

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

OSCAR ONADIA, on behalf of himself and others
similarly situated,

Plaintiff(s),

- against -

THE CITY OF NEW YORK, *et al.*

Defendant.

Index No.: 300940/2010

SETTLEMENT AGREEMENT

THIS CLASS ACTION LAWSUIT SETTLEMENT AGREEMENT

(“Agreement”) is made and entered into as of the 20th day of May 2024, by and among Defendant City of New York (the “City” or “Defendant”) and Class Counsel (as defined below), on behalf of Plaintiffs (together, the “Parties”).

WHEREAS, Named Plaintiff Oscar Onadia (“Class Representative” or “Named Plaintiff”) filed a Complaint against the City on February 1, 2010, which was later amended, alleging on behalf of himself and class of people similarly situated (collectively, “Plaintiffs”), *inter alia*, that the New York City Department of Correction (“DOC” or the “Department”) is liable under 42 U.S.C. § 1983 for unconstitutionally restraining the liberty of detainees otherwise eligible for release based on an ICE detainer; and

WHEREAS, the City denied any and all liability arising out of Plaintiffs’ allegations; and

WHEREAS, by Opinion and Order by the Hon. Mitchell J. Danziger dated January 9, 2017, the Court granted Plaintiff’s motion to certify a class defined as: “All people who were

detained by the New York City Department of Correction, during the limitations period, beyond the individual's scheduled release date, despite all other conditions for the person's release being satisfied, and based solely on a detainer issued by U.S. Immigration and Customs Enforcement prior to December 21, 2012 that either (1) indicated that an investigation had been commenced by ICE, or (2) failed to indicate a reason for continued detention (i.e. no boxes checked on the detainer form)."; and

WHEREAS, the Parties wish to settle the claims by the certified class as well as claims by a broader class of people detained by the New York City Department of Correction during the agreed-upon limitations period, who were all held beyond the individual's scheduled release date, despite all other conditions for the person's release being satisfied, and based solely on a detainer issued by U.S. Immigration and Customs Enforcement prior to December 21, 2012, *without* limitation as to which box was or was not checked on the detainer form;

WHEREAS, though the Parties dispute the appropriate limitations period, they have agreed for purposes of settlement to use as a Class Period over-detention that occurred between April 1, 1997 and December 21, 2012; and

WHEREAS, Class Counsel thoroughly analyzed and evaluated the merits of the claims made against Defendant in the Complaint, and based on their analysis and evaluation of a number of factors, and recognizing the substantial risks of litigation, and in light of the delay attendant to litigation, Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of the Named Plaintiff and the Class Members; and

WHEREAS, Defendant denies all the allegations made in the Complaint but nonetheless, without admitting or conceding any liability or damages whatsoever, has agreed to

settle the action on the terms and conditions set forth in this Agreement to avoid the burden, expense, and uncertainty of continuing litigation; and

WHEREAS, the Parties desire to enter into an agreement to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability; and

WHEREAS, the terms of this Settlement Agreement (“Agreement”) were extensively and vigorously negotiated in good faith with the assistance of the Court over several years; and

WHEREAS, the negotiations have resulted in this Agreement, which, subject to the approval of the Court, settles this Civil Action in the manner and upon the terms set forth below; and

WHEREAS, the signatories hereby represent that they are fully authorized to enter into this Agreement and to bind the Parties and the Class Members to the terms and conditions hereof, subject to Court approval.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

INTRODUCTION

1. The Parties consider this Agreement to be fair, reasonable, and adequate.
2. Defendant denies any and all liability and denies that it or its agencies had or have a policy, or engaged in or currently engage in, a pattern or practice that deprived persons of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States and the State of New York or by statute.

3. This Agreement does not, and shall not be deemed to, constitute an admission by Defendant as to the validity or accuracy of any of the allegations, assertions, or claims made by Plaintiffs. This Agreement does not constitute an admission, adjudication, or finding on the merits of this Civil Action.

4. This Agreement shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except to enforce the terms of this Agreement.

5. Class Counsel has extensively investigated and litigated the claims asserted in this Civil Action and—taking account of the contested issues involved, the expense and time necessary to prosecute the Civil Action through trial, the risks and costs associated with further prosecution of the Civil Action, the uncertainties of complex litigation, and the substantial benefits to be received pursuant to this Agreement—Plaintiff Onadia is sufficiently informed and satisfied that the terms of this Agreement are an appropriate and fair resolution of the Class Members' claims.

DEFINITIONS

6. The capitalized terms below shall have the meanings defined in this Section wherever used in this Agreement, and for the purposes of this Agreement only. Capitalized terms defined in other Sections of this Agreement shall have the meanings whenever used in this Agreement, and for the purposes of this Agreement only.

7. "Administrator" means the Claims Administrator chosen by Class Counsel, subject to approval by Defendant's counsel, and which approval shall not be unreasonably withheld, and appointed by the Court to administer the QSF, disseminate the Claim Packets and provide notice, and review and determine the validity and amount of claims submitted by Class Members, according to the procedures set forth herein, with its further duties defined in paragraphs

64-77. As used in this Agreement, the term “Administrator” shall encompass any other entities that the Administrator or Class Counsel contract with to assist in providing notice to the Class, as approved by the Court in the Notice/Administration Plan.

8. “Administrative Costs” will be those costs incurred to locate and provide notice to Class Members, including costs of the Administrator and third-parties that may facilitate locating and notifying Class Members, as well as those costs to administer the settlement.

9. “Civil Action” means *Onadia v. City of New York, et al.*, No. 0300340/2010 (Sup. Ct. Bronx Cty.).

10. “Claim Form” means the form that Class Members must complete and submit in order to receive payment from this Settlement, to be submitted to the Court with the motion for Preliminary Approval.

11. A “Claim Packet” means a Claim Form, together with the notice to be mailed to Class Members in a form approved by the Court. The Claim Packet will be mailed by the Administrator to all persons on the Class List for whom an address is identified.

12. “Claimant” means a Class Member who submits an executed claim that is timely (including late claims accepted pursuant to Paragraph 94, complete, and accurate.

13. “Claimant Total” means the total amount of funds to be paid to Claimants.

14. “Class Counsel” means Emery Celli Brinckerhoff Abady Ward & Maazel LLP and Benno & Associates P.C.

15. “Class Fund” means the maximum amount to be paid by the City for all Class Member claims, the service award to the Class Representative, Administrative Costs, and Class Counsel’s own past, present, and future fees and costs. That maximum amount shall not exceed \$92.5 million.

16. “Class List” is the spreadsheet of Class Members, based on data provided by DOC and analyzed by Class Counsel’s expert. The Class List contains the names of all people who are presumptively Class Members and the number of days each Class Member was presumptively Overdetained for purposes of this Agreement. The Parties have agreed that for Class Members for whom DOC electronic data as to the number of days Overdetained is unreliable, the presumptive number of days Overdetained for purposes of this Agreement shall be equal to the median number of days Overdetained for the remainder of those on the Class List. The Parties will agree on the contents of this Class List within fourteen (14) days of execution of this Agreement.

17. “Class Member” means any individual who is a member of the Settlement Class, who does not file a valid and timely Opt Out as provided in paragraphs 97-99 of this Agreement.

18. “Class Period” is defined as between April 1, 1997 and December 21, 2012.

19. “Counsel for Defendant” or “Defendant’s Counsel” means the New York City Law Department, Office of the Corporation Counsel.

20. “Confidential Information” means Class Members’ dates of birth, social security numbers, immigration-related identifying numbers, phone numbers, address information, email addresses, and any other contact or personally-identifying information, including any aggregated data collected by the Administrator for the purposes of providing notice, and any updates to such data through aggregation, address research, or additional information collected by Class Counsel or third-parties.

21. “Court” means the Supreme Court of the State of New York, County of Bronx, Hon. Mitchell J. Danziger.

22. “Distribution Amount” will be the Class Fund after deduction of the Settlement Costs, which is the maximum amount available to distribute to Class Members who file claims. If Settlement Costs are lower than 30% of the Class Fund, any unused portion will be added to the Distribution Amount.

23. “DOC” or the “Department” means the New York City Department of Correction.

24. “Effective Date for Payment” or “Effective Date” is the date on which the City must deposit the Claimant Total with the Administrator. The effective date for payment is 30 days following the entry of the Court’s Final Approval Order. The Final Approval Order will become final (a) if no objector has lodged a timely objection, on the date of entry of the Final Approval Order, or (b) if an objector has lodged a timely objection, when the time for that objector to appeal has expired or, if the objector has appealed from the Final Approval Order or any portion thereof, on the date when the appeal results in the affirmance of the Court’s Final Approval Order of this Agreement.

25. “Final Approval Hearing” or “Fairness Hearing” means the hearing to be scheduled by the Court to determine, among other things, whether the Court should approve the proposed Settlement as fair, reasonable, and adequate.

26. “Final Approval Order” means an Order by the Court, after a fairness hearing, granting Final Approval to this Agreement, approving Class Counsel’s fees and costs, approving such Administrative costs that have not been previously approved, approving a Service Award Payment, and dismissing the Civil Action with prejudice.

27. “IIS” is the Inmate Information System, an electronic database maintained by DOC.

28. An “Immigration Detainer” or “ICE Detainer” means a request made by U.S. Immigrations and Customs Enforcement to a law enforcement agency to detain an individual for 48 hours, excluding weekends and holidays, beyond the time when he or she would otherwise be released from criminal custody, to provide ICE extra time to assume physical custody of the person and investigate his or her immigration status. Immigration Detainer and ICE Detainer shall include, but not be limited to, requests made on forms I-247.

29. The “Initial Objection Deadline” shall mean ninety (90) days from the Notice Date, except as provided in paragraph 30, below.

30. The “Final Objection Deadline” shall mean ninety (90) days after the Initial Objection Deadline if fewer than seventy-five percent (75%) of Class Members on the Class List submit Claim Forms or Opt-Out Forms prior to the Initial Claim Form Deadline.

31. The “Initial Opt-Out Deadline” shall mean ninety (90) days from the Notice Date (except as provided in Paragraph 32 below).

32. The “Final Opt-Out Deadline” shall mean ninety (90) days after the Initial Opt-Out Deadline if fewer than seventy-five percent (75%) of Class Members on the Class List submit Claim Forms or Opt-Out prior to the Initial Claim Form Deadline.

33. The “Initial Claim Form Deadline” is the date ninety (90) days from the Notice Date by which any presumptive Class Member who wishes to receive payment pursuant to this Agreement must submit a Claim Form online or mail and postmark the Claim Form, subject to the exceptions set forth in paragraph 34 below.

34. The “Final Claim Form Deadline” shall mean ninety (90) days after the Initial Claim Form Deadline if fewer than seventy-five percent (75%) of Class Members on the Class List submit Claim Forms or Opt-Out prior to the Initial Claim Form Deadline.

35. The “Notice Date” shall mean 60 days from the Preliminary Approval Date.
36. “Notice/Administration Plan” is the plan for providing direct, publication, and other types of notice to potential Class Members along with the plan for administering the settlement.
37. “NYS DOCCS” means the New York State Department of Corrections and Community Supervision.
38. “Opt-Out” or “Request for Exclusion” is any potential Class Member who files a timely written request to be excluded from the Class, in accordance with the requirements set forth in Paragraphs 97-99.
39. “Overdetained” or “Overdetention” is defined as being discharged from DOC custody one or more days after all conditions for the Class Member’s release from custody had been satisfied, presumptively based on DOC’s electronic data as set forth in the Class List.
40. “Preliminary Approval Date” means the date of entry of the Preliminary Approval Order.
41. “Preliminary Approval Order” means the Order entered by the Court preliminarily approving this Agreement, certifying the Class, scheduling a Fairness Hearing, approving a plan of notice to the Class, and appointing the Administrator.
42. “Qualified Settlement Fund” (“QSF”) means a bank account to be established by the Administrator for the benefit of the Settlement Class. The QSF shall be interest bearing if the costs associated with making it interest bearing (such as tax preparation and bank fees) are less than the likely interest earned. If the QSF is an interest bearing account, any amount remaining after the costs described in this paragraph will be subject to the conditions of paragraph 52 herein.

43. The “Recent Group” is defined as those who were held beyond their scheduled release date between February 1, 2007 and December 21, 2012, despite all other conditions for the person’s release being satisfied, and based solely on a detainer issued by U.S. Immigration and Customs Enforcement.

44. “Released Parties” means the City, its predecessors, successors and assigns, together with all past and present officials, employees, representatives, and agents of the City of New York, or any agency thereof, and any person or entity represented by the Office of the New York City Corporation Counsel, and, in the case of all such entities, their respective past and present representatives, officers, directors, attorneys, agents, employees, privities, and insurers.

45. “Settlement Costs” means that portion of the Class Fund that shall be used for the Administrative Costs, service award to the Named Plaintiff, and Class Counsel’s attorneys’ fees and costs as approved by the Court. The Settlement Costs cannot exceed 30% of the \$92.5 million Class Fund. The Administrative Costs portion of Settlement Costs cannot exceed one-third of Settlement Costs, i.e., 10% of the \$92.5 million Class Fund.

46. The “Statute of Limitations Group” is defined as those who were held beyond their scheduled release date between April 1, 1997 and January 31, 2007, despite all other conditions for the person’s release being satisfied, and based solely on a detainer issued by U.S. Immigration and Customs Enforcement.

47. “Summary Notice” means a one-page English and a one-page Spanish summary of this Agreement in a form approved by the Court.

48. “Total Days” is the number of total days of Overdetention for all Class Members based on the Class List. The parties agree that the Total Days for the Recent Group is at least 85,770 and the parties will determine the Total Days for the Recent Group no later than 14

days after execution of this Agreement. The parties agree that the Total Days for the Statute of Limitations Group is 82,434.

CLASS CERTIFICATION AND PRELIMINARY APPROVAL

49. Class Counsel will move for Preliminary Approval of this Agreement and its motion will include a proposed notice, a proposed Preliminary Approval Order, and a proposed Claim Form. The proposed Preliminary Approval Order will request certification of the Settlement Class for settlement purposes and will include the findings required by CPLR Article 9. The Preliminary Approval Motion will also seek the setting of a Fairness Hearing for Final Approval of the settlement at the earliest practicable date. Defendant will not oppose Plaintiffs' motion so long as it conforms to the terms of this Settlement Agreement.

50. The "Settlement Class" is defined as all people who were detained by the New York City Department of Correction beyond the individual's scheduled release date between April 1, 1997 and December 21, 2012, despite all other conditions for the person's release being satisfied, and based solely on a detainer issued by U.S. Immigration and Customs Enforcement. This Settlement Class is broader than the class certified by the Court on January 9, 2017 in that the certified class was limited to individuals detained on the basis of ICE detainers that "(1) indicated that an investigation had been commenced by ICE, or (2) failed to indicate a reason for continued detention (i.e. no boxes checked on the detainer form)."

SETTLEMENT FUND AND DISTRIBUTION

51. The Distribution Amount will be divided on a pro-rata basis based on each Claimant's number of days Overdetained under a point system, as set forth below (the "Pro-Rata Distribution"), but subject to the Per Day Cap and the Fewer Days Claimed Cap. The Pro-Rata Distribution, Per Day Cap and Fewer Days Claimed Cap analysis will be done in three steps.

52. Step One (“Pro-Rata Distribution”): When all timely claims have been processed and the Distribution Amount is determined, the Distribution Amount will be allocated by (1) allotting \$100 for each day over sixty days a Claimant has been Overdetained, which total will then be deducted from the Distribution Amount, the remainder will be the Remainder Amount; (2) the Remainder Amount will then be allocated pro-rata using a point system, (a) each day of Overdetention between 1 and 30 days will be allocated 50 points for days in the Recent Group and 25 points for days in the Statute of Limitations Group, and (b) each day of Overdetention between 31 and 60 days will be allocated 20 points for days in the Recent Group and 10 points for days in the Statute of Limitations Group, the Remainder Amount will then be divided by the total amount of allocated points to reach a Per Point Amount. Each Claimant will receive an amount equal to the number of points allocated to the Claimant multiplied by the Per Point Amount plus, if applicable, \$100 for each day they were Overdetained in excess of 60 days.

53. Step Two (“Per Day Cap”): After the Per Point Amount is calculated in Step One, it will be checked against the Per Day Cap maximum per point cap of \$250. As long as the Per Point Amount is \$250 or less, the Per Day Cap will not be applied, and Step Two will be complete with no need to go to Step Three. If the Per Point Amount is more than \$250, then Claimants will receive no more than \$250 per point unless the Fewer Days Claimed Cap analysis in Step Three dictates otherwise.

54. Step Three (the “Fewer Days Claimed Cap”): If the Per Point Amount calculated in Step One is \$250 or more, the total number of days claimed will be compared against the Total Days available for compensation. If the number of days claimed is 4% or less of Total Days available for compensation for days in the Recent Group, each Claimant in the Recent Group will receive \$12,500 per day Overdetained for the first 80 days of Overdetention and no additional

compensation for days of Overdetention above 80 (“Fewer Days Claimed Cap”). The Fewer Days Claimed Cap will not apply to claims submitted for days in the Statute of Limitations Group.

55. If by operation of the Per Day Cap or the Fewer Days Claimed Cap, the Distribution Amount is not fully distributed, the difference between the Distribution Amount and the amount allocated for distribution will revert to the City.

56. Any Class Members who are Overdetained more than one time during the Class Period are entitled to payment for each instance of Overdetention as set forth above, notwithstanding the fact that they have more than one instance of Overdetention. Each instance of Overdetention will be treated as separate and independent claims for purposes of each of the three steps set forth above. The total amount each Class Member is entitled to in payment for all instances of Overdetention combined is the “Award Amount.”

NOTICE PLAN

57. The parties agree that the nature of the class in this case, which consists primarily of foreign nationals who may no longer be in the United States, combined with the passage of time since the events at issue, makes the task of locating and notifying Class Members uniquely challenging. The parties agree that robust, unique and unprecedented procedures may be required to locate and notify Class Members which may cost as much as 10% of the Class Fund and will be expended predominantly during the notice period (after the Preliminary Approval Order, but before final approval).

58. Class Counsel will be responsible for developing a plan for these robust Class Member location and notice procedures and retaining the Administrator(s) needed to execute the plan (“Notice/Administration Plan”). The Notice/Administration Plan may include services to Class Members that is intended to facilitate their notification and participation in the Settlement,

and may include the provision of information, through a hotline or frequently asked questions document or similar method, regarding the impact of the settlement on Class Members' government benefits and how those may be addressed. It may also include costs incurred to locate and provide notice to Class Members, including costs of the Administrator and third-parties that may facilitate locating and notifying Class Members. The Notice/Administration Plan will be subject to Court approval and material amendments or revisions to the plan shall require Court approval. The City will have the right to object to the Notice/Administration Plan, or any subsequent amendments or revisions to the plan, only insofar as the plan or subsequent modifications is manifestly unreasonable, grossly irresponsible, or arbitrary and capricious.

59. To augment the Notice/Administration Plan's efforts to ensure that as many persons as reasonably possible receive notice, the Parties will work cooperatively together to ensure that Summary Notice are posted in places where Class Members are likely to see them as set out in paragraphs 60-61 below.

60. The City agrees to make best efforts to ensure that the Summary Notices are posted in the following locations within three weeks of the initial mailing of the Claim Packets and approval of the Summary Notices, whichever date is later:

- a. NYC Department of Correction: In the intake areas and law libraries of its housing facilities and in the DOC intake areas that are under DOC control at the state courthouses, where legal notices regularly appear.
- b. NYC Human Resources Administration: Prominently in one place in each client contact location (this does not include administrative offices), for example, Job and Service Centers, SNAP Centers, Medicaid Benefit Access Centers, Office of Child Support Services

Offices, CASA Offices, and HIV/AIDS Services Administration locations.

- c. New York City Department of Probation (“DOP”): In the adult supervision office for each borough in New York City where legal notices regularly appear.
- d. NYC Department of Youth and Community Development: In offices or locations providing General Immigrant Services or Comprehensive Services for Immigrant Families.
- e. Nothing herein shall limit any Party’s ability to request that other locations/offices post the Summary Notice.

61. The City will ensure that an announcement of the Settlement and link to the Summary Notice is posted on the home or landing page of the Department of Correction and the NYC Mayor’s Office of Immigrant Affairs and on the “Get Help” page of the same website, with the full Summary Notice posted on a separate page of the websites, within three weeks of the initial mailing of the Claim Packets and approval of the Summary Notices, whichever date is later, and will remain on these website pages until the latter of the Initial Claim Form Deadline or the Final Claim Form Deadline. Further, the City will ensure that the social media channels of the Mayor’s Office of Immigrant Affairs (including Twitter, Facebook, Instagram, LinkedIn, and Medium) post the Summary Notice at least three times during the period between the Preliminary Approval Order and the 10 days before the Initial Claim Form Deadline.

62. NYS DOCCS: The City agrees that Plaintiffs on behalf of the parties may make a formal written request to NYS DOCCS to post Summary Notices, which the Parties will obtain from the Administrator and shall provide NYS DOCCS, as extensively as reasonably possible, in

locations where individuals incarcerated in their facilities are likely to see them. The City agrees that Plaintiffs on behalf of the parties may also request that DOCCS ask all State parole and probation officers to inform individuals under their supervision of the existence of this Civil Action and Settlement and provide them with a copy of the Summary Notice.

63. Along with the motion for Final Approval, pursuant to a schedule to be set by the Court, Class Counsel shall file or cause to be filed with the Court a declaration from the Administrator confirming that notice was provided consistent with this Settlement Agreement and the Notice/Administration Plan.

ADMINISTRATOR

64. Class Counsel will be responsible for developing the duties for the Administrator and retaining the Administrator who will administer the Class Action settlement. The Administrator's duties may include locating and issuing notice to Class Members, distributing, receiving and validating Claim Forms, determining eligibility for awards to Class Members, calculating Class Member awards, issuing and mailing awards to Class Members, collecting objections and exclusion requests, responding to inquiries from Class Members, and other tasks. The Administrator's duties will be subject to Court approval and material amendments or revisions to the Administrator's duties shall require Court approval. The City will have the right to object to the Administrator's duties, or any subsequent amendments or revisions to its duties, only insofar as its duties or subsequent modifications is manifestly unreasonable, grossly irresponsible, or arbitrary and capricious. Upon application to the Court by the City or Class Counsel, the Administrator may be removed and replaced by the Court for good cause shown.

Data

65. The City agrees to facilitate the work of the Administrator by, among other things, obtaining and providing to the Administrator information, data, documents, and records in the City's possession, which are relevant and appropriate to facilitate the administration of the QSF. Within four weeks of execution of this Agreement, the City will provide the Administrator with an Excel spreadsheet, generated by IIS, containing a list of all Class Members and, where available, the full names of all such individuals, the individual's Social Security Number, date of birth, NYSID number, Book & Case number, last known address, name of closest contact, address of closest contact, ICE number, INS number, Nativity, and, where provided by an individual, Green Card information. Where available, this data shall include all known names, date of birth, addresses, phone numbers, and email addresses for all instances of detention in IIS records since January 1, 1997 (i.e., not limited to data from the Book&Case number for the instance of detention associated with their Class Membership).

66. The City shall provide the Administrator with, where available, any additional date of birth, address, email address, and phone number data for Class Members it possesses from the Cash Assistance databases maintained by the New York City Department of Social Services. The City shall provide these additional datasets to the Administrator no later than two weeks after Preliminary Court Approval.

67. The City will not object to Plaintiffs' efforts to receive data from third parties (i.e., non-City agencies) to effectuate notice to the Class, including from NYS DOCCS, to the extent such data exists and may be obtained.

Confidentiality

68. Class Member Confidential Information shall be treated as confidential and shall not be disclosed to anyone except Class Counsel (including outside consultants and contractors), Defendant's Counsel, the Administrator, or the Court under seal, with the limited exception of (1) sharing with such City personnel as necessary for the purposes of identifying individuals with open child support liens pursuant to (and limited to the data listed in) paragraph 76, subject to the data destruction provisions in paragraph 77; (2) sharing with such City personnel as necessary for the purposes of identifying individuals with docketed parking judgments and business tax judgments owed to the Department of Finance ("DOF") pursuant to (and limited to the data listed in) paragraph 76, subject to the data destruction provisions in paragraph 77; (3) sharing with such City personnel to the extent necessary under federal law to notify the Centers for Medical & Medicaid Services ("CMS"), subject to the data destruction provisions in paragraph 77; (4) sharing with public defender organizations as necessary for the purposes of locating and notifying Class Members that are or have been clients of those public defender organizations (and limited to name, B&C, and NYSID), subject to the data destruction provisions in paragraph 77; (5) notifying the New York State Office of Victim Services (OVS) so that OVS may determine if it will seek any remedy pursuant to N.Y. Exec. Law § 632-a, limited to the City providing OVS the name, date of birth, and last 4 digits of social security number only for claimants who will be receiving Award Amounts over \$10,000 (before deduction of any liens); (6) any reports the City or the Administrator is required by law to make to any state or federal tax authority concerning these payments. To the extent any Party or the Administrator seek to disclose Confidential Information received from the Administrator to any other person or entity, they must first seek the Parties' consent in writing (which shall not be unreasonably withheld), have the recipient sign the

confidentiality agreement, and the disclosure sought shall be for the purposes of providing more effective notice to Class Members. No Party shall use Confidential Information for any other purpose other than in this litigation and for the administration of this Agreement. Neither the Parties nor the Administrator shall share or disclose Confidential Information to the U.S. Department of Homeland Security or its agencies, including but not limited to U.S. Immigration and Customs Enforcement. All Parties and the Administrator shall take all reasonable steps to ensure that the confidential information concerning all proposed Class Members remains private and confidential.

69. Nothing herein shall limit Class Counsel or the Administrator's ability to disclose data about a Class Member to that Class Member or their counsel. Nothing herein shall limit the City's ability to use data and information about Class Members it possesses separate from the administration of this settlement and nothing herein shall require the City to destroy such data/information.

70. The Parties agree that any data listed in paragraph 65-66, collected by the Administrator for the purposes of providing notice, shall not be disclosed to anyone absent an order of a court of competent jurisdiction or pursuant to a grand-jury subpoena (or others as authorized by paragraphs 68-69 above). In the event that any of the Parties, including any City agency, or the Administrator is served with such a court order or grand-jury subpoena providing for or requiring disclosure of any such information, they shall inform all other Parties no later than 2 business days after receiving such service, and in any event before disclosing any such information. Before any such information is disclosed, any Party shall have standing to challenge the disclosure of such information before a court of competent jurisdiction.

QSF

71. The Administrator will apply for a tax ID number, if necessary, and take all necessary steps for the timely creation of the QSF five (5) days before the Final Approval Hearing.

72. The Administrator shall provide the City the Employer Identification Number for the QSF, and a completed W-9 Form and bank routing information for the trust fund account, within 3 days of the Final Approval Order.

73. The Administrator will treat income taxes as the first priority for payment, and therefore, shall, on a quarterly basis, set aside an amount sufficient to pay all income taxes, if any, owed by the QSF on interest earned to date. The Administrator shall pay all income taxes, if any, on a quarterly basis. The Administrator will provide to Class Counsel, Defendant's Counsel, and the City Comptroller a monthly statement of expenses paid. The City Comptroller's Office shall have the right to inspect and copy all tax forms (and worksheets), and monthly bank statements of the QSF. Neither the City nor Class Counsel nor the Class Representative will be responsible for taxes, penalties, or interest incurred on the QSF. The Administrator shall issue all required IRS forms.

Liens and government benefits

74. The City shall not assert any liens against the payment to Class Members except, where relevant, child support liens, docketed parking judgments, and business tax judgments. The City, Class Counsel, and the Administrator will comply with any provisional remedies obtained by the New York State Office of Victim Services, as authorized by N.Y. Exec. Law §632-a, including but not limited to attachment, injunction, receivership, and notice of pendency with respect to any payment made hereunder.

75. The City will not otherwise seek to reduce the payments to Class Members under this Settlement Agreement by exercising its right to recover any other amounts, including liens arising from Environmental Control Board debt and Medicaid liens. This provision applies only to the proceeds received by Class Members under this Settlement Agreement and this provision will not be deemed to be either: (A) a waiver to seek or collect all remaining balances due and owing from any source other than the amounts paid pursuant to this Settlement Agreement; or (B) a restriction on asserting the liens against the payment amounts to Class Members permitted to be recovered under the previous paragraph of this Settlement Agreement.

76. The Administrator shall provide the Parties with a final list of the names, dates of birth, and SSN/ITINs of those Class Members who have submitted Valid Claims by the Initial Claim Form Deadline (or, if extended, the Final Claim Form Deadline) so that the City may determine whether that person's Award Amount will need to be reduced due to child support liens, docketed parking judgments, or business tax judgments. Nothing in this Agreement, however, requires a Class Member to provide an SSN or ITIN as a condition of receipt of a settlement payment. No later than thirty (30) days after receiving the final list of Class Members who have submitted Valid Claims by the Initial Claim Form Deadline (or, if extended, the Final Claim Form Deadline), the City shall provide the Administrator and Class Counsel with a list of those persons who have child support liens, docketed parking judgments, and business tax judgments, and the amount that shall be deducted from each such person's Award Amount (and, with respect to child support liens, forwarded to the beneficiary of such child support lien). The Administrator shall send each person owing child support liens a notice describing that they owe these liens and information on how to file a challenge regarding the deduction of the child support liens from the Award Amount. If a Claimant's name and date of birth match that of the debtor for a docketed

parking judgment or business tax judgment, DOF will provide notice to the Administrator of the details of the lien it is asserting. The Administrator shall notify the Claimant that DOF has asserted a lien for a docketed parking judgment or business tax judgment. The Claimant shall have an opportunity to clarify that the Claimant is not the same individual as the debtor for the debtor for a docketed parking judgment or business tax judgment. For docketed parking judgments, such clarification may include a statement that that the license plate associated with the vehicle to which the parking judgment debt was issued was not registered to such Claimant. If the City later determines that the amount of any liens or judgments was incorrect, the City shall directly pay that person the over-deduction of the amount that was withheld from that person's Award Amount. The City will in no instance maintain or use the data collected by or processed under this Agreement to collect child support or any other liens or judgments from Class Members, beyond such amounts as are deducted from amounts owed to Class Members under this Agreement.

77. With respect to Confidential Information provided to HRA, DOF, and/or Parties' Counsel, the City will in no instance maintain or use that Confidential Information to collect any other liens from Class Members, beyond such amounts as are deducted from amounts owed to Class Members under this Agreement. Except as other required by federal, state or local law, the City shall not share such information with any third-party (other than a contractor, subcontractor, or agent who is bound by contract to maintain the confidentiality of such information) including federal government agencies other than to CMS (and, as to CMS, only to the extent required by federal law). HRA and DOF shall make reasonable efforts to delete all Confidential Information it receives from the Administrator no later than 120 days after the Effective Date for Payment, and provide written confirmation of data destruction to Class Counsel within ten (10) days of such destruction. Nothing in this Agreement will require the City to delete

data it already possesses, independently of the settlement of this action, or which it is required to maintain by state, local or federal law or regulations with respect to payments made by the City or to demonstrate compliance with local, state or federal law or regulations.

ATTORNEYS' FEES AND COSTS

78. At or about the time of the motion for Final Approval, Class Counsel will make an application seeking Court approval for reasonable attorneys' fees and expenses of up to a cap of 30% of the Class Fund, less Administrative Costs and the class representative service award. If the City believes the amount requested for attorneys' fees is excessive in light of pertinent case law, notwithstanding that the amount is within the cap amount, it may oppose the application and submit an alternative proposal to the Court, specifically proposing that fees should be limited to a lodestar amount with multipliers. Either party may appeal the Court's award of attorneys' fees and expenses.

CLASS REPRESENTATIVE SERVICE AWARD PAYMENT AND DAYS OVERDETAINED

79. Subject to the Court's approval, the City agrees to pay \$25,000 to Named Plaintiff Oscar Onadia for the services provided to the Class for any inconvenience, pain, suffering, and other non-pecuniary loss experienced as a result of having been a named plaintiff in this action. This service award payment is in addition to any amounts otherwise due to Plaintiff Onadia with respect to his individual claim as Class Member. The Parties agree that Plaintiff Onadia was Overdetained for 41 days and he will receive a Settlement payment for 41 days of Overdetention consistent with paragraphs 51-56 for Recent Group awards. The Service Award Payment shall be paid directly by the City to Class Counsel for payment to the Named Plaintiff no later than 30 days after the Final Approval Order is final as set forth in paragraph 24 above, and upon the Named Plaintiff having provided a W-9 and any other required documentation. The Administrator shall

also pay the Named Plaintiff's Award Amount directly to Class Counsel for payment to the Named Plaintiff at the same time other Claimants receive their Award Amounts.

FUNDING OF THE SETTLEMENT

80. The City shall pay the Administrative Costs per the Court-approved Notice/Administration Plan within 30 days of the Notice/Administration Plan being approved by the Court or such later period that the Administrator and other entities involved with providing notice shall agree to. The City will pay additional Administrative Costs (up to the limit in Paragraph 45) within 30 days after a request for additional Administrative Costs is approved by the Court.

81. If this Agreement is not ultimately approved by the Court, the City will be responsible for all Administrative Costs incurred prior to such point, though to the extent the Administrator possesses any unspent Administrative Costs, they shall be returned to the City.

82. A copy of the Administrator's final accounting shall also be provided to the City and Class Counsel.

83. Subject to the terms and conditions of this Agreement and the approval of the Court, on or by the Effective Date for Payment, the City shall deposit or cause to be deposited into a bank account designated by the Administrator by wire transfer an amount of same-day-available funds equal to the Claimant Total.

84. No later than 30 days of the date the Court's order or approval of payment of attorneys' fees and costs becomes final, the City shall pay such amount. The Court's order or approval of payment of attorneys' fees and costs will become final (a) when the time for appeal has expired, or (b) if an appeal from the Court's order or approval has been filed, on the date when the appeal results in the affirmance of the Court's order or approval of attorneys' fees and costs.

CLAIMS AWARDS TO CLASS MEMBERS AND CLAIMS PROCESS

85. Subject to the terms and conditions of this Agreement, the City agrees to pay the Claimant Total, Administrative Costs, Class Representative Service Award, and Attorneys' Fees and Costs as determined by the Court.

86. Promptly after the Initial Claim Form Deadline, the Administrator shall inform the Parties which Class Members on the Class List submitted Claim Forms by the Initial Claim Form Deadline.

87. If fewer than seventy-five percent (75%) of Class Members on the Class List submit either Claim Forms or Opt-Out Forms prior to the Initial Claim Form Deadline, then the Initial Opt-Out Deadline shall be extended by an additional ninety (90) days, which date shall be the Final Opt-Out Deadline.

88. If the deadline for submitting Claim Forms is extended pursuant to the previous Paragraph of this Stipulation, then during the ninety (90) days between the Initial Claim Form Deadline and the Final Claim Form Deadline, the City shall provide updated information about Class Members by accessing IIS and providing Class Counsel with updated last known addresses for any Class Member who has not yet submitted a Claim.

89. No payment shall be made to eligible Class Members before the Effective Date for Payment. Claims will be processed between the date of Preliminary Court Approval and the Effective Date for Payment. Upon the Effective Date for Payment, processed claims may be paid. Late claims may be processed after the Effective Date for Payment according to paragraph 94.

90. The Administrator shall contact Class Members who submit deficient Claim Forms to provide them the opportunity to correct their Claim Forms. The absence of a social

security number or other identifying information shall not be a basis for not issuing an award to a Class Member if the Administrator can otherwise confirm the identity of the Class Member. The Administrator shall have the sole discretion to determine whether a Claim Form is deficient, and whether or not to accept a deficient Claim Form.

91. The Administrator is permitted for good cause shown (including proper documentation and proof of authority) to issue a Class Member's check in the name of a person other than the Class Member.

92. Rights and claims hereunder shall survive the death of Class Members. If a Class Member who is eligible to receive monetary relief under this Agreement is deceased, the amount payable to such deceased Class Member shall be paid to the legally and duly appointed representative, administrator, or similar legal successor of their estate ("representative"). A voluntary administrator appointed through the New York State Surrogate's Court's Small Estate program will be considered a representative. The representative shall provide proof of death and appropriate documentation to show that she/he is properly a representative of the estate. A representative as defined in this paragraph shall be permitted to sign the Claim Form in the name of the Class Member. If the Administrator determines, after reasonable opportunity has been given, that there is insufficient information or proof regarding the deceased person's estate to permit such payment, the Administrator will consult with the Parties. Any disputes regarding whether sufficient proof has been provided regarding the deceased person's estate to permit payment shall be resolved by the Court.

93. The Administrator has the discretion to void checks mailed to Class Members who submit timely claims and not cashed within 120 days of issuance. The Administrator has the discretion to void checks after a shorter period of time for re-issued checks

or for checks for Class Members who submit late claims. Money from uncashed checks shall not be returned to the City. The Administrator, on written notice to the City and the Court, shall have the discretion to (a) reissue uncashed checks, or (b) add the amount of the voided checks back to the Class Fund to be divided pro rata amongst eligible Claimants, consistent with the Pro-Rata Distribution, the Per Day Cap and the Fewer Days Claimed Cap, or (c) issue checks to persons who make late claims for good cause shown pursuant to the immediately following paragraph. Alternately, if the Administrator determines that it would be unreasonable or impracticable to take the steps outline in (a), (b), or (c) in the previous sentence (e.g., if there is a low amount of uncashed checks as compared to the significant administrative costs to issue checks), Class Counsel can seek an award by the Court consistent with *cy pres* principles for the uncashed check amounts.

94. The Administrator shall accept untimely claims that are received by the Administrator within three (3) months of the Effective Date of Payment if a Class Member can establish good cause for submitting an untimely Claim Form. The Administrator shall have the sole discretion to determine if the person had “good cause” to file a late claim. If by operation of the Per Day Cap or the Fewer Days Claimed Cap, the Distribution Amount is not fully distributed, late claims with “good cause” will be paid for from the remainder that will revert to the City (consistent with the Pro-Rata Distribution, the Per Day Cap and the Fewer Days Claimed Cap). If the Distribution Amount is fully distributed, Class Counsel shall have the discretion to pay late claims with “good cause” out of the amount remaining in the Class Fund due to the failure of timely Claimants to timely cash their checks and such untimely Claimants will receive a pro-rata share of the amount remaining in the Class Fund (consistent with the Pro-Rata Distribution, the Per Day Cap and the Fewer Days Claimed Cap). All late claims that are approved as showing

“good cause” will also be subject to the deduction of any valid Child Support Liens, docketed parking judgments, and business tax judgments, as detailed in paragraphs 74-76.

95. For class members whose settlement awards are restrained pursuant to N.Y. Exec. Law § 632-a, the Administrator shall pay 10% of the settlement award to the Class Member as authorized by N.Y. Exec. Law § 632-a(3) and CPLR § 5205(k), subject to the deduction of any liens.

96. If the QSF is an interest-bearing account, any interest earned on such monies will be added to the Class Fund.

EXCLUSION FROM THE SETTLEMENT CLASS

97. Any potential Class Member who wishes to be excluded from the Settlement Class must mail a request to be excluded from the Settlement Class (“Request for Exclusion”) to the Administrator. Any Request for Exclusion must be in writing, state the name, date of birth, address, and social security number (if any) of the person requesting exclusion, contain a clear statement communicating that such person elects to be excluded from the Settlement Class, and be signed by the Class Member. Originals of all Requests for Exclusion shall be retained by the Administrator until such originals are filed with the Court with dates, addresses, and social security numbers redacted. Named Plaintiff Onadia will not request exclusion pursuant to this paragraph. A list of all exclusions, as well as a copy of the written Requests for Exclusions sent to the Administrator, shall be provided to Class Counsel and Defendant’s Counsel.

98. All Requests for Exclusion must be received by the Administrator on or before the Initial Opt-Out Deadline (or, if extended, the Final Opt-Out Deadline).

99. Any Class Member who does not timely file a Request for Exclusion shall conclusively be deemed to have become a Class Member and to be bound by this Agreement and by all subsequent proceedings, orders, and judgments herein.

OBJECTIONS AND EXCLUSIONS

100. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the proposed Settlement, including Class Counsel's Attorneys' Fees and Expenses Application, may do so by filing an objection as set out in the notice to be filed along with motion for Preliminary Approval and described below. However, a potential Class Member who requests exclusion from the Settlement Class may not file an objection regarding the terms of the Settlement Agreement.

101. A Class Member who wishes to object must submit to the Administrator at the address provided in the notice their objection(s), as well as the specific reason(s), if any, for each such objection and whether the Class Member wishes to speak at the Fairness Hearing. The objection must state whether it applies only to the objector, to a specific subset of the Class, or to the entire Class, and also state with specificity the grounds for the objection, including any legal support the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of such objection. The Administrator shall promptly send a copy of each objection it receives to Class Counsel and Defendant's Counsel by email.

102. A Class Member's objection must include the name and docket number of this Action and must also include the following information about the Class Member: (a) name; (b) address; (c) telephone number; (d) email address, if available; and (e) signature of the Class Member.

103. Any Objections by any Class Member must be received by the Administrator on or before the Initial Objection Deadline (or, if extended, the Final Objection Deadline).

104. If fewer than seventy-five percent (75%) of the Class Members on the Class List submit Claim Forms or Opt-Out Forms prior to the Initial Claim Form Deadline, then the Initial Objection Deadline shall be extended by an additional ninety (90) days, which date shall be the Final Objection Deadline.

105. A Class Member may object on their own, or through counsel hired at their own expense.

106. Any attorney hired by a Class Member for the purpose of objecting to the proposed Settlement must serve a notice of appearance on Class Counsel and Counsel for Defendant and e-file the notice of appearance using the Court's NYSCEF system. The notice of appearance must be received by Counsel and filed with the Court no later than thirty (30) days before the Fairness Hearing.

107. Any Class Member who does not make an objection in the time and manner provided in this Agreement shall be deemed to have waived and forfeited any and all rights they may have to object, and shall be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement unless otherwise allowed by the Court.

APPEARANCE AT THE FAIRNESS HEARING

108. Class Member attendance at the Fairness Hearing is not necessary. However, any Class Member who submits a timely written objection to the Administrator in accordance with the requirements set out in this Agreement may appear at the Fairness Hearing either in person or through personal counsel retained at the Class Member's own expense.

109. Class Members who intend to appear at the Fairness Hearing on their own behalf must send a letter to the Administrator notifying the Administrator of their intention to appear at the Fairness Hearing. Such letter must also include the following information about the Class Member: (a) name; (b) address; (c) telephone number; (d) email address, if available; and (e) signature of the Class Member. The Administrator shall promptly send a copy of each letter it receives to Class Counsel and Counsel for Defendant by email.

110. The letter referenced in paragraph 109, above, must be received by the Administrator on or before the Initial Claim Form Deadline (or, if extended, the Final Claim Form Deadline).

111. If a Class Member retains personal counsel (at the Class Member's expense) to appear on their behalf at the Fairness Hearing, such counsel shall serve on Class Counsel and Counsel for Defendant and e-file using the Court's ECF system a notice of intention to appear, which must be received by Counsel and the Court no later than thirty (30) days before the Fairness Hearing.

112. Any Class Member who does not submit a letter to the Administrator or whose personal counsel does not file a notice of intention to appear with the Court in the time and manner provided in this Agreement shall be deemed to have waived and forfeited any and all rights they may have to appear at the Fairness Hearing and shall be foreclosed from appearing at the Fairness Hearing unless otherwise allowed by the Court.

113. Any Class Member who submits an objection to the proposed Settlement shall be deemed to consent to the exclusive jurisdiction of the Court with respect to such objection and all issues that arise or relate to such objection, including any order issued or findings made by the Court regarding the objection.

114. At the time Plaintiffs submit their motion seeking Final Approval of the Settlement, they shall also submit to the Court all of the timely requests for exclusion, objections, and Class Member letters indicating an intention to appear personally at the Fairness Hearing that have been timely submitted to the Administrator.

115. Counsel for the Parties shall promptly inform each other of any submission served on them (or that otherwise comes into their possession) pursuant to paragraphs 97-114.

RELEASES

116. Upon the Effective Date of Payment, in consideration for the agreements between the Parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, all Class Representatives and Class Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns shall hereby release, remise and forever discharge the City, its predecessors, successors and assigns, together with all past and present officials, employees, representatives, and agents of the City of New York, or any agency thereof, and any person or entity represented by the Office of the New York City Corporation Counsel, and, in the case of all such entities, their respective past and present representatives, officers, directors, attorneys, agents, employees, privities, and insurers, from each and every Released Claim, as defined in the following paragraph, and shall forever be barred and enjoined from initiating, continuing, filing or otherwise prosecuting any Released Claim against any of the Released Parties. Unless a Class Member Opt Out of the Settlement pursuant to paragraphs 97-99 above, this release shall apply whether or not such Class Member has executed and delivered a Claim Form or otherwise actively participated in the Settlement.

117. Every Class Member, except for those who Opt-Out pursuant to paragraphs 97-99 above, shall be deemed to and shall have knowingly and voluntarily waived, released,

discharged and dismissed all claims or causes of action that were or could have been raised by the Class Representatives and/or the Class or any Class Member based on the factual allegations in the Complaint, the First Amended Complaint, and the Second Amended Complaint against the City of New York during the Class Period (“Released Claims”). This release shall be with full knowledge of any and all rights they may have, and they hereby assume the risk of any mistake in fact in connection with the true facts involved, or with regard to any facts which are now unknown to them. No Opt-Out shall share in any monetary benefits provided by this Agreement.

118. The Parties and Class Members acknowledge that the covenants and promises made by the City herein constitute adequate consideration in exchange for the releases in paragraphs 116-117.

119. Nothing in this Agreement shall be construed to bar any claims of the Class Representative or Class Members based on or arising out of events occurring outside of the Class Period. Nor shall anything in this Agreement be construed to bar any claims by Class Representatives or Class Members based on or arising out of claims in any certified class action, other than this Civil Action, in which the Class Representative or Class Member already is a member of the certified class.

MUTUAL FULL COOPERATION

120. The Parties agree that they will fully cooperate with each other to effectuate and implement all terms and conditions of this Agreement and exercise good faith efforts to accomplish the terms and conditions of this Agreement.

121. The Parties hereby agree not to appeal or challenge any aspect of this Agreement, to otherwise collaterally attack or challenge this Agreement, or to appeal or challenge any aspect of the Final Approval Order, with the exception of attorneys’ fees and expenses.

122. The Parties will take all necessary and appropriate steps to obtain approval of the Agreement and dismissal of the action with prejudice. If the Supreme Court, Bronx County approves this Agreement, and if there is an appeal from such decision by a non-party, Defendant will join Class Counsel in defense of this Agreement on any such appeal or subsequent proceeding. If the City joins in such defense, the City will not be required to devote substantial resources to such defense, and the City reserves the right to condition joining in such defense on Class Counsel's satisfaction of any reasonable objections the City may assert to Class Counsel's positions or drafts.

123. Class Counsel will move for Preliminary Approval and Final Approval.

124. The Parties shall propose to the Court for approval the following settlement schedule:

- Notice Date: 60 days after the Preliminary Approval Date;
- Initial Claim Form Deadline: 90 days after Notice Date;
- Initial Objection/Opt-Out Deadline: 90 days after Notice Date;
- Deadline to move for Final Approval: 15 days before Final Approval Hearing;
- Final Approval Hearing: 45 days after the Final Claim Form Deadline. If the Initial Claim Form Deadline is not extended, then the Final Approval Hearing shall be 45 days from the Initial Claim Form Deadline.

EFFECT OF THE AGREEMENT ON THE PENDING CIVIL ACTION AND CONTINUING JURISDICTION

125. The Court, and any appellate court from which appeals of the Court's decisions may properly be brought, shall retain jurisdiction for the implementation and enforcement of the terms of this Agreement, and all Parties hereto and their counsel shall submit to the exclusive jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Agreement.

MODIFICATION OF THE AGREEMENT

126. This Agreement represents the entire agreement among the Parties, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Agreement shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein, or to determine the meaning of any provisions herein. This Agreement can be modified only on the written consent of all the Parties.

NOTIFICATION OF PARTIES UNDER THE SETTLEMENT AGREEMENT

127. All notices contemplated by this Agreement, other than notice to the Class pursuant to paragraphs 57-63, shall be delivered by hand, by overnight mail, or by email.

COUNTERPARTS

128. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument, and will be binding when it has been executed and delivered by the last signatory. A facsimile or scanned signature is an original signature for purposes of this Agreement.

GOVERNING LAW

129. This Agreement shall be governed by and construed and interpreted according to the laws of the State of New York without reference to conflicts of law principles.

MUTUAL INTERPRETATION

130. The Parties stipulate that this Agreement was negotiated on an “arm’s length” basis between parties of equal bargaining power to resolve a bona fide dispute between the Parties concerning liability and the availability of damages. Also, Class Counsel and Counsel for Defendant jointly drafted this Agreement. Accordingly, this Agreement shall not be construed in favor of or against any of the Parties. Neither Party shall be considered the drafter of this Agreement for purposes of interpreting the Agreement, or the application of any rule of construction.

BINDING UPON SUCCESSORS

131. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective personal representatives, administrators, heirs, successors, and assigns.

NULLIFICATION

132. This Agreement is null and void in the event that any of the following do not occur:

- i. Preliminary Approval of this Agreement by the Court; or
- ii. Final Approval by the Court or an appellate court with jurisdiction.

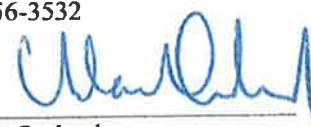
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