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| A.F. and M.D.,<br><br>Plaintiffs,<br><br>vs.<br><br>STATE OF NEW JERSEY DEPARTMENT OF<br>CORRECTIONS, et al.,<br><br>Defendants.          | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION: HUNTERDON COUNTY<br><br>DOCKET NO. HNT-L-359-17<br><br>Civil Action |
| MARIANNE BROWN, et al.,<br><br>Plaintiffs,<br><br>vs.<br><br>STATE OF NEW JERSEY DEPARTMENT OF<br>CORRECTIONS, et al.,<br><br>Defendants. | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION: HUNTERDON COUNTY<br><br>DOCKET NO. HNT-L-76-19                      |
| TAMASA NOBLES, et al.,<br><br>Plaintiffs,<br><br>vs.<br><br>WILLIAM ANDERSON, et al.,<br><br>Defendants.                                  | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION: HUNTERDON COUNTY<br><br>DOCKET NO. HNT-L-145-19                     |

### **SETTLEMENT AGREEMENT**

Plaintiffs Tamasa Nobles, Tawana Murphy, Linda Dougherty, Marianne Brown and Judith Vazquez (collectively, the “Named Plaintiffs”) by and through their counsel, and defendants New Jersey Department of Corrections (“NJDOC”), William Anderson, Sarah Davis and Gary Lanigan (collectively, “Defendants”), hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for the settlement of claims asserted against Defendants by the Named Plaintiffs and on behalf of

the Settlement Class (as defined herein).

**WHEREAS**, the Named Plaintiffs filed class actions captioned Nobles, et al. v. Anderson, et al., Docket No. HNT-145-19 (formerly MER-L-2644-17) (the “Nobles Action”) and Brown, et al. v. State of New Jersey Department of Corrections, Docket No. HNT-76-19 (formerly MER-503-18) (the “Brown Action”) against Defendants alleging a pattern and practice of sexual abuse and harassment of female inmates by NJDOC Staff at Edna Mahan Correctional Facility for Women (“EMCFW”) and that NJDOC administrators failed to prevent, halt or remedy such conduct from 2014 to present; and

**WHEREAS**, the Named Plaintiffs have claimed that Defendants’ alleged actions and omissions violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. (“NJLAD”) and the New Jersey Civil Rights Act, N.J.S.A. 10:6-2 (“NJCRA”); and

**WHEREAS**, Defendants deny the Named Plaintiffs’ and the Settlement Class’s claims, and any wrongdoing or liability; and

**WHEREAS**, the Nobles Action and the Brown Action were both transferred from the Mercer Vicinage to the Hunterdon Vicinage and consolidated for discovery purposes with the similar claims of certain individual plaintiffs under the lead case A.F. & M.D. v. State of New Jersey Department of Corrections, Docket No. HNT-L-359-17; and

**WHEREAS**, Defendants have concluded that settlement is desirable to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve finally and completely all pending and potential claims of the Named Plaintiffs and all Class Members (as defined herein) relating to claims which actually were or could have been asserted by them in this Litigation; and

**WHEREAS**, the Named Plaintiffs recognize the costs and risks of prosecution of this Litigation and believe that their interests, and the interests of all Class Members, to resolve this Litigation, and any and all claims against Defendants, are best served by and through the terms contained within this

Settlement Agreement; and

**WHEREAS**, significant arms-length settlement negotiations have taken place between the Parties including but not limited multiple sessions of mediation with JAMS Mediator Honorable Diane Welsh, U.S.M.J. (ret.) and, as a result, this Settlement Agreement has been reached, subject to the Court approval process set forth herein; and

**WHEREAS**, a Settlement Term Sheet was executed by the Parties on or about March 29, 2021 setting forth key terms of the proposed Settlement reached between the Parties that are memorialized herein; and

**WHEREAS**, the purpose of this Settlement Agreement is to complete the proposed Settlement by setting forth additional necessary terms to bring this matter to a close; and

**WHEREAS**, the Named Plaintiffs and Class Counsel believe that this Settlement Agreement offers significant benefits to Class Members and is fair, reasonable, adequate and in the best interest of Class Members; and

**WHEREAS**, this Settlement Agreement is made and entered into by and among the Named Plaintiffs, individually and on behalf of the Settlement Class, and Defendants.

**NOW, THEREFORE**, it is hereby stipulated and agreed, by and between the undersigned Parties as follows:

# **I. DEFINITIONS**

As used in this Settlement Agreement, the following terms shall have the meaning set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

A. Claims Deadline. “Claims Deadline” shall mean the date that is 120 days after entry of the Preliminary Approval Order by the Court.

B. Class Counsel. “Class Counsel” shall collectively mean the following law firms: Barry,

Corrado & Grassi, PC; Mark B. Frost & Associates; Stark & Stark; and Williams Cedar, LLC.

C. Class Members. “Class Members” shall mean the members of the Settlement Class.

D. Class Notice. “Class Notice” shall mean the Court-approved form of notice to Class Members informing them of the (i) Preliminary Approval Order; and (ii) scheduling of the Final Approval Hearing. The form of the Class Notice, as agreed by the Parties, is attached as **Exhibit A** and shall be approved by the Court prior to its dissemination.

E. Class Period. “Class Period” shall mean the period from January 1, 2014 through the date of the Final Approval Order.

F. Court. “Court” shall mean the Superior Court of New Jersey, Law Division, Hunterdon County.

G. Defendants. “Defendants” shall collectively mean NJDOC, William Anderson, Sarah Davis and Gary Lanigan, together with any of their past and present employees, agents, officers, and assigns, in their individual and official capacities, and any of their departments, divisions, offices, agencies and employees, past and present.

H. Defense Counsel. “Defense Counsel” shall mean Chiesa Shahinian & Giantomasi PC.

I. Effective Date. “Effective Date” is the date on which this settlement becomes Final within the meaning of Section J.

J. Final. With respect to this Settlement, any order relating thereto, any award of any claims, or any award of attorneys’ fees and expenses, “Final” means that the time for appeal or writ review has expired or, if an appeal or petition for review is taken and dismissed or the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If any order is set aside, materially modified, or overturned by the Court or on appeal, and is not fully reinstated on further appeal, the Judgment shall not become final.

K. Final Approval Hearing and Order. “Final Approval Hearing” shall mean the hearing at which the Court will consider whether to enter the Final Approval Order. “Final Approval Order” shall mean the Court order that approves this Settlement Agreement, approves payment of attorneys’ fees and expenses, and makes such other final rulings as are contemplated by this Settlement Agreement.

L. Litigation. “Litigation” shall collectively mean the Nobles Action and the Brown Action, as consolidated under the lead case A.F. & M.D. v. State of New Jersey Department of Corrections, Docket No. HNT-L-359-17, pending before the Superior Court of New Jersey, Law Division, Hunterdon County.

M. Named Plaintiffs. “Named Plaintiffs” shall mean Tamasa Nobles, Tawana Murphy, Linda Dougherty, Marianne Brown, and Judith Vazquez.

N. Opt-Out/Objection Deadline. “Opt-Out/Objection Deadline” shall mean the date that is seventy-five (75) days after entry of the Preliminary Approval Order, which shall be the deadline by which Class Members shall be permitted to opt-out or object to the Settlement Agreement’s terms or provisions prior to the Final Approval Hearing.

O. Parties. “Parties” shall collectively mean the Named Plaintiffs and Defendants.

P. Preliminary Approval Order. “Preliminary Approval Order” shall mean the order of the Court preliminarily approving this Settlement Agreement, the form of which the Parties shall agree upon and designate as **Exhibit B** or a form that is substantially the same form as that approved by the Court.

Q. Released Claims. “Released Claims” shall mean any and all claims, rights, demands, obligations, controversies, debts, damages, losses, actions, causes of action, and liabilities relating in any way to allegations of sexual harassment, sexual abuse, hostile environment, or retaliation for such conduct, including but not limited to all federal and/or state claims for violations of civil rights, violations of the New Jersey Law Against Discrimination, or any tort claims, whether accrued or unaccrued, fixed or contingent, known or unknown or based on facts known or unknown, that have been or could have been

asserted by the Named Plaintiffs or any the Settlement Class Members against Defendants arising out of the allegations, transactions, facts, events, matters, occurrences, acts, representations, or omissions involved in, set forth in, or referred to in the Litigation.

R. Released Parties. “Released Parties” shall mean Defendants, together with any of their past or present successors, assigns, employees, agents, officers, directors, attorneys, legal representatives, insurers, reinsurers, or consultants. “Released Parties” shall also specifically include the State of New Jersey, together with any of its departments, agencies, and past and present employees, agents, officers, directors, attorneys, legal representatives, insurers, reinsurers, consultants, and assigns, in their individual and official capacities.

S. Settlement. “Settlement” shall mean the agreement by the Parties to resolve this Litigation, the terms of which have been memorialized and provided for in this Settlement Agreement.

T. Settlement Agreement. “Settlement Agreement” shall mean this Settlement Agreement and all the exhibits attached hereto.

U. Settlement Class. “Settlement Class” shall mean all women incarcerated at EMCFW for any term during the Class Period who did not file a separate lawsuit alleging Sexual Abuse or Sexual Harassment .

V. Settlement Term Sheet. “Settlement Term Sheet” shall mean the agreement to resolve this Litigation executed by the Parties on March 29, 2021.

W. Sexual Abuse. “Sexual Abuse” includes any of the following acts involving both Class Members and NJDOC staff assigned to EMCFW during the Class Period, with or without consent of the target of that conduct:

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

2. Contact between the mouth and the penis, vulva, or anus;
3. Contact between the mouth and any body part where the staff member has the intent to abuse, arouse, or gratify sexual desire;
4. Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member has the intent to abuse, arouse or gratify sexual desire; and
5. Any other intentional contact, either directly or through clothing, with the genitalia, anus, groin, breast, inner thigh, or buttocks, that is unrelated to official duties or where the staff member has the intent to abuse, arouse or gratify sexual desire.

X. Sexual Harassment. “Sexual Harassment” includes any of the following acts involving both Class Members and NJDOC staff assigned to EMCFW during the Class Period, with or without consent of the target of that conduct:

1. Sexual advances or requests for sexual favors;
2. Repeated verbal comments or gestures of a sexual nature to a prisoner by a staff member including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures;
3. Any attempt or threat by a staff member to engage in the activities within the definition of Sexual Abuse, as set forth above;
4. Any display by a staff member of his or her uncovered genitalia, buttocks, or breast in the presence of a prisoner;
5. Voyeurism by a staff member; and
6. Any retaliation by a staff member relating to any report of Sexual Abuse or otherwise in relation to any report of conduct defined in paragraphs (1)-(5) immediately above.

## **II. REQUIRED EVENTS**

A. Promptly after execution of this Settlement Agreement by all Parties:

1. Class Counsel and Defense Counsel shall take all reasonable and necessary steps, subject to the Court's availability, to obtain entry of the Preliminary Approval Order and to move for the entry of the Final Approval Order.

2. The parties to the Settlement Agreement shall jointly move for entry of a Preliminary Approval Order in the same or substantially identical form as that attached hereto as **Exhibit B**.

3. The Parties will use their best reasonable efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Approval Order.

B. In the event that the Court fails to issue the Preliminary Approval Order or Final Approval Order in all material aspects as those proposed to the Court, this Settlement Agreement is voidable by Defendants.

C. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement are essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

D. Upon the Effective Date, Judgment in this action shall be rendered, subject to the continuing jurisdiction of this Court as provided in Section VII herein.

### **III. COMPENSATION AND INJUNCTIVE RELIEF**

A. Class Damages. Defendants shall pay not more than \$7,985,600 in the aggregate (“Class Damages”) for damages of all Class Members. To recover any compensation, each Class Member shall, on or before the Claims Deadline, file with the designated Settlement Administrator (as defined herein) a claim in a form to be agreed by the Parties. Each claim submitted by a Class Member shall specify one of the following Tier options under which the Class Member seeks compensation and shall comply with the particular requirements of the applicable Tier:

1. Tier 1 Claims and Compensation. All Class members shall be entitled to compensation under Tier 1 (“Tier 1 Compensation”). Tier 1 Compensation shall be calculated as \$1,000 base compensation plus \$20 for each month or partial month in which a Class Member was assigned to EMCFW during the Class Period. Class Members who submit claims under Tier 1 (“Tier 1 Claimants”) shall be paid by Defendants by the later of (i) 90 days after the Claims Deadline; (ii) 30 days after the Final Approval Order; or (iii) 30 days after calculation of Tier 1 Compensation is provided to Defendants by the Settlement Administrator. Compensation of Class Members who submit claims under Tier 2 or Tier 3 shall be entitled to, at a minimum, Tier 1 Compensation, but that compensation will be paid at the time that Tier 2 Compensation and Tier 3 Compensation (as defined herein) are paid as set forth below.

2. Tier 2 Claims and Compensation. Class Members who submit claims under Tier 2 (“Tier 2 Claimants”) shall submit sufficient supporting documentation, which shall include a sworn affidavit and/or certification compliant with Rule 1:4-4(b), setting forth the basis for increased compensation for Sexual Harassment in an amount not to exceed \$4,500 (“Tier 2 Compensation”) each. A Tier 2 Claimant shall have the option to submit contemporaneous corroborating documentation to support their Tier 2 claims. A Tier 2 Claimant shall have the

option to request a hearing before the Special Master, which request shall be granted. A Tier 2 Claimant shall be entitled to minimum compensation not less than that individual's equivalent Tier 1 Compensation but not more than the maximum Tier 2 Compensation. The supporting affidavit and/or certification shall be submitted along with the claim. If no hearing is requested, contemporaneous corroborating documents shall be submitted with the claim. Where a hearing is requested, any contemporaneous corroborating documentation shall be submitted no later than thirty (30) days before the hearing date with the Special Master assigned to claimant.

3. Tier 3 Claims and Compensation. Class Members who submit claims under Tier 3 ("Tier 3 Claimants") shall submit sufficient supporting documentation, which shall include a sworn affidavit and/or certification in compliance with Rule 1:4-4(b) AND contemporaneous corroborating documentation, setting forth the basis for increased compensation for Sexual Abuse in an amount not to exceed \$250,000 ("Tier 3 Compensation") each. The Special Master shall be required to hold a hearing to consider the individual claims of each Tier 3 Claimant. The supporting affidavit and/or certification shall be submitted along with the claim. Any contemporaneous corroborating documentation shall be submitted no later than thirty (30) days before the hearing date with the Special Master. A Tier 3 Claimant shall be entitled to minimum compensation not less than that individual's equivalent Tier 1 Compensation but not more than the maximum Tier 3 Compensation.

4. Requests by Claimants for Documents. A Tier 2 or Tier 3 Claimant may, at the time her claim is submitted, request that NJDOC produce to the Special Master a copy of a specific document submitted or statement made to NJDOC by the claimant at or about the time of the events that gave rise to her claim, so long as that requested document is not subject to any privilege. By way of example, such documents may include grievance forms or e-mails submitted by the

claimant but shall not include the contents of investigative files (beyond any statement by the claimant itself that is contained therein referenced above), inmate files, personnel files, or other operational or policy documents. NJDOC shall make reasonable efforts to locate and produce such documents, which shall be provided directly to the Special Master for his or her review but not to the claimant.

5. Award and Payment of Tier 2 and Tier 3 Compensation. Tier 2 Compensation and Tier 3 Compensation (collectively, “Higher Tier Compensation”) shall not exceed the amount of Class Damages less Tier 1 Compensation and Incentive Compensation. The Special Master shall resolve awards to Tier 2 Claimants and Tier 3 Claimants without knowing the total available amount of Higher Tier Compensation. In the event that Higher Tier Compensation exceeds the amount of Class Damages less Tier 1 Compensation, all Higher Tier Compensation shall be reduced pro rata to the actual amount of Class Damages less Tier 1 Compensation. All Higher Tier Compensation shall be paid by Defendants by the later of (i) 90 days after the Special Master issues awards to all Tier 2 Claimants and Tier 3 Claimants OR (ii) July 15, 2022. Any amount of Class Damages that are not expended to satisfy Tier 1 Compensation, Tier 2 Compensation, and Tier 3 Compensation shall be retained by Defendants and shall not be allocated for any other purpose.

6. Class Representative Compensation. Each of the Named Plaintiffs shall receive compensation of not less than \$50,000 as an incentive award for her efforts and service as a class representative (“Incentive Compensation”). Incentive Compensation shall be paid out of the Class Damages. Nothing shall preclude any of the Named Plaintiffs from submitting a class claim, but any award would be subject to the overall cap of \$250,000 applicable to class claimants. Stated another way, each of the Named Plaintiffs would be entitled to receive the Incentive Compensation

and any award pursuant to the three tiers of the class claims, but limited to a total of \$250,000. Incentive Compensation shall be paid to the Named Plaintiffs at the time Tier 1 Compensation is paid. A Named Plaintiff who submits a Tier 2 or 3 Claim will be subject to the timeframes delineated herein with respect to those claims.

7. Debt/Lien Search. The Class Members acknowledge that if, upon the results of any lien search conducted by Defendants, any debt and/or lien is owed (including but not limited to liens pursuant to N.J.S.A. 2A:17-56.23(b)), such debt and/or lien shall be deducted from any payment to a recipient of compensation pursuant to this class settlement agreement payment prior to disbursement of compensation. Notwithstanding this paragraph, in no case shall the application of a lien reduce the compensation paid to a Class Member below \$2,000.

B. Injunctive Relief. In addition to damages, Plaintiffs sought multiple items of injunctive relief including but not limited to additional training, institutional oversight and review of investigation methodologies and outcomes, additional reporting mechanisms, and the securing of a number of abandoned buildings and a perimeter checkpoint generally. Because the Parties anticipate those issues will be addressed by a Consent Decree relating to the investigation conducted by the Department of Justice that was instituted after the filings in the instant consolidated matter, the Parties have agreed not to address those issues further in this Agreement. Additionally, Defendants shall plan and implement a system at EMCFW for the use of body cameras to be worn by all corrections officers who shall regularly come in contact with inmates assigned to EMCFW.

1. This system shall be implemented and fully operational within twelve (12) months of the Final Approval Order.

2. Once the body camera system is operational, NJDOC shall maintain the system or a system of equal or greater functionality, for a period of not less than three (3) years.

3. The Parties acknowledge that NJDOC anticipates the entry of a federal consent decree relating to the operations of EMCFW (the “Consent Decree”) and is in the process of negotiating the terms of that Consent Decree with the United States Department of Justice. If for any reason the Consent Decree is not entered, the Parties agree to negotiate further terms of injunctive relief to be included as part of this Settlement Agreement and will work in good faith to do so.

C. Opt-Out and Threshold. Class Members may exclude themselves from this Settlement by notifying the Settlement Administrator of their intent to opt out not later than the Opt-Out/Objection Deadline.

1. Any notice by a Class member electing to opt out of this Settlement must be made in writing and contain (i) the person’s name, (ii) her current address and telephone number, (iii) her SBI Number and dates of assignment to EMCFW; (iv) a dated, handwritten signature; and (v) a written statement that such person has reviewed the Class Notice and wishes to be excluded from the Settlement.

2. If a question is raised about the authenticity of a request to opt out, the Settlement Administrator or any Party will have the right to demand additional proof of the individual’s identity, standing, and intent. Any Class Member that submits a valid request to opt out of this Settlement will not participate in or be bound by the terms of this Settlement Agreement or the Final Approval Order.

3. Any Class Member who does not, by the Claims Deadline, complete and submit a valid request to opt out in the manner specified above shall remain a Class Member and, notwithstanding any failure to submit a claim, shall be bound by all terms and conditions of this Settlement Agreement and the Final Approval Order entered by the

Court, including the release of any claims as set forth in Section VII herein.

4. If more than five (5) Class Members opt out of this Settlement on or before the Claims Deadline, Defendants shall have the option, in their sole discretion, within thirty (30) days of the Opt-Out/Objection Deadline, to void the Settlement and this Settlement Agreement on notice to Class Counsel and the Court.

5. None of the Named Plaintiffs shall be permitted to opt out.

D. Attorneys' Fees and Costs. Defendants, subject to Court approval, agree to pay attorneys' fees and costs of not more than \$3,000,000.00, which shall cover all fees and costs for any attorney (including Class Counsel) who has participated as counsel for any of the Named Plaintiffs in the Litigation, for all services, including the finalization and monitoring of the Settlement. In consideration therefore, Class Counsel (Oliver Barry, Esq.; David Cedar, Esq.; Mark Frost, Esq.; and Martin Schrama, Esq.) on behalf of themselves and their respective law firms, will each provide a writing to Defendants assuring them that neither Class Counsel nor the Named Plaintiffs will seek any further attorneys' fees or costs from Defendants and that any compensation they may receive for services as Class Counsel will be paid pursuant to this paragraph. Defendants shall make payment of any attorneys' fees and costs pursuant to this paragraph within forty-five (45) days of the Final Approval Order.

E. Class Administration Costs. Defendants shall bear the reasonable cost and expense of:

1. Notice to all Class members, specifically notices published in agreed newspapers and first-class mail notices as identified in Section V below;

2. The retention and designation of a Settlement Administrator whose duties will include the processing of the claims of Class Members and performing related necessary services for the administration thereof, including but not limited to transmitting applications and documentation to the Special Master and/or any lien resolution issues that may arise; and

3. The retention and designation of one Special Master to adjudicate claims of Tier 2 Claimants and Tier 3 Claimants as set forth herein.

#### **IV. CLASS ADMINISTRATION**

Defendants, with the advice of Class Counsel, shall designate a third party (the “Settlement Administrator”) to administer the resolution of all claims (inclusive of Tier 1 Claims, Tier 2 Claims, and Tier 3 Claims) by Class Members pursuant to this Settlement Agreement. NJDOC will be responsible for issuing payment to Class Members who submit a valid claim as set forth in Section III of this Settlement Agreement.

#### **V. NOTIFICATION TO CLASS MEMBERS**

A. Notification to Class Members. The Class Notice shall be in the form as attached as **Exhibit A**, subject to approval of the Court, and shall be issued as follows:

1. The Class Notice shall be published once in appropriate newspapers, which shall include The Star-Ledger, The Press of Atlantic City, Courier-Post, and The Times of Trenton.

2. The Class Notice shall be sent by first-class mail to each Class Member who is not currently confined at EMCFW at her last known address as reflected in the records of NJDOC. To the extent that any Class Member is still confined at EMCFW, the Class Notice shall be e-mailed to the Class Member or, alternatively, hand delivered with a signed acknowledgement of receipt.

3. The Class Notice shall be mailed and/or e-mailed no later than thirty (30) days after the entry of a Preliminary Approval Order by the Court.

B. Proof of Notice. No later than ten (10) days prior to the Final Approval Hearing, Defendants shall file a certification with the Court, with a copy to Class Counsel, stating that the Class Notice was issued as set forth in the preceding paragraph.

#### **VI. OBJECTIONS BY SETTLEMENT CLASS MEMBERS**

A. The Parties will request that the Court enter as part of the Preliminary Approval Order an order requiring any Class Member who wishes to be heard orally at the Final Approval Hearing, or who wishes for any objection to be considered, to file a written notice of objection by the Objection Deadline. Such objections shall state the name, address and telephone number of the person and provide proof of membership in the Settlement Class, as well as a detailed statement of each objection asserted, including the grounds for objection and reasons for appearing and being heard, together with any documents the objector wishes to be considered.

B. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objections to this Settlement Agreement, in accordance with such Class Member's due process rights. The proposed Preliminary Approval Order and Class Notice will require all Class Members who have any objections to file such notice of objection or request to be heard with the Court, and serve by mail or hand delivery such notice of objection or request to be heard upon Class Counsel and Defense Counsel at the addresses set forth in the Class Notice, by no later than the Opt-Out/Objection Deadline. The Preliminary Approval Order will further provide that objectors who fail to properly or timely file their objections with the Court, along with the required information and documentation set forth above, or to serve them as provided above shall not be heard during the Final Approval Hearing, nor shall their objections be considered by the Court.

The Final Approval Hearing shall be scheduled, Court calendar permitting, no sooner than one hundred five (105) days and not later than one hundred twenty (120) days after entry of the Preliminary Approval Order.

## **VII. DISMISSAL OF ACTION AND JURISDICTION OF COURT**

A. The obligations incurred pursuant to this Settlement Agreement shall be a full and final

disposition of the Litigation and any and all Released Claims against any and all Released Parties.

B. Upon the entry of the Final Approval Order, the Litigation and all claims asserted on behalf of the Named Plaintiffs and Class Members shall be dismissed against all Defendants with prejudice on the merits.

C. Upon the Effective Date, the Class Members shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, relinquished, and discharged any and all Released Claims against any and all of the Released Parties, and the Parties shall file a stipulation of dismissal, with prejudice, as to all Defendants dismissing this Litigation in its entirety and with prejudice. Any Class Members who did not opt out of this Settlement as set forth in Section shall forever be enjoined from prosecuting any and all Released Claims against any and all of the Released Parties.

D. Notwithstanding the foregoing, the Named Plaintiffs shall each execute a general release of the Released Parties that fully, finally and forever releases, relinquishes and discharges any and all actual or potential claims, whether known or unknown, contingent or non-contingent, claimed or unclaimed, in law or equity, including but not limited to, any and all attorneys' fees, costs, punitive or exemplary damages, fines or penalties.

E. Any Party that previously filed an appeal in this Litigation that remains pending before any appellate court of the State of New Jersey shall, prior to any application for entry of a Preliminary Approval Order, withdraw such appeal without prejudice.

F. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement.

#### **VIII. REPRESENTATIONS, WARRANTIES AND COVENANTS**

A. Class Counsel, who are signatories hereof, represent and warrant that they have the

authority, on behalf of the Named Plaintiffs, to execute, deliver, and perform according to this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and the Named Plaintiffs and constitutes their legal, valid, and binding obligation.

B. NJDOC represents and warrants that it has the authority, on behalf of all Defendants, to execute, deliver, and perform according to this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Defendants of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by appropriate representatives of NJDOC and the Office of the Attorney General. This Settlement Agreement has been duly and validly executed and delivered by Defendants and constitutes their legal, valid, and binding obligation.

## **IX. MISCELLANEOUS PROVISIONS**

A. All Modifications to Be in Writing. This Settlement Agreement, including all exhibits attached hereto, may not be modified or amended except in a writing signed by all of the Parties.

B. Execution in Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

C. Choice of Law. This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of New Jersey without giving effect to any choice or conflict of law provision, or rule that would cause the application of the laws of any other jurisdiction.

D. Costs. Except as otherwise provided in this Settlement Agreement, each party to this Settlement Agreement shall bear his, her, or its own costs of the Litigation.

E. Extensions of Time. The Parties to this Settlement Agreement reserve the right, by

agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement. Notwithstanding the foregoing:

1. Any claim of a Class Member not submitted by the Claims Deadline shall be barred and shall not be considered by the Special Master or awarded any compensation.

2. Any Class Member who fails to timely and properly opt out of this Settlement by the Opt-Out/Objection Deadline shall remain a Class Member for the purposes of this Settlement and shall be bound by the release provisions of Section VII(C).

F. All Parties Deemed to be Drafters. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, have been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement.

G. Incorporation of Exhibits. All of the exhibits to this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference. This Settlement Agreement and its exhibits constitute the entire, fully integrated agreement among the Parties and cancel and supersede all prior written and unwritten agreements and understandings pertaining to the Settlement of the Litigation. To the extent there is any conflict between this Settlement Agreement and the prior Settlement Term Sheet, the terms of this Settlement Agreement shall govern.

H. Dispute Resolution. The Parties agree that any disputes regarding the terms and conditions of this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or

the resolution of any disagreement pertaining to this Settlement Agreement shall be submitted to the Court.

I. Notices to Counsel. All notices to the Parties of counsel required by this Settlement Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses:

If to the Named Plaintiffs or Class Counsel:

Oliver Barry, Esq.  
Barry Corrado & Grassi, PC  
2700 Pacific Avenue  
Wildwood, New Jersey 08260  
obarry@capelegal.com

Mark Frost, Esq.  
Mark B. Frost & Associates  
1515 Market Street, Suite 1300  
Philadelphia Pennsylvania 19102  
mfrost@mfroslaw.com

Martin Schrama, Esq.  
Stark & Stark  
993 Lenox Drive, Building 2  
Lawrenceville, New Jersey 08648  
mschrama@stark-stark.com

David Cedar, Esq.  
Williams Cedar, LLC  
8 Kings Highway West  
Haddonfield, New Jersey 08033  
dcedar@williamscedar.com

If to Defendants or Defense Counsel:

Matthew E. Beck, Esq.  
Chiesa Shahinian Giantomasi PC  
One Boland Drive  
West Orange, New Jersey 07052  
mbeck@csglaw.com

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, Class Counsel, as the authorized representatives of the Named Plaintiffs, and NJDOC, as authorized representative of all Defendants, have executed this Settlement Agreement as of the date indicated on the lines below.

BARRY, CORRADO & GRASSI, PC  
*Attorneys for Plaintiffs Marianne Brown  
and Judith Vazquez*

By: \_\_\_\_\_  
Oliver T. Barry

MARK B. FROST & ASSOCIATES  
*Attorneys for Plaintiffs Tamasa Nobles,  
Tawana Murphy, and Linda Dougherty*

By: \_\_\_\_\_  
Mark B. Frost

STARK & STARK  
*Attorneys for Plaintiffs Marianne Brown  
and Judith Vazquez*

By: \_\_\_\_\_  
Martin P. Schrama  
Stefanie Colella-Walsh

WILLIAMS CEDAR, LLC  
*Attorneys for Plaintiffs Tamasa Nobles, Tawana  
Murphy, and Linda Dougherty*

By: \_\_\_\_\_  
David Cedar  
Gerald J. Williams

Witness:

CHIESA SHAHINIAN GIANTOMASI PC  
*Attorneys for Defendants*

By: \_\_\_\_\_  
Matthew E. Beck  
Mauro G. Tucci Jr.

On behalf of all Defendants:

NEW JERSEY DEPARTMENT OF CORRECTIONS

By: \_\_\_\_\_  
Victoria Kuhn, Acting Commissioner