

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAYVON WRIGHT, ANTOINE MURREY,
KEITH MEDLEY, GREGORY GRIFFIN, AND
RASHAD EL, individually

Plaintiffs,

v.

CITY OF WILMINGTON,

Defendant.

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C.A. No. 13-1966-GAM

JURY TRIAL DEMANDED

STIPULATION OF SETTLEMENT AND ORDER

WHEREAS, plaintiffs Jayvon Wright, Antoine Murrey, and Keith Medley commenced the above-captioned action (the “Action”) against the City with the filing of the Complaint on November 21, 2013 (D.I. 1) pursuant to 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution;¹

WHEREAS, the Named Plaintiffs filed a First Amended Complaint (D.I. 61) on March 31, 2016 and a Second Amended Complaint (“SAC” D.I. 146) on May 4, 2017;

WHEREAS, the Named Plaintiffs allege in the Action, *inter alia*, that the City permits “two hour detentions” or “investigatory detentions” as a matter of policy, custom, practice or procedure (or any or all of these) pursuant to which WPD officers arrest subjects based solely on reasonable suspicion and not on probable cause; and that the City’s supervision and training fail to properly instruct on various aspects of law enforcement procedure, including but not limited to “investigative stops [and] detentions” SAC ¶ 152;

WHEREAS, the City denies that it has (or had) such a “two hour detention” or “investigatory detention” policy, and the City further denies that its officers, as a matter of

¹ Defined terms have the meaning assigned below in Section B “Definitions”.

policy, custom, practice or procedure arrest subjects without probable cause. The City maintains that its training and supervision are fully consistent with the law and has vigorously defended against the claims asserted in the Action;

WHEREAS, on November 21, 2013 (D.I. 3), plaintiffs Jayvon Wright, Antoine Murrey, and Keith Medley moved to certify a class pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3);

WHEREAS, on January 28, 2016, the Magistrate Judge issued a Report and Recommendation (D.I. 52) denying the City's Motion to Dismiss Plaintiffs' constitutional claims, but recommending that Plaintiffs' Motion to Certify Class be denied. That Report and Recommendation was adopted by the Court on March 31, 2016 (D.I. 60);

WHEREAS, plaintiffs appealed the denial of class certification to the United States Court of Appeals for the Third Circuit pursuant to Fed. R. Civ. P. 23(f);

WHEREAS, the United States Court of Appeals for the Third Circuit dismissed the appeal on February 17, 2017;

WHEREAS, following discovery, the Class Representatives filed a second Motion for Class Certification (D.I. 160) on June 9, 2017 seeking certification of a class pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3);

WHEREAS, the Court held oral argument on the second Motion for Class Certification on October 19, 2017, and the parties shortly thereafter sought, and the Court entered, a stay of proceedings while settlement alternatives were explored;

WHEREAS, the parties have engaged in extensive discovery and briefing relating to the allegations in the Action, and WPD's policies, customs, practices and procedures in regard to, *inter alia*, stops, detentions and arrests, and regarding WPD's training and supervision on such topics.

WHEREAS, the terms of this Stipulation were vigorously negotiated over a period of several months; and

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

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, subject to the approval of the Court, as follows:

A. INTRODUCTION

1. The parties enter into this Stipulation after arm's length, good faith negotiations solely for the purpose of avoiding the burdens of further litigation. Settlement of the Action under the terms stated in this Stipulation is in the public interest because the Stipulation avoids diversion of private and City resources to adversarial action by the parties.

2. The City denies the claims alleged in the Action and any and all liability, and denies that it had or has a policy, practice, custom or procedure that deprived or deprives persons of any of the rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

3. This Stipulation, the terms provided for herein, the settlement of the Named Plaintiffs' individual damages claims, and the implementation of the policies and training detailed in Sections D - F herein, do not, and shall not be deemed to, constitute an admission or concession of wrongdoing by the City, nor an admission or concession that any of its defenses lack merit. Nor shall this Stipulation, nor any of the negotiations leading to this Stipulation, constitute an admission or concession by the City as to the validity or accuracy of any of the allegations, assertions, or claims made by or on behalf of any of the Plaintiffs (in the Action or otherwise) all of which remain disputed.

4. This Stipulation also shall not constitute, nor be deemed to constitute, an admission or concession by or on behalf of any of the Plaintiffs that the claims alleged in the Action lack merit.

5. In the event this Stipulation is not approved in an order of Final Approval that becomes Final, it shall not be used in the Action nor in any other proceeding for any purpose and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*, except as stated in Paragraph B. 7 below.

6. This Court has jurisdiction over the Action under 28 U.S.C. §§ 1331. Venue is proper in the United States District for the District of Delaware pursuant to 28 U.S.C. § 1391.

B. DEFINITIONS

1. “Action” shall have the meaning assigned in the Recitals, above.
2. “Class” shall be as defined in Paragraph C. 1, below.
3. “Class Members” shall mean all members of the Class defined in Paragraph C. 1, below.
4. “Class Representatives” shall mean Keith Medley and Rashad El.
5. “Class Counsel” shall mean the attorneys of record for the Class Representatives and putative class in the Action.
6. “City” shall mean the City of Wilmington.
7. “Effective Date” means the date on which the Court’s order and judgment of Final Approval approving the Stipulation and dismissing the Action with prejudice becomes Final. The “Effective Date” shall be the date upon which this Stipulation enters into effect; provided, however, that Paragraphs A. 2 - A. 5 shall take effect on the Signature Date and shall survive termination of this Stipulation.

8. “Final” means when referring to an order or judgment: (i) that the time for appeal or appellate review of such order or judgment has expired; or (ii) if there has been an appeal, that such order or judgment has been affirmed on appeal and that all applicable periods for reconsideration, appeal, rehearing or review, by certiorari or otherwise, have expired, or (iii) that said appeal has been dismissed or decided without causing a material change in the order or judgment, and such order or judgment is no longer subject to review by further appeal, reconsideration, rehearing, review, writ of certiorari or otherwise.

9. “Final Approval” shall mean the entry of a final order and judgment by which the Court approves this Stipulation and dismisses the Action with prejudice, following a fairness hearing.

10. “Final Approval Date” shall mean the date on which this Court enters an order of Final Approval.

11. “Named Plaintiffs” shall mean Jayvon Wright, Keith Medley, Antoine Murrey, Gregory Griffin, and Rashad El, and shall include the Class Representatives.

12. “Parties” shall mean Named Plaintiffs and City.

13. “Plaintiffs” shall mean the Named Plaintiffs (including the Class Representatives) and Class Members.

14. “Preliminary Approval” shall mean the entry of an order by which the Court preliminarily approves this Stipulation.

15. “Preliminary Approval Date” shall mean the date on which this Court enters an order of Preliminary Approval.

16. “Released Persons” shall have the meaning given in Paragraph K. 1 hereof.

17. “Settled Claims” shall have the meaning given in Paragraph K. 1 hereof.

18. “Signature Date” shall mean the date this Stipulation (defined below) is signed by authorized counsel for the Named Plaintiffs and the City. The Signature Date is November 19, 2018.

19. “Stipulation” shall mean this Stipulation of Settlement and Order executed on behalf of the City and the Plaintiffs in the above-captioned action.

20. “WPD” shall mean the Wilmington Police Department.

21. “WPD Detention Practices” shall be as defined in Paragraph C.1.

22. Notwithstanding Paragraphs B. 7 - 10 above, in the event that any appeals, petitions, motions or writs are taken or filed, or any other judicial action or proceeding is initiated regarding the Court’s Final Approval of this Stipulation or entry of final judgment dismissing this Action with prejudice, any and all obligations required to be undertaken pursuant to this Stipulation are stayed pending the full and final determination of any and all such appeals, petitions, motions or writs, such that the Court’s order of Final Approval approving this Stipulation and dismissing the Action with prejudice are fully and fairly Final and not subject to further appeal, petition, motion, writ, rehearing or other review. This Stipulation shall be null, void and of no effect, and no party shall be required to undertake any obligations in accordance with this Stipulation, in the event that the final determination of any such appeals, motions, petitions, writs or other review results in a rejection of or material change to the settlement as set forth in this Stipulation, or a reversal of the order dismissing the Action with prejudice; provided, however, that Paragraphs A. 2 - A. 5 shall survive termination of this Stipulation.

C. CLASS CERTIFICATION

1. For settlement purposes only, a non-opt-out class is certified pursuant to Fed. R. Civ. P. 23(a), (b)(1) and (b)(2) consisting of:

All persons who have been or are at risk of being stopped, detained, handcuffed, transported, searched or imprisoned during the period lasting from November 21, 2011 to the Effective Date by any officer or other member of WPD under circumstances alleged to constitute an unlawful arrest without probable cause resulting from any of the following: (i) officer conduct purportedly pursuant to 11 *Del. C.* § 1902, WPD Directive 6.10K, or any statute, directive, policy, practice, pattern, custom or procedure of detention for purposes of investigation, or 2 hour detention (collectively, the “WPD Detention Practices”); or (ii) any alleged deficiencies in training or supervision concerning or relating to the WPD Detention Practices.

2. Paragraph C.1 above is expressly conditioned and contingent upon (i) entry of an order of Final Approval by the Court, (ii) that becomes Final. In the event the order of Final Approval is denied, reversed or modified on appeal (or remand), or otherwise does not become Final, Paragraph C. 1 respecting class certification shall be void and of no effect.

D. POLICY ON STOPS PURSUANT TO 11 *DEL. C.* § 1902

1. The Class Representatives (through Class Counsel) and the City have negotiated the terms of a new Directive 6.10K (“New Directive 6.10K”) and have agreed that New Directive 6.10K will promote constitutional interactions between WPD officers and persons stopped and detained for questioning. Former WPD Directive 6.10K (which was a subject of the Action) has been stricken by WPD.

2. New Directive 6.10K is attached under seal as Exhibit A.

3. New Directive 6.10K will take effect on or within 60 days following the Signature Date.

E. POLICY ON DOCUMENTATION.

1. The Class Representatives (through Class Counsel) and the City have negotiated and developed a new directive on documentation.

2. The new policies on documentation are contained in New Directive 6.10K.

3. The new policies on documentation contained in New Directive 6.10K will take effect on or within 60 days following the Signature Date.

F. TRAINING

1. The Class Representatives (through Class Counsel) and the City have negotiated a schedule of training and training materials regarding New Directive 6.10K, regarding stops pursuant to 11 *Del. C.* § 1902, and regarding the new policies on documenting probable cause for arrests that will aid in training WPD officers to engage in constitutional interactions with individuals who are stopped and detained for questioning.

2. The revised training materials are attached under seal as Exhibit(s) B-C to this Stipulation.

3. The schedule of training is attached as Exhibit D and shall take effect on or within 60 days following the Signature Date.

G. INDIVIDUAL DAMAGES CLAIMS AGAINST CITY

1. Solely for purposes of settlement and not as an admission of liability for damages in any amount, in order to avoid the costs, burden and disruption of further litigation, the City has agreed to pay, and the Named Plaintiffs have agreed to accept, the following sums to settle the Named Plaintiffs' individual damages claims:

- a. Rashad El: \$10,000.00
- b. Keith Medley: \$5,500.00
- c. Jayvon Wright: \$4,000.00
- d. Antoine Murrey: \$1,500.00
- e. Gregory Griffin: \$10,000.00

2. All attorneys' fees and costs relating to the Named Plaintiffs' individual damages

claims shall be included in the amount awarded by the Court pursuant to Section N. 1; there shall be no separate or additional award of attorneys' fees and costs for the resolution of the Named Plaintiffs' individual damages claims.

3. The City has also agreed to pay, subject to the approval of the Court, an incentive award to each of the Class Representatives in the amount of \$4,500.00 for Mr. El, and \$4,500.00 for Mr. Medley.

4. The Named Plaintiffs and the City agree that each Named Plaintiff will sign and execute a Settlement Agreement and Release in the form attached hereto as Exhibit E. The failure of a Named Plaintiff to execute any of the aforementioned documents will result in non-payment of the individual award provided for in this Stipulation to such Named Plaintiff, but will not otherwise affect the operation of this Stipulation and the Release provided for in Section K below.

H. CONFIDENTIALITY

1. Nothing in this Stipulation or undertaken pursuant to this Stipulation constitutes or is intended to constitute a waiver of any applicable privilege.

2. The parties shall continue to be subject to the Protective Order entered in the Action (D.I. 129), and all other orders of the Court regarding disclosure of documents and information in this case.

I. NOTICE TO THE SETTLEMENT CLASS AND CERTAIN OFFICIALS

1. The parties shall cause to be published a notice in the form attached hereto as Exhibit F. Such notice shall be published in The News Journal at least three times after the Preliminary Approval Date and prior to the scheduled fairness hearing. The notice shall be posted conspicuously in the Louis L. Redding City County Building, 800 N. French Street,

Wilmington Delaware within thirty (30) days after the Preliminary Approval Date, until the date of the scheduled fairness hearing.

2. The City will post an announcement of the proposed settlement on its website, with a link to the notice referenced in I. 1 above on the home page of the Website, entitled “Investigatory Detention Class Action Settlement Notice.” The link shall be active within thirty (30) days after the Preliminary Approval Date, until the date of the scheduled fairness hearing.

3. Costs of publication shall be borne by the City.

4. Within 10 days of submission of the Stipulation to the Court, the City will serve CAFA Notice on State and Federal officials as required by 28 U.S.C. § 1715(b). The City will bear the costs associated with serving the CAFA Notice.

J. EFFECT OF THE SETTLEMENT STIPULATION ON THE ACTION

1. The Class Representatives (through Class Counsel) will take all necessary and appropriate steps to obtain approval of this Stipulation and dismissal of the Action with prejudice. If the Court approves this Stipulation, and if there is an appeal from such decision, the City will join in the defense of the Stipulation.

2. On the Final Approval Date the District Court will dismiss the Action with prejudice and without costs, expenses, or attorneys’ fees in excess of the amount authorized by the Court in accordance with Paragraph N. 1 herein. The terms of this Stipulation shall be a full, final, and complete resolution of the Action.

K. RELEASE

1. The Stipulation, as of the Effective Date, resolves in full the Settled Claims. “Settled Claims” include any and all claims, rights of action and other demands for relief, whether at law or in equity, and whether based on statute, rule, regulation or other law or right,

including but not limited to rights arising under the U.S. or Delaware Constitutions, that Plaintiffs may have, known or unknown, against any or all of the City, WPD, their predecessors, successors or assigns, their past and present officials, officers, employees, representatives, attorneys, insurers and agents (collectively the “Released Persons”) based upon, arising from or relating to (i) any of the WPD Detention Practices, (ii) any training or supervision with respect to any of the WPD Detention Practices or (iii) the documentation of any action taken in connection with any of the WPD Detention Practices. “Settled Claims” shall further include, without limitation, the claims alleged or that could have been alleged in the Action, any and all claims for class-wide damages that were sought or could have been sought in the Action, whether under Fed. R. Civ. P. 23(b)(3) or otherwise, and all other claims that arise from or relate to the acts, events, occurrences or statements, or any other matter whatsoever set forth in any or all of the Complaint, the First Amended Complaint, and the Second Amended Complaint in the Action; provided, however, that “Settled Claims” does not include the individual, non-class damages claims for which separate Settlement Agreements and Releases for the Named Plaintiffs will be required pursuant to Paragraph G. 4 herein, and claims falling within Paragraph K. 5, below.

2. As of the Effective Date, the Plaintiffs, shall be deemed to have fully, finally and forever released, relinquished and discharged, for themselves and all of their heirs, executors, administrators, successors and assigns, and for all persons claiming by or through any of them, all of the Settled Claims against the Released Persons, and shall be forever enjoined from prosecuting any Settled Claims against any of the Released Persons.

3. With respect to any of the Settled Claims, as of the Effective Date the Plaintiffs shall be deemed to have expressly waived, relinquished, and released any and all provisions,

rights, and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any foreign state or any state of the United States or territory of the United States, or principal of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

4. As of the Effective Date, Plaintiffs shall be deemed to have acknowledged that the foregoing waiver was separately bargained for, is an integral element of the settlement provided for in this Stipulation, and was relied upon by the City in entering into the Settlement.

5. This Stipulation does not affect the rights of any Plaintiff, inclusive of all Class Members, to bring individual, non-class damages claims against the Released Persons (or any of them) solely on an individual, non-class basis for what they believe is a violation of their rights, including individual, non-class claims arising from or related to the Settled Claims; provided however that the individual, non-class claims of the Named Plaintiffs are being settled pursuant to Section G hereof. Nor shall this Stipulation affect in any way any defenses to such claims that are or may be available to any of the Released Persons.

6. This Release will be, and may be, raised as a complete defense to and will preclude any action or proceeding encompassed by the release of the Released Persons, subject to Paragraph K.5 above.

L. APPLICATION AND PARTIES BOUND

1. Each of the Plaintiffs shall be deemed to have submitted to the jurisdiction of this Court.

2. This Stipulation applies to and is binding upon the Plaintiffs and the City and its officers, agents, employees, successors, and assigns. This Stipulation is enforceable only by the Plaintiffs and the City. Each of the undersigned representatives of the Plaintiffs and the City certifies that he or she has authority from his or her clients to enter into this Stipulation.

3. The terms of this Stipulation shall be forever binding on the Plaintiffs as well as their heirs, executors and administrators, successors, and assigns and those terms shall have *res judicata* and all other preclusive effect in all pending or future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits, or other proceedings involve matters encompassed by the release provided for in Section K above.

M. MODIFICATION AND TERMINATION OF THE SETTLEMENT STIPULATION

1. This Stipulation represents the entire agreement among the Plaintiffs and the City, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation shall be deemed to exist, or to bind the Plaintiffs and the City, or to vary the terms and conditions contained herein, or to determine the meaning of any provisions herein. This Stipulation can be modified or amended only in a writing signed by representatives of the parties hereto.

N. ATTORNEYS' FEES AND COSTS

1. The City shall pay an amount of attorneys' fees and costs negotiated as part of the settlement process, subject to approval by the Court, in the amount of \$512,163.70, to Class

Counsel.

O. NULLIFICATION

1. Subject to Paragraph O. 2 below, this Stipulation shall terminate, is null and void, and the parties shall be restored to their respective positions in the Action, in the event that any of the following do not occur:

a. Preliminary Approval of this Stipulation by the Court without modification unless approved in writing by the parties; or

b. The entry of an order of Final Approval of this Stipulation by the Court without modification unless approved in writing by the parties; or

c. Dismissal of the Action with prejudice after Final Approval by the Court;
or

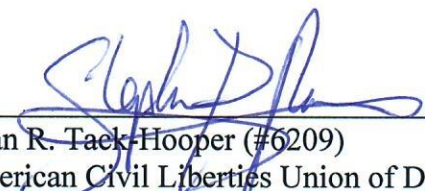
d. The Effective Date does not occur.

2. The foregoing notwithstanding, Paragraphs A. 2 - A. 5 shall survive termination of this Stipulation, and shall not be rendered null and void thereby.

P. APPLICABLE LAW

1. This Stipulation and any rights, remedies or obligations provided for hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of Delaware.

/s/


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Attorney for Plaintiffs

Dated: January 22, 2019

/s/


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Attorneys for Defendant

Dated: January 17, 2019

SO ORDERED and APPROVED this 15th day of MARCH, 2019.



U.S.D.J.

EXHIBIT D

Wilmington Police Department: Schedule of Trainings on New Directive 6.10K

January 8, 2019

January 15, 2019

January 29, 2019

February 19, 2019

Additional trainings to be scheduled
to the extent needed to complete training
of all current WPD officers

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAYVON WRIGHT, ANTOINE MURREY,)
 KEITH MEDLEY, GREGORY GRIFFIN, AND)
 RASHAD EL, individually)
)
 Plaintiffs,) C.A. No. 13-1966-GAM
)
) JURY TRIAL DEMANDED
 v.)
)
 CITY OF WILMINGTON,)
)
 Defendant.)

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (this “Agreement”) is entered into by and between _____ (“Plaintiff”) and the City of Wilmington (“City”) with respect to the following:

WHEREAS, plaintiffs Jayvon Wright, Antoine Murrey, and Keith Medley commenced the above-captioned (the “Action”) against the City with the filing of the Complaint on November 21, 2013 (D.I. 1) pursuant to 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution, and;

WHEREAS, plaintiffs Gregory Griffin and Rashad El, together with plaintiffs Wright, Murrey and Medley (all plaintiffs are hereinafter referred to as the “Plaintiffs”) filed a First Amended Complaint (D.I. 61) on March 31, 2016 and a Second Amended Complaint (“SAC” D.I. 146) on May 4, 2017, and;

WHEREAS, the Plaintiffs allege in the Action, *inter alia*, that the City permits “two hour detentions” or “investigatory detentions” as a matter of policy, custom, pattern, practice or procedure (or any or all of these) pursuant to which WPD officers arrest subjects based solely on reasonable suspicion and not on probable cause; and that the City’s supervision and training fail to properly instruct on various aspects of law enforcement procedure, including but not limited to “investigative stops [and] detentions” SAC ¶ 152, and;

WHEREAS, the City denies that it has such a “two hour detention” or “investigatory detention” policy, and that its training and supervision are deficient, and has vigorously defended against the claims asserted in the Action, and;

WHEREAS, plaintiffs Medley and El have sought class certification in the Action, which claims are being resolved (subject to approval of the Court) by a separate Stipulation of

Settlement and Order (the “Class Action Settlement Stipulation”) providing for non-monetary relief in the form of new policies and training, and;

WHEREAS, the Class Action Settlement Stipulation provides at Section G that the individual damages claims of the Plaintiffs will be settled in a separate Settlement Agreement and General Release for each;

NOW THEREFORE, in consideration of the respective representations, covenants, agreements, warranties and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Within 14 days after the Effective Date as defined in the Class Action Stipulation, counsel for Plaintiff will deliver an original, executed copy of this Agreement to counsel for the City, together with (if necessary to conclude dismissal of Plaintiff’s claims in the Action with prejudice) a signed stipulation of dismissal with prejudice in the form attached hereto as Exhibit A, dismissing Plaintiff’s claims asserted in the Action with prejudice. Simultaneously therewith, the City will deliver a settlement check made payable to counsel for Plaintiff in the amount of _____ (the “Settlement Amount”). The Settlement Amount shall be inclusive of all attorneys’ fees, costs and expenses incurred by Plaintiff’s counsel in resolving his claim(s), whether arising under 42 U.S.C. § 1988, or any other statute or authority.

2. Plaintiff, for himself and on behalf of any person claiming by, through or under him hereby forever irrevocably and unconditionally releases, remises and discharges the City, Wilmington Police Department (“WPD”), their predecessors, successors or assigns, their past, and present officials, officers, employees, representatives, attorneys, insurers and agents (collectively the “Released Persons”), and each of their heirs, executors, administrators, successors and assigns, of and from any and all claims, rights of action and other demands for relief, whether at law or in equity, and whether based on statute, rule, regulation or other law or rights arising under the U.S. and Delaware Constitutions, that Plaintiff may have, known or unknown, against any or all of the Released Persons based upon, arising from or relating to (i) any officer conduct constituting an unlawful arrest purportedly pursuant to 11 *Del. C.* § 1902, WPD Directive 6.10K, or any statute, directive, policy, practice, pattern, custom or procedure of detention for purposes of investigation, or 2 hour detention (the “WPD Detention Practices”), (ii) any training or supervision with respect to any of the WPD Detention Practices, (iii) the documentation of any action taken in connection with any of the WPD Detention Practices. “Settled Claims” shall further include, without limitation, the claims alleged or that could have been alleged in the Action, any and all claims for class-wide damages that were sought or could have been sought in the Action, whether under Fed. R. Civ. P. 23(b)(3) or otherwise, and all other claims that arise from or relate to the acts, events, occurrences or statements, or any other matter whatsoever set forth in any or all of the Complaint, the First Amended Complaint, and the Second Amended Complaint in the Action.

3. This Agreement has in all respects been voluntarily and knowingly executed by Plaintiff, on advice and with approval of his legal counsel.

4. It is understood and agreed that this Agreement is being made in connection with the settlement, compromise and release of disputed allegations and claims and that this Agreement, and any negotiations, statements or actions in connection therewith, are not to be construed as, and will not be argued to be, an admission or concession of liability by the City or any other person or entity on account of the disputed claims. The City, WPD and their officers, agents and employees expressly deny wrongdoing or liability of any sort and by this Agreement intend merely to avoid the cost, expense and inconvenience of contested litigation, and to eliminate further involvement therein.

5. Together with Stipulation of Settlement and Order (with exhibits) executed on November 19, 2018, this Agreement constitutes the entire agreement by and among the undersigned, and each of them, and it supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, concerning the subject matter herein among the parties to this Agreement.

6. This Agreement and any rights, remedies or obligations provided for hereunder, shall be interpreted, construed and enforced in accordance with the laws of the State of Delaware and any action upon this Agreement shall be brought in a court of competent jurisdiction within the State of Delaware.

7. Other than as stated herein, each of the undersigned represents and warrants that they have not assigned, transferred, pledged or hypothecated, or purported to assign, transfer or hypothecate, to any person, entity or individual, any of the claims, demands causes of action, obligations, damages, attorneys' fees, costs and liabilities released pursuant to this Agreement.

8. If any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

9. Any modification, amendment or alteration of this Agreement, or any of its terms, shall be in writing and signed by all parties to this Agreement; nothing else including, but not limited to, detrimental reliance, estoppel, oral representations or any promises whatsoever shall modify, amend, or alter this Agreement.

10. Each of the parties agrees that it will promptly execute and deliver all such documents and instruments as may be necessary and appropriate to effectuate the terms of this Agreement. The parties agree that monetary damages would be inadequate to remedy a breach of this provision and that specific performance is an appropriate remedy for the breach of this provision.

11. Each of the undersigned warrants that they have full power, capacity and authority to execute this Agreement on behalf of the party so indicated.

12. Each of the undersigned warrants that they have read the terms of this Agreement and had the opportunity to have the terms used herein and consequences thereof explained by their attorney prior to signing.

13. All representations, warranties and agreements set forth in this Agreement shall be deemed continuing and shall survive the execution date of this Agreement.

14. This Agreement may be executed in counterparts and, as so executed, shall constitute one agreement binding on all parties.

15. The undersigned shall each bear his own attorneys' fees and costs, except as otherwise provided in the Class Action Settlement Stipulation.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth beneath their signatures below with the intention of making this a document under seal.

ATTEST:

[Name] Plaintiff

Witness

_____(SEAL)

NAME: _____

DATE: _____

ATTEST:

CITY OF WILMINGTON

Witness

BY: _____(SEAL)

NAME: _____

TITLE: _____

DATE: _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAYVON WRIGHT, ANTOINE MURREY,
KEITH MEDLEY, GREGORY GRIFFIN, AND
RASHAD EL, individually

Plaintiffs,

V.

CITY OF WILMINGTON,

Defendant.

C.A. No. 13-1966-GAM

JURY TRIAL DEMANDED

STIPULATION OF DISMISSAL

WHEREAS, the Court having finally approved the Stipulation of Settlement and Order, resolving the class claims asserted in the above referenced action the (Class Action Stipulation), and;

WHEREAS, the parties hereto agree that the Effective Date as defined in the Class Action Stipulation has occurred and that Plaintiff has received his Settlement Amount, as defined in his individual Settlement Agreement and Release in this case;

NOW THEREFORE, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), plaintiff [*name of Plaintiff*] and the City of Wilmington, by and through their undersigned counsel, do hereby stipulate and agree that the claims asserted by him in the above-captioned action are hereby voluntarily dismissed with prejudice. Each party shall bear its own fees and costs.

Ryan R. Tack-Hooper (#6209)
American Civil Liberties Union of Delaware
100 W. 10th Street, Suite 706
Wilmington, Delaware 19801
(302) 654-5326
rtackhooper@aclu-de.org

Stephen P. Norman (#4620)
The Norman Law Firm
30838 Vines Creek Road, Suite 3
Dagsboro, Delaware 19939
(302) 537-3788
snorman@thenormanlawfirm.com

Attorney for Plaintiffs

DATE: _____

C. Malcolm Cochran, IV (#2377)
Kelly E. Farnan (#4395)
Christine D. Haynes (#4697)
Richards, Layton & Finger, P.A.
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700
cochran@rlf.com
farnan@rlf.com
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Attorneys for Defendant

EXHIBIT F

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAYVON WRIGHT, ANTOINE MURREY,
KEITH MEDLEY, GREGORY GRIFFIN, AND
RASHAD EL, individually

Plaintiffs,

V.

CITY OF WILMINGTON,

Defendant.

C.A. No. 13-1966-GAM

JURY TRIAL DEMANDED

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: All persons who have been or are at risk of being stopped, detained, handcuffed, transported, searched or imprisoned during the period lasting from November 21, 2011 until the Court’s final approval of the Settlement Stipulation by any officer or other member of WPD under circumstances alleged to constitute an unlawful arrest without probable cause resulting from any of the following: (i) officer conduct purportedly pursuant to 11 *Del. C.* § 1902, WPD Directive 6.10K, or any statute, directive, policy, practice, pattern, custom or procedure of detention for purposes of investigation, or 2 hour detention (collectively, the “WPD Detention Practices”); or (ii) any alleged deficiencies in training or supervision concerning or relating to the WPD Detention Practices (the “Putative Settlement Class”).

**PLEASE READ THIS NOTICE CAREFULLY AS IT ADDRESSES A LAWSUIT THAT
MAY AFFECT YOUR RIGHTS.**

This Notice does not constitute a determination by the Court concerning the merit or lack of merit of the allegations made by the Plaintiffs against the City of Wilmington (“City”) in this case.

I. INTRODUCTION

Jayvon Wright, Antoine Murrey, Keith Medley, Gregory Griffin and Rashad El (“Named Plaintiffs”), individually, and in the case of Keith Medley and Rashad El (the “Putative Class Plaintiffs”) on behalf of a class of all others similarly situated, and Defendant City of Wilmington (“City”), who are parties to the above captioned putative class action entitled *Wright v. City of Wilmington*, Civil Action No. 13-1966-GAM (D. Del.) (the “Action”), have reached an agreement, subject to the approval of the Court, to settle the Action (the “Settlement Stipulation”). This Notice describes the proposed Settlement Stipulation and how it may affect your legal rights. The proposed Settlement Stipulation will not go into effect until: (1) individuals whose rights may be affected by the Settlement Stipulation have had the chance to

object to it; and (2) the Court has a hearing and approves the Settlement Stipulation as fair, adequate and reasonable and all appeals from that approval have been exhausted.

Your rights as a member of the Putative Settlement Class are affected by the Settlement Stipulation if you have been or are at risk of being stopped, detained, handcuffed, transported, searched or imprisoned during the period lasting from November 21, 2011 to the date of the Court's final approval of the Settlement Stipulation by any officer or other member of WPD under circumstances alleged to constitute an unlawful arrest without probable cause resulting from any of the following: (i) officer conduct purportedly pursuant to 11 *Del. C.* § 1902, WPD Directive 6.10K, or any statute, directive policy, practice, pattern, custom or procedure of detention for purposes of investigation, or 2 hour detention (collectively, the "WPD Detention Practices"); or (ii), any alleged deficiencies in training or supervision concerning or relating to the WPD Detention Practices.

In the Action, the Putative Class Plaintiffs allege that WPD had a policy, practice, pattern, custom or procedure pursuant to which WPD officers have conducted investigatory stops and detentions under circumstances constituting unlawful arrests. After hard fought litigation, including extensive discovery into the allegations in the Action, and negotiations between counsel for the parties, the Putative Class Plaintiffs and counsel for the Putative Class (from the American Civil Liberties Union of Delaware and the Norman Law Firm, hereinafter "Putative Class Counsel") have concluded, following a thorough investigation, that the terms and conditions of the Settlement Stipulation are fair, reasonable and in the best interests of the Putative Class. In reaching this conclusion, the Putative Class Plaintiffs and Putative Class Counsel have analyzed the benefits of the Settlement Stipulation, the possible outcome of further litigation, and the expense and length of continued proceedings necessary to prosecute the claims through trial, and possible appeals.

By entering into the Settlement Stipulation, the City and WPD do not admit any fault or wrongdoing. The City denies that WPD has (or had) a policy, practice, pattern, custom or procedure pursuant to which WPD officers unlawfully arrest subjects. The City and WPD deny the allegations in the Action and do not admit to liability of any kind in the Settlement Stipulation, or otherwise.

II. SUMMARY OF PROPOSED SETTLEMENT

Below is a brief summary of what the Settlement Stipulation addresses, subject to approval by the Court:

- * Revisions to WPD directives that instruct officers on the initiation of investigatory stops.
- * Revisions to WPD directives that describe the duration and scope of investigatory stops, and instruct officers on the proper application of 11 *Del. C.* § 1902.
- * Revisions to WPD directives that instruct officers on the differences between investigatory stops and *de facto* arrests.

- * Revisions to WPD directives that instruct WPD officers regarding limitations that apply to decisions to transport a person away from the scene of an investigatory stop.
- * Revisions to WPD directives that require specific documentation for subjects brought to the police station and held in the temporary holding facility (the “Turnkey”) and notifying officers that a crime report will be required in such circumstances.
- * Revisions to WPD directives requiring documentation of factual circumstances for each arrest, sufficient for a supervisor to review.
- * A course and schedule of training for WPD officers regarding the foregoing.

Upon approval by the Court, the Settlement Stipulation will resolve and release all class claims of the certified Class against the City relating to any statute or alleged directive, policy, practice, pattern, custom or procedure, or any alleged deficiencies in training or supervision, involving or resulting in unlawful arrests arising prior to the date the Settlement Stipulation goes into effect. Only class wide claims are being resolved. Other than the claims of the five individual plaintiffs (inclusive of the Class Representatives), which are being resolved in separate settlement agreements, individual damage claims (if any) of members of the Class are not being settled but can only be pursued on an individual, non-class basis.

The Named Plaintiffs in the Action, including the Putative Class Plaintiffs, are settling their individual, non-class damage claims against the City in separate settlement agreements. If approved, the Putative Class Plaintiffs will receive \$10,000 in the case of Mr. El, and \$5500 in the case of Mr. Medley for their individual claims; they will also receive individual incentive awards in the amount of \$4500 for Mr. El, and \$4500 for Mr. Medley. These amounts have been proposed solely for purposes of settlement, in order to avoid the costs, burden and disruption of further litigation, and not as an admission of liability, including for damages in any amount. Concurrently with seeking final approval of the Settlement, Putative Class Counsel will apply to the Court for an award of attorneys’ fees and expenses in an amount not to exceed \$512,163.70, which, if approved, will be paid by the City following the Effective Date, as specified in the Settlement Stipulation.

III. HEARING ON PROPOSED SETTLEMENT

The Court has scheduled a Fairness Hearing for _____, 2018 at _____ .m before the Honorable Gerald A. McHugh, U.S. District Judge, at the United States District Court for the District of Delaware, 844 North King Street, Wilmington DE 19801. At the Fairness Hearing the Court will determine (1) whether to approve certification of the Putative Class, Class Representatives and Class Counsel (2) whether the Class Representatives and Class Counsel have adequately represented the Class; (3) whether the proposed Settlement Stipulation is fair, reasonable, and adequate and should be finally approved; (4) whether judgment should be entered dismissing the Action with prejudice and releasing the Settled Claims; (5) whether to approve Class Counsel’s application for an award of attorneys’ fees and expenses, and/or the application for incentive fees for the Class Representatives; (6) any objections to the Settlement or to the application for fees and expenses; and (7) such other matters as the Court may deem appropriate. The Court has the right to adjourn the Fairness

Hearing without further notice to the Class, and to approve the Settlement Stipulation with or without modification.

It is not necessary for you to appear at the hearing and you need do nothing if you do not wish to object to the settlement. You may, however, choose to appear at the hearing, either in person or through an attorney. If you wish to appear at the hearing in person or through your own attorney, you or your attorney **must** notify the Clerk of the Court, John A. Cerino, Office of the Clerk, 844 N. King St., Unit 18, Wilmington, Delaware 19801 and the following attorneys **in writing** by _____, 2018:

Ryan R. Tack-Hooper
American Civil Liberties Union of Delaware
100 W. 10th Street, Suite 706
Wilmington, Delaware 19801
(302) 654-5326
rtackhooper@aclu-de.org

Stephen P. Norman
The Norman Law Firm
30838 Vines Creek Road, Suite 3
Dagsboro, Delaware 19939
(302) 537-3788
snorman@thenormanlawfirm.com

Kelly E. Farnan
Richards, Layton & Finger, P.A.
920 North King Street
Wilmington, DE 19801
(302) 651-7705
farnan@rlf.com

Requests to be heard at the Fairness Hearing filed by attorneys should be filed pursuant to the Electronic Case Filing Procedures for the District of Delaware, which are available on line at <http://www.ded.uscourts.gov/cmecf-information>

IV. OPT-OUT

You may not “opt out” of the provisions of the Settlement. You may, however, voice objections to the Settlement as discussed below.

V. OBJECTIONS TO THE SETTLEMENT

If you believe that the Court for any reason should not finally approve the proposed Settlement Stipulation, or any portion of it, you may object to it. You may object through an attorney but need not retain an attorney to object. If you want to object to the proposed Settlement Stipulation, you or your attorney must file an objection in writing with:

Clerk of the Court
John A. Cerino
Office of the Clerk
844 N. King St. Unit 18
Wilmington DE 19801

with copies to:

Ryan R. Tack-Hooper
American Civil Liberties Union of Delaware
100 W. 10th Street, Suite 706
Wilmington, Delaware 19801
(302) 654-5326
rtackhooper@aclu-de.org

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snorman@thenormanlawfirm.com

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(302) 651-7705
farnan@rlf.com

All objections must be in writing and must be received by the Clerk of the Court on or before _____, 2018. All objections must state and/or include the following: (1) the name and number of the Action, which are *Wright v. City of Wilmington*, Civil Action No. 13-1966-GAM; (2) the name, address, telephone number and email address of the person (or his/her attorney) intending to object and/or appear at the hearing; (3) proof of membership in the Putative Class; (4) a written statement of objections; (5) the grounds for such objections and any reasons why such Putative Class Member desires to appear and be heard; (6) all documents and writings such person desires the Court to consider. Objections filed by attorneys should be filed pursuant to the Electronic Case Filing Procedures for the District of Delaware, which are available on line at <http://www.ded.uscourts.gov/cmecf-information>. The Court's CM/ECF case filing can be accessed at <http://ecf.ded.uscourts.gov/cgi-bin/login.pl>.

Only members of the Putative Class or their attorneys who have filed written objections shall have the right to present objections orally at the Fairness Hearing, and they will only have the right to do so if they expressly seek it in their written objections.

Unless otherwise ordered by the Court, any members of the Putative Class who do not make their objections or opposition to the Settlement in the manner described above shall be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the Settlement Stipulation and any other matters pertaining to the claims described therein.

VI. ADDITIONAL INFORMATION

This Notice is a summary and does not describe all of the details of the Settlement Stipulation. The Settlement Stipulation, and all other papers filed in the Action, are available for inspection in the offices of the Clerk of the Court, John A Cerino, Office of the Clerk, 844 N. King St., Unit

18, Wilmington Delaware, 19801. The documents may be examined by any Putative Class Member or by counsel during business hours.

Further information about and copies of this Notice and the Settlement Stipulation are available at www.aclu-de.org and www.TheNormanLawFirm.com. If you have additional questions, you may also call Putative Class Counsel, Ryan R. Tack-Hooper at (302) 654-5326 or Stephen P. Norman at (302) 537-3788.

**PLEASE DO NOT CONTACT THE JUDGE DIRECTLY ABOUT THE
SETTLEMENT OR THIS NOTICE.**

reflected in the Stipulation, after nearly five years of litigation, including substantial discovery and extensive briefing on the issues involved in this case at the class certification stage, the Proposed Settlement resulted from serious, informed and arms-length negotiations among the parties. Fees and expenses for class counsel have been negotiated in the amount of \$512,163.70, subject to Court approval. The incentive awards to the two proposed Class Representatives have been negotiated in the amount of \$4,500 subject to Court approval. Putative Class Members are otherwise treated equally.

3. Moreover, the equitable relief proposed herein provides full and complete relief and compensation to the putative Class for their claims except with respect to the individual damages claims, which can still be asserted by individual class members on an individual, non-class basis. The equitable relief proposed will promote constitutional interactions between WPD officers and persons stopped and detained for questioning, and falls within the range of acceptable remedies for the conduct alleged in the Action.

4. In addition, under the Proposed Settlement, while Class Members will release any right they may have to pursue class-wide relief under Federal Rule of Civil Procedure 23, they will retain their right to sue for damages individually.

5. For purposes of settlement only, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), and 23(b)(2), the Court preliminarily certifies the Class as proposed in the Stipulation, subject to final determination at the Fairness Hearing. For purposes of settlement only, the Court preliminarily certifies the Class Representatives as representatives of the Class, and counsel for the Named Plaintiffs in the Action shall be designated as Class Counsel, subject to final determination at the Fairness Hearing.

6. A fairness hearing (the “Fairness Hearing”) shall be held before the Court on _____, 2018 at _____ : _____ .m., at the United States District Court for the District of Delaware, 844 North King Street, Wilmington, Delaware 19801, to:

a. Determine whether the proposed Class and this Action should be finally certified, as a mandatory non-opt-out class action pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), and 23(b)(2);

b. determine whether the proposed Class Representatives should be certified as representatives of the class, and proposed Class Counsel certified as counsel for the Class;

c. determine whether the Proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, adequate and in the best interests of the Class and should be approved by the Court;

d. determine whether the Settled Claims should be released and the Action should be dismissed with prejudice as provided for in the Stipulation;

e. determine whether the negotiated award of attorneys’ fees and expenses is fair, reasonable, adequate and in the best interests of the Class;

f. determine whether the negotiated, incentive fees to the Class Representatives is fair, reasonable, adequate and in the best interests of the Class;

g. hear and determine any objections to the Settlement, or the application of Class Counsel for an award of attorneys’ fees and expenses, and/or the application of Class Representatives for an award of incentive fees; and

h. rule on such other matters as the Court may deem appropriate.

7. The Court may adjourn the Fairness Hearing (including consideration of the application of Class Counsel for an award of attorneys' fees and expenses) without further notice to the Class other than by announcement at the Fairness Hearing or any adjournment thereof. The Court reserves the right to approve the Proposed Settlement at or after the Fairness Hearing with such modification(s) as may be consented to by the Parties to the Stipulation and without further notice to the Class.

8. The Court approves pursuant to Rule 23 of the Federal Rules of Civil Procedure, in form and content, the Notice of Proposed Class Action Settlement (the "Notice") attached as Exhibit F to the Stipulation and finds that the notice plan set out in the Stipulation is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

9. At least ten (10) business days prior to the Fairness Hearing provided for in Paragraph 6 of this Order, the City shall file, or cause to be filed, an affidavit attesting to the implementation of the notice plan set out in the Stipulation.

10. All proceedings in the Action, other than those incident to approval of the Stipulation, are hereby stayed until further order of this Court. Pending the Effective Date as defined in the Stipulation, the Named Plaintiffs and all Class Members, or any of them, are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting directly, representationally, derivatively, or in any other capacity, any of the Settled Claims against any of the Released Persons.

11. Any member of the proposed Class who objects to any aspect of the class action determination(s), the appointment of Class Counsel and/or the Class Representatives, the

Proposed Settlement, the Stipulation, the dismissal of the Action with prejudice, Plaintiffs' counsel's application for fees and expenses, and/or Class Representatives' application for incentive awards may appear personally or by counsel at the Fairness Hearing and present evidence or argument that may be proper and relevant; provided, however, that no member of the proposed Class may be heard and no papers or briefs submitted by or on behalf of any member of the proposed Class shall be received and considered, except by Order of the Court for good cause shown, unless, no later than fourteen (14) business days prior to the Fairness Hearing, such person files with the Clerk of the Court and serves upon counsel listed below a written objection stating and/or including the following: (1) the name and number of the Action; (2) the name, address, telephone number and email address of the person (or his/her attorney) intending to object and/or appear at the hearing; (3) proof of membership in the putative Class; (4) a written statement of objections; (5) the grounds for such objections and any reasons why such putative Class Member desires to appear and be heard; (6) all documents and writings such person desires for the Court to consider. Such filings shall also be delivered to the following counsel:

Ryan R. Tack-Hooper
American Civil Liberties Union of Delaware
100 W. 10th Street, Suite 706
Wilmington, Delaware 19801
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rtackhooper@aclu-de.org

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farnan@rlf.com

Stephen P. Norman
The Norman Law Firm
30838 Vines Creek Road, Suite 3
Dagsboro, Delaware 19939
(302) 537-3788
snorman@thenormanlawfirm.com

12. Plaintiffs shall serve and file their opening brief in support of the Settlement and their application for attorneys' fees and expenses (the "Fee Application") no later than thirty (30) calendar days prior to the Fairness Hearing. Objections, if any, by Defendants to the Fee Application are to be filed and served no later than ten (10) calendar days prior to the Fairness Hearing. If reply papers are necessary, they are to be filed and served no later than three (3) business days prior to the Hearing. If any objections to the Settlement are received or filed by Class Members, Plaintiffs and/or Defendants may serve and file a brief response to those objections no later than five (5) calendar days prior to the Fairness Hearing.

13. In the event that: (a) the Court declines to enter an order of Final Approval, or enters an order of Final Approval that alters the Stipulation in any material respect, (b) declines to dismiss the Action with prejudice after Final Approval; (c) the order of Final Approval and dismissal with prejudice do not become Final, or (d) for any reason, the Effective Date does not occur; this Order shall be null, void and of no effect *nunc pro tunc*, and the Parties shall be restored in all respects to their respective positions existing prior to the execution of the Stipulation, subject to Paragraph O. 2 of the Stipulation.

14. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to proposed Class Members.

SO ORDERED this ____ day of _____, 2018.

The Hon. Gerald A. McHugh