

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JONATHAN ZARKOWER, an individual on behalf of  
himself and all others similarly situated,

Plaintiff,

19 CV 3843  
(ARR) (RLM)

-against-

CITY OF NEW YORK, PETER FORTUNE, Individually,  
SALVATORE DIMAGGIO, Individually, ANDREW CHIN,  
Individually, PABLO DEJESUS, Individually, and JOHN and  
JANE DOE 1 through 50, Individually, (the names John  
and Jane Doe being fictitious, as the true names are presently  
unknown),

Defendants.

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**STIPULATION OF SETTLEMENT AND ORDER**

This Settlement and Stipulation (the “Stipulation”) is made and entered into on August 23, 2023 between the City of New York (the “City”) and Plaintiff Jonathan Zarkower (the “Class Representative”) on behalf of himself and the plaintiff class of which he is the Class Representative. The City and the Class Representative shall be referred to herein collectively as the “Parties.”

WHEREAS, this action was commenced on July 2, 2019, wherein plaintiff alleged that the NYPD had a practice in the 114<sup>th</sup> Precinct of detaining individuals after they had been issued a DAT (“Desk Appearance Ticket”) for the sole purpose of being debriefed; and

WHEREAS, the Class Representative filed an Amended Complaint on November 11, 2019;  
and

WHEREAS, the Parties engaged in limited discovery including the exchange of documentary support relevant to the methodology for the assemblage of a Class List (defined below); and

WHEREAS, the Parties seek to avoid additional protracted and expensive litigation and therefore agree to the entry of this Stipulation to resolve all issues that were raised in this action by the Class Representative, both individually and as class representative; and

WHEREAS, Defendants deny any and all liability arising out of the allegations set forth in the Amended Complaint; and

WHEREAS, since the commencement of this action, the City has revised New York City Patrol Guide Section 208-27, which now states that “a defendant who is DAT eligible and whose processing has otherwise been completed should never be held for the sole purpose of being debriefed . . .;” and

WHEREAS, the terms of this Stipulation were extensively negotiated in good faith over the span of approximately one year under the supervision of the Honorable Magistrate Judges Roanne L. Mann and James R. Cho; and

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

NOW, THEREFORE, with the agreement of all Parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

**DEFINITIONS**

The terms described below shall have the meanings defined in this Section wherever used in this Stipulation, and for the purposes of this Stipulation only.

1. “114<sup>th</sup> Police Precinct Debriefing Practice” shall mean the New York City Police Department (“NYPD”) 114<sup>th</sup> Police Precinct’s former practice of detaining arrestees after they had been issued a desk appearance ticket (“DAT”) for the purpose of debriefing them.

2. “Administrator” shall mean the entity retained to disseminate the Notice Form, process the Opt Out Forms and Claim Forms, and otherwise administer this settlement according to the terms and procedures set forth in this Stipulation.

3. “Anticipated Maximum Total Payment” shall be the amount of money necessary to pay each Class Member four thousand dollars (\$4,000).

4. “Automated Telephone Message” shall mean an automated telephone message consisting of language substantially in the form of the script attached hereto as Exhibit 1, or such other language that may be approved by the Court in the Preliminary District Court Approval.

5. “Challenge” shall mean a challenge submitted by a Class Member or person not included in the Preliminary Class List who claims to be a Class Member pursuant to the Challenge Procedure.

6. “Challenge Deadline” shall mean sixty (60) days from the Notice Date.

7. “Challenge Procedure” shall mean the procedure set forth in Paragraphs 84 through 87 of this stipulation.

8. “Claim Form” shall mean a document substantially in the form of the document attached hereto as Exhibit 2, or in such other form that may be approved by the Court in the Preliminary District Court Approval, that each Class Member must timely submit in order to be eligible to receive a Final Individual Payment Amount.

9. “Claim Form Deadline” shall mean one hundred and fifty (150) days from the Notice Date.

10. “Claim Form Deadline Warning” shall mean the document attached hereto as Exhibit 3

11. “Class Counsel” shall mean Brett H. Klein, Esq., PLLC, collectively.

12. “Class Member” shall mean any person who is a member of the Settlement Class who does not file a timely Opt-Out Form as provided in Paragraphs 104 through 106 of this Stipulation.

13. “Class Website” shall mean the website to be established by the Administrator.

14. “Class Representative” shall mean Jonathan Zarkower.

15. “Debriefing” shall mean the procedure documented in NYPD’s Patrol Guide Section 210-08 of questioning prisoners for the purpose of developing a central repository of criminal intelligence. The Policy is attached hereto as Exhibit 4 (effective date June 30, 2021).

16. “Defense Counsel” shall mean the Corporation Counsel for the City of New York.

17. “Desk Appearance Ticket” or “DAT” shall mean an appearance ticket issued to an arrestee by the NYPD in lieu of further detention.

18. “Effective Date for Payment” shall mean the date when the City’s obligation to pay the Eligible Class Members becomes effective (with individual checks being generated pursuant to the processes set forth below). The Effective Date for Payment shall be one day after the date upon which each of the following has occurred: (1) entry of an Order by the Court granting Final Approval to this Stipulation, approving attorneys’ fees and costs, and dismissing the Civil Action with prejudice; and (2) the time for appeal of the Final Approval Order by an Objector has expired, or if an appeal from the Final Approval Order, or any portion thereof, is taken by an Objector, the appeal by such Objector is resolved.

19. “Eligible Class Member” shall mean (a) any Class Member who submits a Claim Form in compliance with this Stipulation, who submits a signed W-9 Form, who satisfies the identification requirement set forth in Paragraphs 50 through 52 of this Stipulation, and whose claim is not otherwise barred for the reasons set forth herein, or (b) any Class Member who files a meritorious Challenge in compliance with Paragraphs 84 through 87 of this Stipulation.

20. “Fairness Hearing” shall mean the hearing held by the Court pursuant to F.R.C.P. 23(e)(2), which shall occur after the Claim Form Deadline.

21. “Final Approval Order” means an Order by the Court, after a fairness hearing, granting Final Approval to this Stipulation, approving Class Counsel’s fees and costs, approving the Administrative costs, approving Service Award Payments, and dismissing the Civil Action with prejudice.

22. “Final District Court Approval” shall mean an order issued by the Court after the Claim Form Deadline, and after the Court has been informed of the percentage of Class Members who have submitted Claim Forms, and following a fairness hearing, finally certifying the Settlement Class, granting final approval of this Stipulation, adjudging the terms hereof to be fair, reasonable, and adequate.

23. “Final Individualized Payment Amount” shall be four thousand dollars (\$4,000) if such Class Member timely submits a Claim Form, submits a signed W-9 Form, and satisfies the identification requirement set forth in Paragraphs 50 through 52 of this stipulation.

24. “Last Known Contact List” shall be the Preliminary Class List with last known addresses, and phone numbers if available, for every Class Member that Defense Counsel shall develop, and that the Parties and the Administrator shall update from time to time pursuant to Paragraphs 69 through 71 of this Stipulation.

25. “Notice Date” shall mean thirty (30) days after Preliminary District Court Approval.

26. “Notice Form” shall mean a document substantially in the form of the document attached hereto as Exhibit 5, or in such other form that may be approved by the Court in the Preliminary District Court Approval, that shall be mailed to each Class Member as set forth on the Last Known Contact List and available on the Class Website summarizing the terms and conditions of this Stipulation and notifying such Class Member (a) that in order to be eligible to receive a Final Individual Payment Amount, he or she must timely submit a Claim Form and establish his identity pursuant to Paragraphs 50 through 52 below; (b) he or she must submit a signed W-9 Form; and (c) that any payment made hereunder is subject to reduction for any outstanding New York child support, docketed parking and Environmental Control Board judgments owed to DOF, docketed business tax warrants or judgments owed to DOF, and/or Medicare liens, if any. The Notice Form shall contain instructions about how any of the aforementioned document(s) may be submitted to the Administrator.

27. “Notice Summary” shall mean a document substantially in the form of the document attached hereto as Exhibit 6, or in such other form that may be approved by the Court in the Preliminary District Court Approval.

28. “NYPD” shall mean the New York City Police Department.

29. “Objection” shall mean any objection made pursuant to F.R.C.P. 23(e)(5) to any aspect of this Stipulation or the Preliminary District Court Approval.

30. “Objector” shall mean a person who files an Objection.

31. “Objection Deadline” shall mean sixty (60) days from the Notice Date.

32. “Opt-Out Form” shall mean the document attached hereto as Exhibit 7.

33. “Opt-Out Deadline” shall mean sixty (60) days from the Notice Date.

34. “Released Claims” shall mean any and all past or present claims or causes of action (including any suits, petitions, demands or other claims in law, equity, or arbitration),

and any and all allegations of liability or damages, of whatever kind, nature, or description, direct or indirect, in law, equity, or arbitration, absolute or contingent, whether class or individual in nature, including both known claims and Unknown Claims, asserted or unasserted, for monetary and non-monetary relief (including without limitation attorneys' fees, costs or disbursements incurred by the Class Representative and/or the Settlement Class and/or any Class Member in connection with or related to this action), that were or could have been asserted by the Class Representative and/or any Class Member against the Released Parties based upon or arising out of the same transactions, occurrences or nucleus of operative facts that form the basis of the claims that were asserted in this action. The Released Claims do not include or cover any actions or omissions occurring after the date Preliminary Approval is granted, nor do the Released Claims include or cover any claims involving unconstitutional confinement occurring in NYPD precincts other than the 114<sup>th</sup> Precinct, or claims within the 114<sup>th</sup> Precinct unrelated to detainment for the sole purpose of debriefing.

35. "Released Parties" means the City of New York, Peter Fortune, Salvatore Dimaggio, Andrew Chin, Pablo Dejesus, and of their parents, subsidiaries, affiliates, predecessors, successors and/or assigns and in the case of all such entities, their respective past and present representatives, officers, directors, attorneys, agents, employees, privies and insurers.

36. "Preliminary Class List" shall mean the list attached hereto as Exhibit 8.

37. "Preliminary District Court Approval" shall mean an order issued by the Court, prior to holding a fairness hearing or granting final approval of this Stipulation, conditionally certifying the Settlement Class and granting preliminary approval of this Stipulation.

38. "Settlement Class" shall mean any person who was (1) arrested by the NYPD and detained at the 114<sup>th</sup> Precinct between November 11, 2013 and June 30, 2021 and (2) issued a

DAT; and (3) further detained after being issued a DAT; and (4) debriefed during this further detention pursuant to the 114<sup>th</sup> Police Precinct Debriefing Practice.

39. “Text Summary” shall mean a text message substantially in the form of the language contained within the document attached hereto as Exhibit 9, or in such other form that may be approved by the Court in the Preliminary District Court Approval.

40. “Unknown Claims” shall mean any and all Released Claims about which any Class Representative or Class Member does not know or does not suspect to exist in their favor at the time of the release of the Released Parties, which if known by them might have affected their decision(s) with respect to the settlement provided for in this Stipulation. With respect to any and all Released Claims, the Parties stipulate and agree that upon the end of the claims period, the Class Representatives and Class Members shall waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law with respect to Unknown Claims. The Parties acknowledge, and all Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was bargained for and was a material element of the settlement provided for in this Stipulation. Unknown Claims do not include any claims that are specifically excluded in the definition of Released Claims.

41. “W-9 Form” shall mean the document attached hereto as Exhibit 10.

#### **MUTUAL FULL COOPERATION**

42. The Parties agree that they shall fully cooperate with each other and make good faith efforts to effectuate and implement all terms and conditions of this Stipulation.

#### **RELEASES**

43. Upon the Effective Date for Payment, in consideration for the agreements by the Parties and other good and valuable consideration, the receipt and sufficiency of which is hereby



acknowledged, all Class Representative and Class Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns shall hereby release, remise and forever discharge the Released Parties (as defined above) from each and every Released Claim, 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 opts out of the Settlement pursuant to Paragraphs 104 through 106, this Release shall apply whether or not such Class Member has executed and delivered a Claim Form or otherwise actively participated in the Settlement.

44. Every Class Member, except for those who Opt-Out pursuant to Paragraphs 104 through 106, shall be deemed to and shall have knowingly and voluntarily waived, released, discharged and dismissed the Released Claims, 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.

45. The Parties and Class Members acknowledge that the covenants and promises made by the City herein constitute adequate consideration in exchange for the Released Claims.

46. Nothing in this Stipulation shall be construed to bar any claims of the Class Representative or Class Members based on or arising out of: (1) events occurring after the date of the Preliminary Approval Order; or (2) events occurring in precincts other than the 114<sup>th</sup> Police Precinct.

#### **PAYMENTS TO CLASS MEMBERS**

47. The City shall pay each Eligible Class Member Four Thousand Dollars (\$4,000).

48. Based on the information set forth in the Preliminary Class List, the amount of the Anticipated Maximum Total Payment is \$11,736,000.

49. To the extent that any person not shown on the Preliminary Class List believes that he or she is a Class Member, such person may avail himself or herself of the Challenge Procedure set forth in Paragraph 84 through 87 of this stipulation.

**IDENTIFICATION REQUIREMENT**

50. A Class Member shall establish his or her identity by providing the Administrator with a copy of a driver's license or other government issued identification, or with (i) any available electric, gas, water, telephone, cable, or other utility bills in such Class Member's name; (ii) a lease in such Class Member's name; (iii) a passport or visa; (iv) a green card or other identification issued by the Immigration and Naturalization Service or the United States Immigration and Customs Enforcement; or (v) other documentation that reliably establishes such Class Member's identity.

51. If the Class Member does not provide the Administrator with a driver's license or other acceptable identification that reliably establishes such Class Member's identity as described in Paragraph 50, then the Administrator shall promptly contact such Class Member and attempt to verify the identity of such Class Member by asking the Class Member to submit a copy of a driver's license or other acceptable identification. If the Administrator is unable to verify the identity of a Class Member, the Administrator shall so inform Class Counsel and the City. The City and Class Counsel will confer in good faith and if the City and Class Counsel are unable to agree about whether a Class Member has sufficiently established his or her identity, and if Class Counsel has a good faith and demonstrable basis to believe that such Class Member has sufficiently established his or her identity, then any such dispute shall be submitted to the assigned Magistrate Judge for a final and binding determination with no further review by any Court.

52. A Class Member submitting a Claim Form shall have the option to submit acceptable identification to the Administrator at any time prior to sixty (60) days after Final District Court Approval. In the event that the City disputes whether any Class Member has provided satisfactory proof of identity as set forth in Paragraph 51 above, and such dispute is resolved in such Class Member's favor, such Class Member shall be deemed to have provided proof of identity on the date that such Class Member provided the disputed identification document.

**CLASS REPRESENTATIVE SERVICE AWARD PAYMENTS**

53. Subject to the Court's approval, the City agrees to pay a settlement that includes service award for the damages suffered and services provided to the class by the Class Representative and in recognition of the time and energy that he has devoted to litigating this lawsuit, and his willingness to serve as a representative of the Class, in the amount of Seventeen Thousand Dollars (\$17,000). This service award payment shall be in addition to the Four Thousand (\$4,000) otherwise due to him with respect to his individual claim as a Class Member.

**ATTORNEYS' FEES**

54. The Parties agree that the Court may award reasonable attorneys' fees that are authorized by law or by the parties' agreement pursuant to Fed. R. 6.1 Civ. P. 23(h).

55. Defendants have agreed to pay Class Counsel Four Hundred Thousand Dollars (\$400,000) for attorneys' fees and costs subject to Court approval. Defendants will not object to a motion by Class Counsel for attorneys' fees and Costs of \$400,000.

56. The City shall pay Class Counsel the entirety of the attorneys' fees and costs awarded by the Court, and each Eligible Class Member, including the Class Representative, shall receive the entirety of their Final Individual Payment Amount.

57. For the avoidance of doubt, the payment of Four Hundred Thousand Dollars includes payment for any and all future work performed by Class Counsel.

58. Class Counsel shall provide the City with executed Form W-9s containing Tax Payer Identification Numbers for Class Counsel.

### **SETTLEMENT SCHEDULE**

59. The Parties have proposed to the Court for approval the following settlement schedule:

- Notice Date: 30 days after the Preliminary Approval Date;
- Deadline to Object/Opt Out/ Challenge: 60 days after the Notice Date;
- Claim Form Deadline: 150 days after the Notice Date;
- Final Approval Hearing: 60 days after the Claim Form Deadline; and
- Deadline to submit proof of identity and W-9 Forms: 60 days after Final District Court Approval.

### **PRELIMINARY COURT APPROVAL**

60. The Parties agree to the certification of a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure and Plaintiffs will seek such certification at the fairness hearing on this settlement.

61. No later than sixty (60) days after this Stipulation is executed, Class Counsel shall move for Preliminary District Court Approval approving the terms of this Stipulation and the form of the Notice Form, the Notice Summary, the Automated Telephone Message, Text Summary, the Claim Form, and the Opt Out Form, setting deadlines for mailing the Notice Form, posting the Notice Summary, Claim Forms, Opt Out Forms, and Objections, entering the Administrator Order, and scheduling the Fairness Hearing.

62. In moving for Preliminary District Court Approval, Class Counsel shall ask the Court to certify the Settlement Class based on the following definition: any person who was (1) arrested by the NYPD and detained at the 114<sup>th</sup> Precinct between November 11, 2013 and June 30, 2021; and (2) issued a DAT; and (3) further detained after being issued a DAT; and (4) debriefed during this further detention pursuant to the 114<sup>th</sup> Police Precinct Debriefing Practice.

63. If Preliminary District Court Approval is denied, the Parties shall work together diligently and in good faith to remedy the basis or bases for such denial, and Class Counsel shall file a renewed motion for Preliminary District Court Approval as soon as practicable.

64. If the Parties are unable to obtain Preliminary District Court Approval notwithstanding their diligent efforts, then this Stipulation shall become null and void in its entirety, and the Parties shall be restored to their positions immediately prior to the execution of this Stipulation.

**CLAIMS ADMINISTRATOR: SUMMARY OF EXPENSES AND DUTIES**

65. The City shall pay the entirety of all costs and expenses associated with the claims administration process, including without limitation the Administrator's fees, all costs associated with the notice process, and all costs associated with the payment process.

66. The Administrator shall be KCC, LLC. The Parties and the Counsel for the City of New York shall ensure that the Administrator complies with all terms of the Stipulation.

67. The Administrator shall submit invoices for its services, costs, and expenses on a monthly basis to the City and to Class Counsel, and the City will pay such bills provided the City does not object to the bill within forty-five (45) days of the receipt of the monthly bill. The Administrator's duties shall be to: (1) transmit the Notice and Claim Forms, in both English and Spanish, to Class Members by means set forth herein and as approved by the Court; (2) establish

the Class Website, and a toll-free phone number where information about the settlement will be available to Class Members and where Class Members can ask, and receive responses to, questions; (3) publish the Notice by means set forth herein and as approved by the Court; (4) respond to questions from Class Members; (5) review and assess the validity of information in the Claims Forms submitted by Class Members; (6) verify the identity of Class Members by reviewing their identification; (7) arrange for and distribute checks containing payments to Class Members as set forth in this Stipulation; (8) create a database of Class Members who have filed timely and valid Claim Forms; (9) create a database of Opt Outs; and (10) perform any other duties necessary to fulfill the foregoing responsibilities and any other responsibilities set forth in this Stipulation.

68. The Administrator shall adhere as closely to the plan and costs set forth in the proposal attached hereto as Exhibit 11, barring unforeseen or unavoidable cost increases or other necessary changes that may arise in administering the Class or as required by the Court.

### **CLAIMS PROCESS**

69. Promptly after the Preliminary Approval Order, but no more than seven (7) days thereafter, Defense Counsel shall furnish to the Administrator the Last Known Contact List of all individuals identified in the Preliminary Class List. The City and the Administrator shall use their best efforts to make the Last Known Contact List as comprehensive and accurate as practicable, including by the City providing the last known addresses as reflected in the NYPD's record of arrest for the Class Member, and where appropriate, by the Administrator performing searches for each Class Member using reasonably available public and proprietary electronic resources that collect data from various sources such as utility records, property tax records, motor vehicle registration records, and credit bureaus. Any disputes between the Parties with respect to the appropriate scope of such searches shall be submitted to the assigned Magistrate Judge for a final and binding determination with no

further review by any Court, but in no event will the Parties request that the Court direct the City to research all City databases.

70. The Administrator shall update the Last Known Contact List from time to time when new information about a Class Member's Last Known Contact is obtained from any reliable source.

71. Information provided to Class Counsel and the Administrator by the City pursuant to the preceding two paragraphs shall be confidential and may not be disclosed to anyone except Class Counsel, Defense Counsel, certain City agencies (including the NYPD and the Comptroller's Office), the Administrator, or the Court under seal, with the limited exception of 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 122 below, individuals with docketed parking and Environmental Control Board judgments owed to DOF and/or docketed business tax warrants or judgments owed to DOF pursuant to (and limited to the data listed in) Paragraph 122 below, and/or individuals with Medicare liens asserted by the federal government, subject to the data destruction provisions in Paragraph 122 below. Class Counsel, Defense Counsel, and the Administrator shall not disclose the confidential information to any person not a member of their staff without consent of the Parties. Class Counsel, Defense Counsel, and the Administrator shall take all reasonable steps to ensure that the confidential information concerning all proposed class members remain private and confidential. In addition, the information provided to Class Counsel and the Administrator regarding the Preliminary Class List and Last Known Contact List by Defense Counsel will not be used for any other purpose other than in this litigation and for the administration of this Stipulation. Similarly, the City will not use any information concerning the Preliminary Class List and Last Known Contact List that is provided by the Administrator or Class

Counsel for any other purpose other than in this litigation and for the administration of this Stipulation, and the City shall keep such information confidential.

72. Promptly after Preliminary District Court Approval, the Administrator shall generate drafts of the Notice Forms (in both English and Spanish) that will be mailed to each Class Member. The draft Notice Form for each Class Member shall be in the form of the template attached hereto as Exhibit 5, or in such other form(s) as may be approved by the District Court in the Preliminary District Court Approval.

73. On or before the Notice Date, the Administrator shall cause the Notice Form for each such Class Member, the Claim Form, and the Opt Out Form (with each form in both English and Spanish and shall be in the form of the template attached hereto as Exhibits 5, 2, and 7, or in such other form(s) as may be approved by the District Court in the Preliminary District Court Approval) to be mailed to such Class Member at their last known address.

74. In order to provide the best notice practicable, the Claims Administrator will do the following before any mailing of the Notice and Claim Form; (1) run the list of all Proposed Settlement Class Members through the United States Postal Service's National Change of Address database ("NCOA"); and (2) perform address searches using public and proprietary electronic resources which collect their data from various sources such as utility records, property tax records, motor vehicle registration records (where allowed) and credit bureaus.

75. If the envelope that was mailed to any Class Member is returned with a forwarding address, the Administrator shall so inform Class Counsel and Defense Counsel and shall promptly re-mail such Notice Form, Claim Form, and Opt-Out Form to such Class Member at such forwarding address.



76. If the envelope that was mailed to any Class Member is returned as “return to sender” (or other similar designation), the Administrator shall so inform the Class Counsel and Defense Counsel and shall promptly perform a standard skip trace in an effort to attempt to ascertain the current address of such Class Member. If such address is obtained, the Administrator shall promptly re-mail such Notice Form, Claim Form, and Opt-Out Form to such Class Member at such address. If such address is not obtained, then Class Counsel shall make reasonable efforts to obtain such address.

77. Promptly after Preliminary District Court Approval, the Administrator shall generate an “Automated Telephone Message” in the form of the script attached hereto as Exhibit 1, or in such other form(s) as may be approved by the District Court in the Preliminary District Court Approval.

78. On or before the Notice Date, the Administrator shall cause the Automated Telephone Message to be transmitted in both English and Spanish to the last known phone number of each Class Member on the Last Known Contact List, if a phone number is available for said Class Member.

79. Promptly after Preliminary District Court Approval, the Administrator shall generate drafts of the Text Summary in English and Spanish, which shall be in the form of the template attached hereto as Exhibit 9, or in such other form(s) as may be approved by the District Court in the Preliminary District Court Approval, if a phone number is available for said Class Member.

80. On or before the Notice Date, the Administrator shall cause the Text Summary to be texted in both English and Spanish to the last known phone number of each Class Member.

81. On or before the Notice Date, the Administrator shall publish English and Spanish language versions of the Notice Summary, which shall be in the form of the template attached hereto as Exhibit 6, or in such other form(s) as may be approved by the District Court in the Preliminary District Court Approval, via Facebook/Instagram, Twitter, and YouTube, and on select MTA buses.

82. On or before the Notice Date, the Administrator shall establish a website, email address, and toll-free telephone number (that is accessible to both English and Spanish speakers) through which actual and prospective Class Members can access information, ask questions about the settlement process set forth in this Stipulation, and provide the Administrator with an updated Last Known Address.

83. All relevant information and documents will also be made available on the Class Website.

84. Any person may, at any time before the Challenge Deadline as explained in the Notice Summary, submit a Challenge to his or her omission from the Class List.

85. A person may submit a Challenge by providing the Administrator (either directly or with the assistance of Class Counsel) with his or her name; his or her NYSID number, if known; his or her social security number, if known; his or her date of birth; and a reasonable approximation of the date of the arrest that they claim should be included in the Class definition.

86. Promptly after a Challenge is submitted to the Administrator, the Administrator shall inform the Corporation Counsel and Class Counsel of the Challenge and the information that was provided. The Corporation Counsel and Class Counsel shall then work together in good faith to determine whether the Challenge has merit. The Corporation Counsel shall provide Class Counsel with the information necessary to determine whether the challenger has a valid claim

within ten (10) business days, and the Parties shall meet and confer within five (5) business days thereafter. If the Corporation Counsel and Class Counsel agree that the Challenge has merit, then any changes that are warranted shall be reflected on an Amended Class List, the Parties shall so inform the Administrator, and the Administrator shall so inform the person who made the Challenge by first class mail (which mailing shall include the Notice Form, the Claim Form, the Opt Out Form, and a Substitute W-9 Form.) If the Parties agree that the Challenge does not have merit, then the Parties shall inform the Administrator that the Challenge has been rejected, and the Administrator shall so inform the person who made the challenge. If the parties disagree about whether the Challenge has merit, then the Challenge shall probably be submitted to the assigned Magistrate Judge for a final and binding determination. Under no circumstances shall any person submitting a Challenge be entitled to receive any documents relating to the consideration and resolution of such Challenge; any such consideration and resolution shall be undertaken by counsel for the Parties and, in the event of a dispute, by the assigned Magistrate Judge.

87. Any Challenges submitted after the Challenge Deadline shall be null and void.

88. Nothing in this section shall limit further appropriate efforts to provide notice.

89. The Administrator shall provide to Counsel for the Parties, at least ten (10) business days prior to the Final Fairness Hearing, a list of Class Members for whom notices were returned as undeliverable and for whom efforts to obtain an alternative address failed.

#### **SUBMISSION AND REVIEW OF CLAIM FORMS**

90. The Administrator shall provide the parties with bi-weekly updates regarding the number and identity of Class Members who have provided updated Last Known Addresses, who have availed themselves of the Challenge Procedure, whose Notice Forms were returned as undeliverable, who have submitted Opt Out Forms, and/ or who have submitted Claim Forms.

91. All Class Members seeking payment pursuant to the settlement must make such a claim in writing using the Claim Form in the form attached as Exhibit 2, or such other form as may be approved by the Court. All Claim Forms must be signed by the Claimant, and must be accompanied by proof of identity in accordance with the identification requirement as set forth in paragraphs 50 through 52, and a signed W-9 Form. A Claim Form is deemed submitted upon deposit in a postpaid properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the U.S. Post Office, when submitted for delivery by a commercial express carrier, when emailed to the Administrator, or when actually received by the Administrator, whichever date is earlier.

92. In order for a Claim Form to be considered complete, all questions must be answered and all applicable blanks filled in in a manner legible to the Administrator. Failure to file a timely and complete Claim Form by the deadline for submission of all Claim Forms, if not corrected within the remedial period set forth in Paragraphs 94 through 95 below, shall bar the Class Member from receiving payment.

93. Class Members who file a Claim Form must notify the Administrator of any change of address. The Administrator shall be available through a website and a toll-free phone line to respond to requests from Class Members for assistance in completing and filing Claim Forms.

94. No untimely filed and/or incomplete Claim Forms may be accepted by the Administrator, except that (1) the Administrator may extend the deadline for receipt of Claim Forms by up to thirty (30) additional calendar days where error or delay by United States Postal Service is established; and/or (2) the Administrator may provide a one-time extension of the deadline for receipt of Claim Forms of up to thirty (30) additional calendar days upon good cause shown.

95. The Administrator shall conduct a review of all Claim Forms to determine whether the Claim Form is completed and has been timely submitted. In the event that a Claim Form is timely, but is incomplete, the Administrator shall provide a one-time twenty (20) calendar day remedial period in which a Claimant can rectify any errors in the Claim Form.

96. The Administrator shall also conduct a review of each claim submitted, as well as data provided by the NYPD and the City, in order to determine the eligibility of the claim for payment. If the Administrator rejects a claim as not meeting the terms or provisions of the Stipulation, the Administrator shall so notify the Claimant, Class Counsel, and Defense Counsel, in writing and specify the eligibility and/or entitlement criteria that the Claimant failed to satisfy.

97. Within ten (10) business days of receiving a Claim Form from a Class Member that is (i) not accompanied by a W-9 Form and/or (ii) not accompanied by identification, the Administrator shall send the W-9 Form to such Class Member by first class mail and include a self-addressed stamped envelope in which such Class Member may submit a W-9 Form and his or her identification to the Administrator, as well as instructions about how such documents can be sent to the Administrator by e-mail.

98. On or about thirty (30) days before the Claim Form Deadline, the Administrator shall send the Claim Form Deadline Warning, via first class mail, and transmit an automated call and text (if a phone number is available) to each Class Member who has not yet submitted a Claim Form at such Class Member's Last Known Contact information.

99. Promptly after the Claim Form Deadline, the Administrator shall inform the Parties which Class Member submitted Claim Forms prior to the Claim Form Deadline.

100. The Administrator shall provide to Class Counsel and Defense Counsel, at least ten (10) business days prior to the Final Fairness Hearing, a list of Class Members for whom notices were returned as undeliverable and for whom efforts to obtain an alternative address failed.

101. The Administrator shall provide Class Counsel and Defense Counsel, at least five (5) business days before the Fairness Hearing, a sworn declaration by a person with knowledge declaring under penalty of perjury that the Administrator has complied with all of the terms, conditions, and procedures set forth above, and which informs the Court of the total number of or percentage of objectors and the total number of challengers.

102. The Claims Administrator shall, within 30 days after the Final Claim Form Deadline complete its review and issue a final determination as to which Class Members are entitled to receive payment pursuant to the settlement.

103. If the Actual Maximum Total Payment exceeds the Anticipated Maximum Total Payment by more than one percent (1%), then the City shall have the option to cancel this Stipulation by providing Class Counsel notice of such cancelation by email no later than two (2) weeks after the Actual Maximum Total Payment is calculated. If the City timely exercises such option to cancel this Stipulation, then this Stipulation shall become null and void in its entirety, and the Parties shall be restored to their positions immediately prior to the execution of this Stipulation.

#### **OPTING OUT**

104. Any Class Member who chooses to opt out of the settlement provided for in this Stipulation shall mail, or e-mail a completed and signed Opt Out Form (or other signed writing clearly evidencing such intent and containing their name and address) to the Administrator such that it is postmarked or received by the Administrator on or before the Opt Out Deadline.

105. Any Class Member who submits an Opt Out Form to the Administrator by the Opt Out Deadline shall be barred from participating in the settlement provided for in this Stipulation, shall not receive any payment from the City pursuant to this Stipulation, shall not be entitled to submit any Objection to this Stipulation or to the Preliminary District Court Approval, and shall not be bound by the release provided for in Paragraphs 43 through 46 of this Stipulation.

106. Any Class Member who does not submit an Opt Out Form (or other signed writing clearly evidencing such intent and containing their name and address) to the Administrator by the Opt Out Deadline shall be deemed to have accepted the settlement and other terms of this Stipulation and shall be bound thereby and by any and all subsequent proceedings, order, and judgments in this action.

### **OBJECTIONS**

107. Any Objections to this Stipulation by any Class Member shall be submitted to the Court on or before the Objection Deadline.

108. All Objections must be submitted to the Court in writing and must include a detailed description of the basis of the Objection.

109. Objections must be filed with the Court, with copies served on the Claims Administrator, Class Counsel and Defense Counsel, within sixty (60) calendar days after the Notice Date, or within such other time period, or pursuant to such other procedures, as may be set by the Court.

110. Only those Class Members who have not submitted timely Opt Out Forms may submit Objections to this Stipulation.

111. Any Class Member who fails to submit an Objection to this Stipulation by the Objection Deadline shall be deemed to have waived such any and all objections to this Stipulation

and shall be foreclosed from making any objection (whether by appeal or otherwise) to this Stipulation and/or to the Preliminary District Court Approval.

112. No Class Member may appear at the Fairness Hearing for the purpose of objecting to this Stipulation and/or to the Preliminary District Court Approval unless he or she submitted an Objection to the Court on or before the Objection Deadline.

113. Any lawyer intending to appear for a Class Member for the purpose of making objections must also file a Notice of Appearance with the Court by the objection deadline and must also serve copies by mail to Counsel for the Parties by the objection deadline.

114. An objector may withdraw their objection at any time.

#### **FINAL COURT APPROVAL**

115. No later than forty (40) days before the date set by the Court for the Fairness Hearing, Class Counsel shall move for Final District Court Approval.

116. If Final District Court Approval is denied, the Parties shall work together diligently and in good faith to remedy the basis or bases for such denial, and Class Counsel shall re-move for Final District Court Approval as soon as practicable.

117. If the Parties are unable to obtain Final District Court Approval notwithstanding their diligent efforts, then this Stipulation shall become null and void in its entirety, the Parties will arrange for notice to be provided at the City's expense informing the Class Members that the settlement was not approved, and the Parties shall be restored to their positions immediately prior to the execution of this Stipulation.

#### **PAYMENT OF CLAIMS**

118. Promptly after the Effective Date for Payment, Plaintiff shall execute and deliver to Defense Counsel all documents necessary to effect such payment of his service award to him, including, without limitation, a General Release, Affidavits of Status of Liens, and a W-9.



119. Within ninety (90) days of the receipt of these documents, the City will pay the Service Award, as set forth in paragraph 53.

120. Promptly after the Effective Date for Payment, Class Counsel shall execute and deliver to Defense Counsel all documents necessary to effect such payment of the attorneys' fees in the amount of \$400,000, or any other amount awarded by the Court, including, without limitation, a General Release, Affidavits of Status of Liens, and a W-9.

121. Within ninety (90) days of the receipt of these documents, the City will pay Class Counsel their attorneys' fees, as set forth in paragraphs 54 through 58.

122. Promptly after Final District Court Approval is granted, the Administrator shall begin to provide Class Counsel and Defense Counsel a list of all Eligible Class Members who have submitted a valid and verified claim so that the City may, on a rolling basis, determine whether each person's award will need to be reduced due to New York child support liens, docketed parking and Environmental Control Board judgments owed to DOF, docketed business tax warrants or judgments owed to DOF, and/or Medicare liens. Promptly thereafter, the City shall provide the Administrator and Class Counsel with a list of those persons who have New York child support liens, docketed parking and Environmental Control Board judgments owed to DOF, docketed business tax warrants or judgments owed to DOF, and/or Medicare liens asserted by the federal government and the amount that shall be deducted from each such person's payment (and, with respect to child support liens, forwarded to the beneficiary of such child support lien).

123. Upon the request of any Class Member or Class Counsel made prior to the mailing of their check pursuant to the next Paragraph of this Stipulation, the Administrator shall remit the amount of such Class Member's Final Individual Payment Amount by mail to an alternative address provided by such Class Member or Class Counsel, which shall be deemed their Last Known Address; provided, however, that Final Individual Payment

Amounts shall not be made payable to agents of Eligible Class Members other than Court-appointed legal representatives of such Eligible Class Members. In no event shall Class Counsel seek fees or costs for work relating to the appointment of a legal representative or other designee for any Class Member for purposes of effectuating payment.

124. As soon after the Effective Date for Payment as is practicable, the Administrator will provide a final list to Class Counsel and Defense Counsel of all Eligible Class Members who have submitted a valid and verified claim.

125. Twenty days after receipt of such list, the City shall transfer payment to the Administrator in the amount necessary to effectuate payment in the amount of the Final Individual Payment Amount to which each Eligible Class Member who has submitted a valid and verified claim is entitled pursuant to this Stipulation.

126. As promptly as practicable after receiving such funds from the City, the Administrator will distribute to each Eligible Class Member who has submitted a valid and verified claim at their Last Known Address, a check in the amount of the Final Individual Payment Amount to which such Class Member is entitled pursuant to this Stipulation.

127. If any Class Member's Final Individual Payment Amount is reduced because of New York child support liens, docketed parking and Environmental Control Board judgments owed to DOF, docketed business tax warrants or judgments owed to DOF, and/or Medicare liens, then the Administrator shall provide such Class Member with written notice of those deductions, together with such Class Member's Final Individual Payment Amount and information on how to file a challenge regarding such deductions. If the City later determines that the amount of the lien was incorrect, the City shall directly pay such Class Member the amount that was incorrectly withheld from such Class Member's Final Individual Payment Amount.

128. The City shall maintain records confirming the date each check was mailed to each Eligible Class Member.

129. The City and/or the Administrator also shall provide Class Counsel with a list, on a bi-weekly basis, of all Eligible Class Members whose checks were returned to the Administrator as undeliverable during the prior two-week period.

130. The City and/or the Administrator also shall provide Class Counsel with a list, on a bi-weekly basis, of all Eligible Class Members whose checks have cleared during the prior two-week period.

131. On or about the one hundred and fiftieth (150th) day after a check has been mailed to an Eligible Class Member, the Administrator shall send an overnight notice to any such Eligible Class Member who still has not cashed their check, at their Last Known Address, informing them that their Final Individual Payment Amount was mailed to them and of the deadline for cashing their check provided for in the next paragraph of this Stipulation.

132. If an Eligible Class Member has not cashed their check by one hundred and eighty (180) days after the Administrator first mailed it, then the City shall stop payment on such check, and such Class Member's Final Individual Payment Amount shall be cancelled and deemed forfeited.

133. If a Class Member has not satisfied the identification requirement as set forth in paragraphs 50 through 52 of this Stipulation or has not submitted a signed W-9 Form by sixty (60) days after Final District Court Approval, such Class Member's eligibility to receive a Final Individual Payment Amount shall be deemed forfeited.

**DISPUTE RESOLUTION**

134. Should any dispute arise regarding the implementation of this Stipulation, the Parties shall first meet and confer and attempt to resolve the dispute informally. If such efforts fail, the Parties shall present the issue to and appear before the Magistrate Judge at a conference.

**MISCELLANEOUS PROVISIONS**

135. This Stipulation constitutes the entire agreement between and among the Parties hereto with respect to the matters covered hereby and supersedes any prior or contemporaneous agreement, understanding, or undertaking, written or oral, by or between or among the Parties.

136. This Stipulation shall not be admissible in any action or proceeding except as necessary to enforce its terms and obligations.

137. The City and Class Counsel shall be deemed to have participated fully in the drafting, review, and revision of this Stipulation. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Stipulation.

138. The signatories to this Stipulation represent that they are fully authorized to enter into this Stipulation and to bind the Parties to the terms and conditions hereof, subject to Court approval.

139. The Parties acknowledge that they each have voluntarily entered into this Stipulation after consulting with counsel, and that no promises or representations were made to them by any person to induce them to enter into this Stipulation other than the express terms set forth herein.

140. No term or provision of this Stipulation may be varied, changed, modified, waived, discharged, or terminated orally, but only by an instrument in writing signed by the Party against

whom the enforcement of the variation, change, modification, waiver, discharge, or termination is sought and approved by the Court.

141. The Court shall retain jurisdiction over this action to ensure the fair and effective implementation and enforcement of the terms of this Stipulation, and the Parties and the Class Members hereby submit to the exclusive jurisdiction of the Court for purposes of implementing and enforcing the terms of this Stipulation.

142. This Stipulation may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Copies of this Stipulation shall have the same force and effect as an original, and each of the Parties hereby expressly waives any right to assert that such copies fail to comply with the “Best Evidence” rule of the Federal Rules of Evidence or any equivalent rule of law or evidence of any other jurisdiction. Signatures by facsimile, .pdf, or other electronic imaging shall be deemed to constitute original signatures.

Dated: New York, New York  
August 23, 2023

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By:   
\_\_\_\_\_  
LISSA GREEN-STARK

By:   
\_\_\_\_\_  
CAROLYN K. DEPOIAN

SO ORDERED:

\_\_\_\_\_  
HONORABLE ALLYNE R. ROSS  
United States District Judge

Dated: \_\_\_\_\_, 2023