

I, CURTIS WARREN, being duly sworn, depose and say that on the 20th day of December, 2018 at 3:51 pm, I:

served a SUITABLE AGE PERSON by delivering and leaving a true copy of the NOTICE OF ELECTRONIC FILING, SUMMONS, CLASS ACTION COMPLAINT, VERIFICATION AND EXHIBITS with KATRINNA LAMPITOC as Co Worker at 951 BROADWAY, WOODMERE, NY 11695, the said premises being the respondent's place of Work within the State of New York. Deponent completed service by mailing a true copy of the NOTICE OF ELECTRONIC FILING, SUMMONS, CLASS ACTION COMPLAINT, VERIFICATION AND EXHIBITS in a postpaid envelope addressed to: 951 BROADWAY, WOODMERE, NY 11595 and bearing the words "Personal & Confidential" by First Class Mail on 12/20/2018 and placed in an official depository of the U.S.P.S. in New York State

Said documents were conformed with index number and date of filing endorsed thereon.

**Military Status:** Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

**Marital Status:** Based upon inquiry of party served, they refused to state whether or not the Defendant is married.

**Description of Person Served:** Age: 40, Sex: F, Race/Skin Color: White, Height: 5'5", Weight: 140, Hair: Dark Brown, Glasses: N



**AFFIDAVIT OF SERVICE For 523769/2017**

I certify that I am over the age of 18, have no interest in the above action. Under penalties of perjury, I declare I have read the foregoing document and the facts stated are true.

Subscribed and Sworn to before me on the 21<sup>st</sup>  
day of Dec, 2018 by the affiant  
who is personally known to me.

Sheila Maria Grant  
NOTARY PUBLIC

SHEILA MARIA GRANT  
Notary Public, State of New York  
No. 01GR5269680  
Qualified in Kings County  
Commission Expires October 01, 2020

CWarren

CURTIS WARREN

Direct Process Server LLC  
22 Southern Blvd  
Suite 103  
Nesconset, NY 11767  
(631) 406-6989

Our Job Serial Number: DPR-2018003197



**FILED: BRONX COUNTY CLERK 12/27/2018 05:10 PM**

NYSCEF DOC. NO. 11

RECEIVED NYSCEF: 12/27/2018

**AFFIDAVIT OF SERVICE**

State of New York

County of Bronx

Supreme Court

Index Number: 33378/2018E

Date Filed: 11/27/2018

Plaintiff:

**SHERARD CLARK**

vs.

Defendant:

**BAY PARK CENTER FOR NURSING AND REHABILITATION, LLC D/B/A  
BAY PARK CENTER FOR NURSING AND REHABILITATION; BENJAMIN  
LANDA; BEN PHILIPSON; MAYER FISCHL; ELI GRINSPAN; CHANA  
LERNER; RICHARD BUSELL; SENTOSACARE, LLC; AND DOES 1-25,**

For:

FINKELSTEIN, BLANKINSHIP, FRIE-PEARSON & GARBER, LLP  
445 HAMILTON AVENUE  
SUITE 605  
WHITE PLAINS, NY 10601Received by Direct Process Server LLC on the 20th day of December, 2018 at 11:24 am to be served on  
**RICHARD BUSELL, 725 EQUESTRIAN WAY, WESTBURY, NY 11590-6680.**I, CURTIS WARREN, being duly sworn, depose and say that on the **20th day of December, 2018 at 3:02  
pm, I:**served a **SUITABLE AGE PERSON** by delivering and leaving a true copy of the **NOTICE OF  
ELECTRONIC FILING, SUMMONS, CLASS ACTION COMPLAINT, VERIFICATION AND EXHIBITS**  
with **JOHN DOE REFUSED TO GIVE NAME** as **SECURITY GUARD** at **725 EQUESTRIAN WAY,  
WESTBURY, NY 11590-6680**, the said premises being the respondent's place of Abode within the State  
of New York. Deponent completed service by mailing a true copy of the **NOTICE OF ELECTRONIC  
FILING, SUMMONS, CLASS ACTION COMPLAINT, VERIFICATION AND EXHIBITS** in a postpaid  
envelope addressed to: **725 EQUESTRIAN WAY, WESTBURY, NY 11590-6680** and bearing the words  
"Personal & Confidential" by First Class Mail on **12/20/2018** and placed in an official depository of the  
U.S.P.S. in New York State

Said documents were conformed with index number and date of filing endorsed thereon.

**Military Status:** Based upon inquiry of party served, Defendant is not in the military service of the United  
States of America.**Marital Status:** Based upon inquiry of party served, they refused to state whether or not the Defendant is  
married.**Additional Information pertaining to this Service:**12/20/2018 2:57 pm Attempted service at 725 EQUESTRIAN WAY, WESTBURY, NY 11590-6680,  
12/20/2018 2:59 pm This place is a gated community and security said he can't let me on the premises  
confirmed Richard Busell lives here and stated I can drop the papers**Description of Person Served:** Age: 35, Sex: M, Race/Skin Color: Black, Height: 5'10", Weight: 175, Hair:  
Black, Glasses: N

**AFFIDAVIT OF SERVICE For 33378/2018E**

I certify that I am over the age of 18, have no interest in the above action. Under penalties of perjury, I declare I have read the foregoing document and the facts stated are true.

Subscribed and Sworn to before me on the 22<sup>nd</sup>  
day of Dec, 2018 by the affiant  
who is personally known to me.

Sheila M. Grant  
NOTARY PUBLIC

SHEILA MARIA GRANT  
Notary Public, State of New York  
No. 01 GR6269680  
Qualified in Kings County  
Commission Expires October 01, 2020

C Warren

CURTIS WARREN

Direct Process Server LLC  
22 Southern Blvd  
Suite 103  
Nesconset, NY 11767  
(831) 406-6989

Our Job Serial Number: DPR-2018003194

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

SHERARD CLARK,

Plaintiff(s) – Petitioner(s)

V.

INDEX NO.: 33378/2018E

BAY PARK CENTER FOR NURSING AND  
REHABILITATION, LLC d/b/a BAY PARK CENTER  
FOR NURSING AND REHABILITATION, ET AL.,

Defendant(s) – Respondent(s)

STATE OF NEW YORK  
COUNTY OF RICHMOND

ss.:

David B Sontz, the undersigned, being duly sworn, deposes and says that I was at the time of service over the age of 18 years and not a party to this action.

On 12/21/2018 at 7:34 PM, I served a true copy of a NOTICE OF ELECTRONIC FILING, SUMMONS, CLASS ACTION COMPLAINT, EXHIBITS 1 THRU 3 upon MAYER FISCHL at 2 SIENNA WAY, LAKEWOOD, NJ 08701 in the manner indicated below:

Individual  
[ X ]

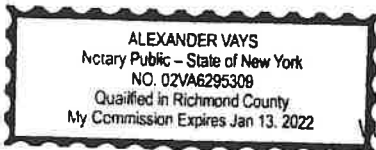
By delivering thereat a true copy of each to said recipient personally; deponent knew the person so served to be the person described herein by deponent asking the person if he or she is the named Recipient and the person responding that he or she is in fact the person named in this action as Recipient. Recipient was identified by self-admission.

Approximate Description of Receipt	Male	White	Brown/Grey	50s	5'11	175 lbs	
	Sex	Skin	Hair Color	Age	Height	Weight	Other

David B Sontz  
PO Box 25066  
Newark, NJ 07102  
800-637-1805

Sworn to before me this  
24 day of Dec 2018

Notary Public



WE SERVE NJ LLC, PO BOX 25066, NEWARK, NJ 07102

STATE OF NEW YORK

BRONX COUNTY

SUPREME COURT

DOCUMENTS SERVED WITH INDEX # 33378/2018E

Sherard Clark

Plaintiff(s)/Petitioner(s)

vs

Bay Park Center for Nursing and Rehabilitation, LLC et al

Defendant(s)/Respondent(s)

County of Rockland, State of New York

Mark Sandstrom, being duly sworn deposes and says: Deponent is not a party herein, is over 18 years

of age and resides at Rockland County, NY On December 20, 2018 at 5:00 pm

at 22 Pleasant Ridge Road, Spring Valley, NY 10977

deponent served a Notice of Electronic Filing Summons and Class Action Complaint

UPON: Ben(t) Philipson, Defendant

(herein called recipient) therein named.

INDIVIDUAL by delivering a true copy of each to said recipient personally; deponent knew the person served to be the person described as said person therein.

CORPORATION A corporation, by delivering thereat a true copy of each to personally, deponent knew said corporation so served to be the corporation, described in same as said recipient and knew said individual to be thereof.

SUITABLE AGE PERSON by delivering a true copy of each to Gabriel Philipson, Esq, daughter a person of suitable age and discretion. Said premises is recipient's actual place of business dwelling house (usual place of abode) within the state.

AFFIXING TO DOOR by affixing a true copy of each to the door of said premises, which is recipient's actual place of business dwelling house (usual place of abode) within the state. Deponent was unable, with due diligence to find recipient or a person of suitable age and discretion, having called thereat

MAILING COPY Deponent caused a copy of same to be enclosed in a first class postpaid sealed wrapper properly addressed to recipient at recipient's last known residence place of employment at 22 Pleasant Ridge Road, Spring Valley, NY 10977 and caused said wrapper to be deposited in a post office official depository under exclusive care and custody of the U. S. Postal Service within the State of New York on 12/21/2018 Bearing the legend "Personal and Confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns a legal action.

DESCRIPTION A description of the Defendant, or other person served, or spoken to on behalf of the Defendant is as follows: Sex Female Color of skin White Color of hair Brown Approx. Age 32 Approx. Height 5'6" Approx. weight 120 Other

WITNESS FEES \$ the authorizing traveling expenses and one day's witness fee was paid (tendered) to the recipient.

PHOTO Deponent was able to identify recipient from a photograph.

MILITARY SERVICE Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or on active duty in the military service in the State of New York and was informed that recipient was not.

Sworn to before me on this 26th day of December, 2018

Claire M Ryan

CLAIRE M. RYAN NOTARY PUBLIC, State of New York No. 01R16149175, Qualified in Rockland Co. Term Expires July 3, 2022

Mark Sandstrom

Invoice/Work Order # 9961675

ATTORNEY SERVICE BUREAU, P.O. BOX 382, POMONA, NEW YORK 10970, 845-638-1323

FILED: BRONX COUNTY CLERK 01/11/2019 10:05 AM

INDEX NO. 33378/2018E

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

RECEIVED NYSCEF: 01/11/2019 Job # 1473070

Attorney: FINKELSTEIN, BLANKINSHIP, FREI-PEARSON & GARBER LLP  
Address: 445 HAMILTON AVE., STE#605 WHITE PLAINS, NY 10601

SHERARD CLARK INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

Index Number: 33378/2018E

vs

Plaintiff

Client's File No.: clark vs. bay park

BAY PARK CENTER FOR NURSING AND REHABILITATION LLC DBA BAY PARK CENTER  
FOR NURSING AND REHABILITATION, BENJAMIN LANDA ET AL

Court Date:

Defendant

Date Filed: 11/27/2018

STATE OF NEW YORK, COUNTY OF QUEENS, SS.:  
NNAMDI ERSKINE, being sworn says:

**AFFIDAVIT OF SERVICE**

Deponent is not a party herein; is over the age of 18 years and resides in the State of .

On 1/8/2019, at 7:58 AM at: 1020 OCEAN PKWY , BROOKLYN, NY 11230 Deponent served the within Summons and Verified Complaint,  
NOTICE OF ELECTRONIC FILING

On: CHANA LERNER, Defendant therein named.

#1 AFFIXING TO DOOR

By affixing a true copy of each to the door of said premises which is defendants  
 actual place of business / employment  dwelling house (usual place of abode) within the state. Deponent was unable with due diligence to find  
defendant or person of suitable age and discretion thereat having called there 01/03/2019 7:19 PM, 01/04/2019 12:04 PM

#2 WITNESS FEES

Subpoena Fee Tendered in the amount of

#3 OTHER

#4 MAILING

Deponent completed service by depositing a copy of the said documents in a postpaid properly addressed envelope, bearing the words "Personal  
and Confidential" by first class mail on: 01/08/2019 in an official depository of the United States Postal Service in the State of New York.

Sworn to before me on 01/08/2019

DIANNE GONZALEZ  
NOTARY PUBLIC, State of New York  
No. 01GO026821, Qualified in Queens County  
Term Expires, August 3, 2019

NNAMDI ERSKINE  
DCA License# 1376400



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Against Bay Park Center for Nursing and Rehabilitation Says Alleged Understaffing Behind 'Unsafe, Inadequate' Care](#)

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