

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LORRAINE PADRO, LESLIE BAILEY,  
MARIE THELOT, SARAH RODRIGUEZ,  
DHANASAR RAMAN, TOBY MARLOW,  
as court-appointed guardian for JUDITH BLUMENSOHN,  
CARMEN DURAN, JOHN EDWARDS,  
ERNESTA GUTIERREZ, JULIA JUAN,  
and JANE DOE, individually and on behalf  
of all others similarly situated,

Civil Action  
CV-11-1788

(Amon, Ch. J.)  
(Mann, M.J.)

Plaintiffs,

-against-

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

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**SETTLEMENT AGREEMENT**

WHEREAS, Plaintiffs are applicants for Social Security Disability Insurance Benefits and/or Supplemental Security Income payments based on disability. On April 12, 2011, Plaintiffs, on behalf of a putative class, filed against the Social Security Administration (“SSA”) a Complaint alleging that five Administrative Law Judges (“ALJs”) in SSA’s Queens Office of Disability Adjudication and Review (“ODAR”) have exhibited “general bias” against claimants for disability benefits. On May 4, 2011, Plaintiffs filed an Amended Complaint in this action (hereinafter referred to as “the Case”), which added three named plaintiffs and supplemented the allegations;

WHEREAS, the Commissioner of Social Security expressly denies any wrongdoing, as alleged in the Case or otherwise, and does not admit or concede any actual or potential fault,

wrongdoing or liability in connection with any facts or claims that have been or could have been alleged in the Case. Nonetheless, the Commissioner considers it desirable to settle the Case on the terms set forth in this Settlement Agreement;

WHEREAS, Plaintiffs and the Commissioner of Social Security (collectively “the Parties”) wish to avoid further litigation in this matter and to bring the Case to a close, and have determined to settle the Case, including all claims that Plaintiffs, the proposed Class (as defined below), and the members of that Class have brought or could have brought in the Case;

WHEREAS, the purpose of this Settlement Agreement is to make a full, complete, and final resolution of all claims and causes of action that have been or could have been asserted in the Case against the Commissioner by the Plaintiffs, the proposed Class (as defined below), and the members of that Class arising out of the conduct alleged therein;

NOW, THEREFORE, in reliance on the mutual promises, covenants, releases, and obligations as set out in this Settlement Agreement, and for good and valuable consideration, the Parties hereby stipulate and agree to resolve all claims that were or could have been at issue in this Case as follows:

**I. DEFINITIONS**

**As used in this Settlement Agreement:**

A. The terms “ALJ” and “an administrative law judge” refer to an individual appointed in accordance with 5 U.S.C. § 3105, who conducts hearings and makes decisions on claims for disability benefits as provided in 20 C.F.R. §§ 404.929 and 416.1429.

B. The term “Appeals Council” refers to the component of SSA’s Office of

Disability Adjudication and Review that, under direct delegation from the Commissioner of Social Security, provides the final level of administrative review for claims filed under Titles II and XVI of the Social Security Act (hereinafter referred to as “the Act”).

C. The term “Class member” refers to an individual who meets the criteria set forth in section II.

D. The term “days” means calendar days.

E. The “date the Class member receives” a notice refers to the date five (5) days after the date on the notice, unless the Class member can show that he or she received the notice later.

F. The “date of final approval” refers to the date on which an order granting approval of this Settlement Agreement is entered, via the Electronic Case Filing System of the U.S. District Court for the Eastern District of New York, on the docket of this Case.

G. The “date on which the Settlement becomes effective” refers to the date as of which no timely appeals may be taken from the Court’s order granting approval of this Settlement Agreement, and as of which any and all appeals of such an order have been resolved.

H. The term “good cause” means good cause as used in 20 C.F.R. §§ 404.911 and 416.1411.

I. The term “Named ALJs” refers to the administrative law judges identified in the Amended Complaint as Michael D. Cofresi, Seymour Fier, Marilyn P. Hoppenfeld, David Z. Nisnewitz, and Hazel C. Strauss.

J. The term “Noticing Party” refers to a Party seeking enforcement of section III pursuant to the provisions in section V.

K. The term “Plaintiffs” refers to Lorraine Padro, Sarah Rodriguez, Dhanasar Raman, Toby Marlow as court-appointed guardian for Judith Blumensohn, Carmen Duran, John Edwards, Julia Juan, and Jane Doe.

L. The term “Post-Settlement Claim” refers to a claim for disability benefits under Titles II and/or XVI of the Act that is the predicate for a decision that forms the basis for prospective relief as described in paragraph III.B.1 of this Agreement.

M. The term “Responding Party” refers to the party from whom enforcement is sought pursuant to the provisions in section V.

N. The term “Retrospective Claim” refers to a claim for disability benefits under Titles II and/or XVI of the Act that is the predicate for an ALJ decision that forms the basis for retrospective relief, as described in paragraph III.A.1 of this Agreement.

O. The terms “section” and “paragraph” refer to the numbered and lettered parts of this Settlement Agreement.

P. The terms “unfavorable decision” and “partially favorable decision” refer to decisions by an ALJ, in which the ALJ finds either that a claimant is not entitled to disability benefits (unfavorable decision) or is not entitled to all of the disability benefits sought in the underlying claim (partially favorable decision). The terms “unfavorable decision after court remand” and “partially favorable decision after court remand” refer to an “unfavorable decision” or “partially favorable decision” that is issued after a claim is remanded by a federal court for

further consideration, as provided in 20 C.F.R. §§ 404.984, 416.1484. The Parties agree that an order of dismissal under 20 C.F.R. §§ 404.957, 416.1457 will not be considered an “unfavorable decision” or a “partially favorable decision” when determining whether an individual is eligible for relief under the Settlement Agreement.

Q. The terms “unfavorable Post-Settlement Decision” and “partially favorable Post-Settlement Decision” refer to an unfavorable or partially favorable ALJ decision that forms the basis for a Class member’s eligibility for prospective relief as described in paragraph III.B.1 of this Agreement. An “unfavorable Post- Settlement Decision” is a decision described in paragraph III.B.1(a) and a “partially favorable Post-Settlement Decision” is a decision described in paragraph III.B.1(b).

## **II. CLASS**

A. ***Class Defined:*** The Parties agree to the certification by the Court upon Plaintiffs’ motion, for purposes of this Settlement Agreement only, of a plaintiff class (hereinafter referred to as “the Class”) defined as follows: all claimants for Social Security Disability Insurance Benefits and/or Supplemental Security Income payments based on disability who, during the period beginning January 1, 2008 and ending thirty (30) months after the date of final approval of the Settlement Agreement, have been or will be issued an unfavorable or partially favorable decision on a claim for disability benefits under Title II or Title XVI of the Act from any of the five Named ALJs and who also meet the criteria for relief set forth in section III below.

B. ***Rule 23(b)(2) class:*** The Parties agree, for purposes of this Settlement Agreement only, to certification of the Class pursuant to Federal Rule of Civil Procedure 23(b)(2). Upon certification of the Class by the Court and as of the date on which the Settlement

becomes effective, all Class members eligible for relief who are not given the right by this Settlement Agreement (including its attachments) to opt out of the terms of this Settlement Agreement, and all those who are given the right to opt out who do not opt out, are bound by the terms of the Settlement Agreement.

### **III. INDIVIDUAL RELIEF**

#### **A. Retrospective Relief**

1. ***Eligibility for Retrospective Relief:*** A Class member eligible for retrospective relief is someone who, during the period from January 1, 2008 through the date of final approval of the Settlement Agreement, was issued an unfavorable or partially favorable decision on the merits of a claim for disability benefits under Title II or Title XVI of the Act by any of the Named ALJs, provided that the exceptions in paragraphs III.A.1(a) through III.A.1(d) do not apply. The ALJ decision will not entitle the individual to retrospective relief if:

- a) a United States District Court affirmed the ALJ decision described in paragraph III.A.1, above, in an order as to which no motion under Rule 59 of the Federal Rules of Civil Procedure is pending with the Court as of the date on which the Settlement becomes effective; or
- b) a United States District Court remanded the claim described in paragraph III.A.1, above, in an order that expressly declined to reassign such remanded claim to a different ALJ, and as to which no motion under Rule 59 of the Federal Rules of Civil Procedure is pending with the Court as of the date on which the Settlement becomes effective; or
- c) the potential Class member has already been found eligible for all benefits for

which he or she could be eligible pursuant to the claim described in paragraph III.A.1, above; or

- d) the claim described in paragraph III.A.1, above, has either: (i) already been readjudicated by an ALJ other than a Named ALJ, or (ii) is pending readjudication by an ALJ other than a Named ALJ at the time of the potential Class member's request for relief.

2. ***Retrospective Relief -- Readjudication:*** Each Class member who is eligible for retrospective relief will be entitled to readjudication of his or her Retrospective Claim, provided the Class member requests this relief within the time limit set forth in paragraph III.A.3, below. Readjudication shall be conducted by an ALJ other than a Named ALJ, or may be provided by an attorney advisor or the Appeals Council in accordance with existing SSA rules and regulations. If a claim to be readjudicated has been remanded by the Appeals Council and is pending before a Named ALJ at the time of the Class member's request for readjudication, the claim shall be reassigned. If the Class member has another claim pending either at the Appeals Council or before an ALJ other than a Named ALJ, or has more than one Retrospective Claim, SSA may consolidate all such claims for any given claimant and review them simultaneously, provided that this would not cause unreasonable delay. A Class member eligible for retrospective relief: shall have the right to appeal any new hearing decision received pursuant to this Settlement Agreement, as set forth in 42 U.S.C. § 405(g) and its implementing regulations; and shall have the right to withdraw the claim to the extent provided by applicable SSA rules and regulations.

3. ***Retrospective Relief -- Time to Request Readjudication:*** A Class member eligible for retrospective relief must affirmatively request readjudication within sixty (60) days

after the date the Class member receives the notice informing him or her of his or her right to relief (described herein as “Notice A”), using the procedures described in that notice, unless the Class member can demonstrate that this deadline was missed for good cause.

4. ***Notice of Retrospective Relief (“Notice A”)***: Notice A shall advise Class members eligible for retrospective relief that, as a result of the Settlement Agreement, they may request readjudication of Retrospective Claims. Further, Notice A shall inform Class members eligible for retrospective relief that in order to obtain this readjudication, they must affirmatively opt for readjudication within sixty (60) days after the date the Class member receives Notice A. Notice A shall also set forth the procedures Class members must follow to obtain readjudication. Notice A shall provide contact information for Class counsel. SSA shall send Notice A within sixty (60) days after the date on which the Settlement becomes effective by first class mail to: the last known address in SSA’s records for each Class member eligible for retrospective relief; and the Class member’s appointed representative, if any such representative is identified in SSA’s records. SSA shall bear the cost of Notice A. SSA shall provide Class counsel with a list of the names and addresses to which Notice A was mailed; in the event that any Notice A mailings are returned to SSA as undeliverable, the list will identify the mailings that were returned to SSA as undeliverable. This list shall be considered Confidential Information pursuant to section VI, below. Attached to this Settlement Agreement is Notice A (Exh. A), the language of which has been agreed to by the Parties and the terms of which are incorporated into this Agreement. Personal information such as a Class member’s address, appropriate field office, and similar information, will be included by SSA in Notice A. The bracketed dates and website address will be added prior to mailing.

**B. Prospective Relief**

1. ***Eligibility for Prospective Relief:*** A Class member eligible for prospective relief is someone who:

- a) During the thirty (30) month period beginning on the day after the date of final approval of the Settlement Agreement, is issued an unfavorable decision on a claim for disability benefits under Title II or Title XVI of the Act by any of the Named ALJs; or
- b) During the thirty (30) month period beginning on the day after the date of final approval of the Settlement Agreement, is issued a partially favorable decision on a claim for disability benefits under Title II or Title XVI of the Act by any of the Named ALJs, and either requests Appeals Council review of that decision or (if the decision is a partially favorable decision after court remand) files written exceptions or proceeds with a civil action seeking review of that decision.

2. ***Prospective Relief -- Appeals Council Review:*** SSA's Office of Disability Adjudication and Review, Office of Appellate Operations, will assign specified Staff (hereinafter referred to as "Staff") to review Class members' unfavorable and partially favorable Post-Settlement Decisions as follows:

- a) The Staff shall report through normal supervisory chains and ultimately to the Executive Director of the Office of Appellate Operations, Office of Disability Adjudication and Review.
- b) The Staff shall consider requests for review or written exceptions (as appropriate)

filed by Class members eligible for prospective relief who appeal from unfavorable or partially favorable Post-Settlement Decisions, or who are deemed to have filed an appeal or written exceptions regarding an unfavorable Post-Settlement Decision as provided in paragraph III.B.2(c).

- c) If, as of sixty five (65) days after the date an unfavorable Post-Settlement Decision is issued, a Class member eligible for prospective relief has not requested Appeals Council review of that Decision, the Class member shall be deemed to have requested Appeals Council review under 20 C.F.R. §§ 404.967, 416.1467; or, alternately, if the Post-Settlement Decision is an unfavorable decision after court remand, the Class member will be deemed to have filed written exceptions as provided in 20 C.F.R. §§ 404.984, 416.1484 on the day the decision is issued, but shall be given an opportunity to withdraw these exceptions or to submit additional written exceptions.

3. ***Prospective Relief -- Standards for Review of Claims and Related Rights:*** The Staff will consider a Class member's Post-Settlement Claim to determine whether the ALJ decision is legally sufficient, or contains an error of law or abuse of discretion, including but not limited to an error related to (1) evaluating treating source opinions, (2) assessing credibility, (3) developing the record, and (4) conducting hearings. The Staff will use the standards ordinarily applicable to requests for review under 20 C.F.R. §§ 404.967, 416.1467; will consider whether there is a basis to grant the request for review under the regulatory criteria set forth at 20 C.F.R. §§ 404.970, 416.1470; and will take appropriate action in accordance with those regulations; except that if the Post-Settlement Decision is a decision after court remand, the Staff will consider exceptions as provided under 20 C.F.R. §§ 404.984, 416.1484; and will take

appropriate action in accordance with those regulations. A Class member shall have the right to withdraw such a claim to the extent provided by applicable SSA rules and regulations.

4. ***Prospective Relief -- Rehearing before New ALJ:*** If a Post-Settlement Claim is remanded for a new hearing, the hearing after remand shall be conducted by an ALJ other than a Named ALJ. If the Post-Settlement Claim is appealed more than once, any subsequent hearings after remand shall be assigned in accordance with ordinary agency procedures, except that no subsequent hearings regarding such Claim may be conducted before a Named ALJ. Pursuant to existing SSA rules and regulations, readjudication may also be provided by an attorney advisor or the Appeals Council.

5. ***Notices of Prospective Relief (“Notice B” and “Notice C”):*** Notice B shall be sent to each claimant for disability benefits who is issued an unfavorable Post-Settlement Decision, except that a modified version of Notice B (attached hereto as Notice B – Decision After Court Remand) shall be sent to each claimant for disability benefits who is issued an unfavorable decision after court remand. Both versions of Notice B shall advise such claimant: that, as a result of the Settlement Agreement, any request for administrative review of an unfavorable Post-Settlement Decision will be directed to Staff at the Appeals Council; that, if a Post-Settlement Claim is remanded for a new hearing, the hearing after remand will be conducted by an ALJ other than a Named ALJ; and that the claimant may opt out of the terms of this Agreement but, if he or she wishes to opt out, he or she must do so in a manner specified in Notice B either at the time of his or her request for further administrative review or within sixty (60) days after the date the Class member receives Notice B. Notice B will further advise the claimant that, if he or she does not request review by the Appeals Council within sixty five (65) days after the date an unfavorable Post-Settlement Decision is issued, he or she will be deemed

to have made such a request; while the modified version of Notice B will advise that a claimant who receives an unfavorable decision after court remand will be deemed to have filed written exceptions regarding that decision on the day the decision is issued, but will be given an opportunity to withdraw those exceptions or to submit additional written exceptions.

Notice C shall be sent to each claimant for disability benefits who is issued a partially favorable Post-Settlement Decision, except that a modified version of Notice C (attached hereto as Notice C – Decision After Court Remand) shall be sent to each claimant for disability benefits who is issued a partially favorable decision after court remand. Both versions of Notice C shall advise such claimant that: as a result of the Settlement Agreement, any request for administrative review of a partially favorable Post-Settlement Decision shall be directed to Staff at the Appeals Council; and any subsequent hearings will be heard by an ALJ other than a Named ALJ. Notice C shall further advise that: in order to obtain relief under this Settlement Agreement, the claimant must seek further administrative or court review of his or her claim; and he or she may opt out of the terms of this Agreement but, if he or she wishes to do so, he or she must do so in a manner specified in Notice C either at the time of his or her request for further administrative review or within sixty (60) days after the date the Class member receives Notice C.

SSA shall send Notice B and/or Notice C, as appropriate, at the same time an unfavorable or partially favorable Post-Settlement Decision is mailed to the claimant. The notice will be sent to the same address or addresses as the decision, and may be sent in the same manner and in the same envelope as the decision. SSA shall bear the cost of Notice B and Notice C. Attached to this Settlement Agreement are the two versions of Notice B and Notice C (Exhs. B & C), the language of which has been agreed to by the Parties and the terms of which are incorporated into this Agreement. Personal information such as a Class member's address, appropriate field

office, and similar information, will be included by SSA in Notice B and Notice C. The bracketed dates and website address will be added prior to mailing. Additional language will be included if required by law or internal procedures applicable to the issuance of hearing decisions.

C. ***Establishing the Right to Retrospective or Prospective Relief:*** If SSA learns of an individual who may be entitled to relief as a Class member under this Settlement Agreement but who did not receive Notice A, B, or C, or if an individual contacts SSA and claims to be entitled to relief as a Class member under this Settlement Agreement but did not receive Notice A, B, or C, SSA shall review available records to determine whether the individual meets the requirements for retrospective or prospective relief, and shall determine within a reasonable time whether the individual is eligible. If SSA determines that such an individual is entitled to relief, SSA shall issue Notice D, a copy of which is attached (Exh. D), and the language of which has been agreed to by the Parties and the terms of which are incorporated into this Agreement. If the individual is entitled to prospective relief, SSA may alternately resend Notice B or Notice C as appropriate. Personal information such as a Class member's address, appropriate field office, and similar information, will be included by SSA in Notice D, and the bracketed website address will be added prior to mailing. If SSA determines that the individual is not entitled to relief, SSA shall notify the individual in writing of the reason for the determination.

#### **IV. OTHER RELIEF**

A. **SSR:** SSA shall issue a Social Security Ruling ("SSR") regarding agency procedures for addressing allegations of an unfair ALJ hearing, ALJ bias, and ALJ misconduct. Plaintiffs agree that they will not have an opportunity to review the SSR prior to its publication in the Federal Register and that SSA makes no commitment to issue the SSR by a date certain.

B. ***Training:*** In calendar year 2012 or 2013, SSA shall conduct (and may already have conducted by the time of approval of this Settlement Agreement) training programs designed to instruct experienced ALJs on the following issues: (1) evaluating treating source opinions; (2) assessing credibility; (3) developing the record; and (4) conducting hearings. SSA retains discretion to determine the timing and content of the training provided in such training programs, as well as which among its ALJs will be required to participate. SSA shall also provide mentors for experienced ALJs. Such mentors will be available to ALJs as a resource with respect to the substantive issues covered in the training described above, and also to provide feedback to the ALJs on the manner in which their decisions reflect the issues covered in the training. SSA retains discretion to determine the roles and responsibilities of such mentors, as well as which among its ALJs will be required to consult with a mentor. Nothing in this agreement shall preclude SSA from exercising its discretion in pursuing any training and/or mentoring it deems appropriate.

**V. ENFORCEMENT**

The Court shall not retain jurisdiction over this action after the date on which the Settlement becomes effective, except with respect to the enforcement of section III, and such jurisdiction will be only as set forth in this section V. Specifically, a Party may seek enforcement only of the paragraphs listed herein, and only as follows:

A. A Noticing Party may not seek enforcement (or review of any kind) regarding the composition of the Staff which has been assigned pursuant to paragraph III.B.2.

B. A Noticing Party seeking enforcement of any term in section III shall serve on the Responding Party a written notice that describes the alleged breach or violation with

particularity. Such notice must include the following: (a) an identification of the term(s) that has allegedly been violated; (b) a description of the specific errors or omissions upon which the alleged violation is based; and (c) a description of the corrective action sought. Such notice must be served within a reasonable time, but not to exceed sixty (60) days, after the Noticing Party becomes aware, or reasonably should have become aware, of a potential violation. If the alleged breach relates to a decision or Class membership determination regarding an individual Class member, notice must be served within sixty (60) days from the date of any contested decision or Class membership determination, unless the Noticing Party can demonstrate that the deadline was missed for good cause.

C. Within forty-five (45) days of the Responding Party's receipt of a written notice of breach or violation, counsel for the Noticing and Responding Parties will meet and confer, and otherwise begin to address the allegation. The Noticing and Responding Parties shall make their best efforts to resolve any and all allegations of breach or violation without the Court's involvement. If requested to do so, the Noticing Party shall provide to the Responding Party any discoverable information and materials reasonably available to the Noticing Party that constitutes evidence of the alleged breach or violation.

D. If the Responding Party fails to respond to a notice of breach or violation within forty-five (45) days, or the Noticing and Responding Parties otherwise cannot resolve the issue or issues raised in that notice, the Noticing Party may move for enforcement as early as seventy-five (75) days after the date on which the notice was served, but no later than one hundred thirty-five (135) days after the date on which the notice was served, unless the Parties otherwise agree in writing. The Parties agree that any such motion for enforcement shall not include a request that any Party or non-party be held in contempt.

E. Except to his or her counsel, the Noticing Party shall not disclose the allegation of a breach or violation to the Court or to any individual or party other than the Responding Party unless: (a) at least seventy-five (75) days have passed since the written notice was submitted to the Responding Party; and (b) the Noticing Party and the Responding Party have not agreed on corrective action pursuant to the process specified above.

## **VI. PRESERVATION OF CONFIDENTIALITY**

The provisions set forth in the November 15, 2011 Stipulation and Order for the Protection of Confidential Documents and Testimony shall remain in effect with regard to all further proceedings relating to this Settlement Agreement, and with regard to any Confidential Information (as that term is defined in the November 15, 2011 Stipulation and Order) disclosed pursuant to this Settlement Agreement.

## **VII. PROCEDURES FOR APPROVAL OF SETTLEMENT**

A. ***Preliminary approval:*** Following its execution, the Parties shall promptly present the Settlement Agreement to the Court with a request that the Court preliminarily approve the Settlement Agreement. The Parties shall further request that upon such preliminary approval the Court will schedule a hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (hereinafter referred to as the “Fairness Hearing”), after which the Court will determine whether to grant its final approval of the Settlement Agreement. At the same time, Plaintiffs will move for certification of the Class defined above, with such Certification being for the purposes of this Settlement Agreement only and being conditional upon final approval of this Settlement Agreement.

B. ***Notice of Proposed Class Action Settlement and Fairness Hearing:*** Within

thirty (30) days after the date on which the Court preliminarily approves the Settlement Agreement, SSA will mail a Notice of Proposed Class Action Settlement and Fairness Hearing (“Notice E”) (Exh. E), the language of which has been agreed to by the Parties, or such other notice as is ordered by the Court. Notice E contains a brief description of the claims advanced by Plaintiffs and the Commissioner’s denial of liability for such claims, a summary of the terms of the proposed settlement, and information regarding the upcoming Fairness Hearing. SSA will send such notice to each individual for whom, during the period from January 1, 2008 until the date on which the notices are prepared, a Named ALJ issued an unfavorable or partially favorable decision on a claim for disability benefits under Title II or Title XVI of the Act. The notice will be sent by first class mail to the last known address shown in SSA’s records for each such individual, as well as to the individual’s appointed representative, if any such representative is identified in SSA’s records. SSA shall bear the cost of such notice.

#### **VIII. PUBLICATION**

Within ten (10) days after the date on which the Court preliminarily approves the Settlement Agreement, SSA shall: (i) deliver for publication a copy of Notice E, or such other notice as ordered by the Court, to two (2) newspapers of general circulation in the New York Metropolitan area with instructions that the Notice be published at least once per week for three (3) successive weeks as a one-eighth (1/8<sup>th</sup>) page advertisement; (ii) post a copy of Notice E, or such other notice as ordered by the Court, on its official public website, [www.socialsecurity.gov](http://www.socialsecurity.gov); and (iii) post a copy of Notice E, or such other notice as ordered by the Court, in the Queens ODAR.

**IX. DISMISSAL AND SETTLEMENT AGREEMENT**

Plaintiffs agree to the dismissal of the Case with prejudice under Federal Rules of Civil Procedure 41(a)(1) and 23(e), subject to the terms of the Settlement Agreement and to the Court's continuing jurisdiction as set forth in section V. In accordance with the terms of this Settlement Agreement, Plaintiffs will move for dismissal of the Case with prejudice to be effective on the date of final approval of this Settlement Agreement.

**X. RELEASES**

Plaintiffs, the members of the Class defined above, and their heirs, administrators, representatives, attorneys, successors, and assigns, and each of them hereby RELEASE, WAIVE, ACQUIT, and FOREVER DISCHARGE the United States and the Commissioner from, and are hereby FOREVER BARRED and PRECLUDED from prosecuting, any and all claims, causes of action, or requests for any injunctive and/or monetary and/or any other form of relief, including, but not limited to, damages, tax payments, debt relief, costs, attorneys' fees, expenses, and/or interest, whether presently known or unknown, that have been or could have been asserted in the Case by reason of, with respect to, in connection with, or which arise out of, any matters alleged in the Case. The Parties agree that the terms of this section are not designed otherwise to interfere with the rights of Plaintiffs, the members of the Class defined above, and their heirs, administrators, representatives, attorneys, successors, and assigns under 42 U.S.C. § 405(g) and its implementing regulations.

**XI. NO ADMISSION OF LIABILITY**

A. Neither this Settlement Agreement nor any order approving it constitutes an admission by the Commissioner and/or the United States of the truth of any allegation or the

validity of any claim asserted in the Case, or of the liability of the Commissioner and/or the United States, nor a concession or an admission of any fault or omission of any act or failure to act, or of any statement, written document, or report heretofore issued, filed or made by the Commissioner and/or the United States.

B. Neither this Settlement Agreement nor any confidential papers related to the Agreement and created for settlement purposes only, nor any of the terms of either, may be offered or received as evidence of discrimination or unfair treatment in any civil, criminal, or administrative action or proceeding, nor shall they be the subject of any discovery or construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the part of the Commissioner and/or the United States, or as an admission by any Party to this Settlement Agreement that the consideration to be given under the terms of this Agreement represents the relief that could have been recovered after trial.

## **XII. DUTIES CONSISTENT WITH LAW AND REGULATIONS**

Nothing contained in this Settlement Agreement shall impose on the Commissioner and/or the United States any duty, obligation, or requirement, the performance of which would be inconsistent with law, as set forth in federal statutes, federal regulations, or elsewhere in effect at the time of such performance.

## **XIII. INTEGRATION**

This Settlement Agreement and its Exhibits constitute the entire agreement of the Parties, and no prior statement, representation, or agreement that is not contained herein, will have any force or effect.

**XIV. MODIFICATION**

This Settlement Agreement may be modified with the written agreement of the Parties and with the approval of the District Court, upon such notice to the Class, if any, as the District Court may require.

**XV. DUTY TO DEFEND**

The Parties to this Settlement Agreement shall defend against any challenges to it in any forum.

**XVI. SEVERABILITY**

Should any non-material provision of this Settlement Agreement be found by a court to be invalid or unenforceable, then (A) the validity of other provisions of this Settlement Agreement shall not be affected or impaired, and (B) such provisions shall be enforced to the maximum extent possible.

**XVII. CONDITIONS THAT RENDER SETTLEMENT AGREEMENT VOID OR VOIDABLE**

This Settlement Agreement shall be void if it is disapproved at any stage by the Court and/or if the Court denies the motion for dismissal mentioned in section IX above.

**XVIII. EFFECT OF SETTLEMENT AGREEMENT IF VOIDED**

A. Should this Settlement Agreement become void after its execution, the Commissioner will not object to reinstatement of this action in the same posture and form as it was pending as of the date of execution of this Agreement.

B. All negotiations in connection herewith, and all statements made by the Parties at

or submitted to the District Court during the Fairness Hearing shall be without prejudice to the Parties to this Settlement Agreement and shall not be deemed or construed to be an admission by a Party of any fact, matter, or proposition.

C. The Commissioner retains all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Case, and nothing in this Settlement Agreement shall be raised or construed by any Plaintiffs, Class members, or Plaintiffs' counsel, to defeat or limit any defenses, arguments, or motions asserted by the Commissioner. Neither this Settlement Agreement, nor the fact of its having been made, nor any exhibit or other document prepared in connection with this Settlement Agreement, shall be admissible, entered into evidence, or used in any form or manner in discovery in the Case or in any other action or proceeding for any purpose inconsistent with Rule 408 of the Federal Rules of Evidence.

D. The provisions set forth in section XI will apply even if the Settlement Agreement is otherwise rendered void.

**XIX. ATTORNEY FEES**

A. The Parties agree that the amount of \$125,000 will be paid to Plaintiffs' counsel the Urban Justice Center, as attorney fees. Those funds are the only funds to be paid by the Commissioner and/or the United States under this Settlement Agreement and/or otherwise in connection with this action (aside from any payments made to cover the costs associated with Notices A, B, C, D, and E as set forth above). Plaintiffs' counsel Gibson, Dunn & Crutcher has agreed to waive additional fees incurred in connection with this action.

B. Within seven (7) calendar days of the date on which the Settlement becomes effective, Plaintiffs' counsel will notify the Commissioner and the Commissioner's counsel in

writing of the identity of the account and bank designated for the deposit of funds, and will provide any necessary tax reporting information as well as all information necessary and appropriate to direct any and all deposits provided for in this Settlement Agreement.

C. Upon receipt of the information described in paragraph B above, the Commissioner shall promptly complete any intra-governmental forms and documentation that are required from SSA in order to issue payment.

**XX. COUNTERPARTS**

This Settlement Agreement may be executed in counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

**XXI. WARRANTY**

Plaintiffs' counsel and the Commissioner's counsel warrant that they are authorized to stipulate to settlement of the Case in accordance with the provisions set forth in the Settlement Agreement.