

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**MASSIMILIANO PERRAULT, individually
and on behalf of all others similarly situated,**)
)
)
 Plaintiff)
)
)
 v.)
)
)
 **JRK PROPERTY HOLDINGS, INC.,
JRK RESIDENTIAL GROUP, INC.,
UTILITY BILLING, INC., and
TEWKSBURY APARTMENTS PROPERTY
OWNER, LLC,**)
)
)
 Defendants)
)
)

Civil Action No. 23-10746-FDS

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement Agreement” or “Agreement”) is made by and between Massimiliano Perrault (“Plaintiff,” or “Class Representative”), individually and on behalf of the Class Members (defined below), and JRK Property Holdings, Inc., JRK Residential Group, Inc., Utility Billing, Inc., and Tewksbury Apartments Property Owner, LLC (“Defendants”) (collectively referred to herein as the “Parties”).

**Section I
Definitions**

In addition to terms defined elsewhere in this Agreement, the following definitions apply:

“Action” means this lawsuit: *Massimiliano Perrault, et al. v. JRK Property Holdings, Inc., et al.*, Case No. 1:23-cv-10746-FDS (D. Mass.)

“Administrator” means Optime Administration, LLC, the entity engaged by Plaintiff to implement the Class Notice Plan and administer the Settlement pursuant to this Agreement.

“Administrator’s Fee” means the Administrator’s fees for carrying out the Class Notice Plan and administering the Settlement.

“Attorney Fee and Expense Award” has the meaning set forth in Section III.B.

“Claims” means the claims for relief asserted in Counts I – III of the Complaint.

“Class” means the class of persons the Parties are requesting be certified by the Court for settlement purposes, defined as follows: All persons who were lessees (as tenants or co-tenants) of apartments at any one or more of the Properties (as defined herein) at any time from February 2, 2019 through September 6, 2024.

“Class Counsel” means Kenneth D. Quat, d/b/a Quat Law Offices, and John R. Yasi of Yasi & Yasi, P.C.

“Class List” has the meaning set forth in Section IV.I.

“Class Members” means the persons in the Class.

“Class Notice Plan” means the terms for providing notice of this Settlement to Class Members to be submitted to the Court for approval, as set forth in Section IV.

“Class Period” means February 2, 2019 – September 6, 2024.

“Class Representative Service Award” has the meaning set forth in Section III.C.

“Complaint” means the Second Amended Class Action Complaint and Jury Demand filed in the Action on December 21, 2023 as Doc. No. 38.

“Court” means the United States District Court for the District of Massachusetts.

“Defendants’ Counsel” means Thomas H. Wintner and Mathilda S. McGee-Tubb of the law firm Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

“Effective Date” has the meaning set forth in Section III.E.

“Final Approval Hearing” means the hearing at which the Court will determine: (1) the merits of any objections to the Settlement, (2) whether the Class Notice Plan was carried out in accordance with this Agreement; (3) whether to approve in final form this Settlement Agreement as fair, reasonable, adequate and in the best interests of the Class Members in accordance with Rule 23 of the Federal Rules of Civil Procedure, and whether to enter judgment accordingly; (4) amounts to be awarded as legal fees and expenses to Class Counsel; (5) an amount to be awarded as Service Awards to the Class Representative and his predecessor; and (6) such other matters as the Court deems necessary and appropriate.

“Final Judgment” means the Court’s order and/or judgment approving the Settlement in final form.

“Full Notice” has the meaning described in Section IV.2, below.

“Net Settlement Fund” means the amount of the “Settlement Fund” less amounts paid or to be paid for the Attorney Fee and Expense Award, Plaintiff’s Service Award, and the Class’s contribution toward the Administrator’s Fee.

“Notice of Compliance” means the Administrator’s report summarizing the Administrator’s efforts in carrying out the Class Notice Plan in accordance with this Agreement, the results of those efforts, certification of compliance with the Plan, and specification of any objections received by the Administrator.

“Person” means any individual or entity.

“Plaintiff’s Service Award” has the meaning set forth in Section III.C.

“Preliminary Approval Order” means the order described in Section V.1.

“Properties” means the apartment complexes known as: One Webster Apartments, located at 1 Webster Avenue, Chelsea, MA; Residences at Tewksbury Commons, 7 Archstone Avenue, Tewksbury, MA; The Residences at Stevens Pond, located at 1 Founders Way, Saugus, MA; Essex Apartment Homes, 1 Avalon Drive, Peabody, MA; and The Charles Bellingham, 151 N. Main Street, Bellingham, MA.

“Released Claims” means, as to Defendants, the Claims and all other claims and causes of action based on or arising from Defendants’ alleged failure to mail to Class Members on the commencement dates of their tenancies the initial water submeter readings for Class Members’ apartments. For the avoidance of doubt, this includes but is not limited to Counts II and III in the Complaint.

“Released Persons” means, as to Defendants, Defendants and their current and former officers, employees, agents, attorneys, shareholders, parent corporations, subsidiaries, affiliates, predecessors, successors, and assigns, including individuals and entities.

“Released Persons” means, as to Plaintiff, Plaintiff and Class Members as defined herein.

“Settlement” means the terms set forth in this Settlement Agreement.

“Settlement Benefits” means the benefits set forth in Section III.

“Settlement Fund” has the meaning set forth in Section III.A.

“Void Date” has the meaning set forth in Section VII.

Section II **Background**

2.1 Plaintiff asserts in the Action that Defendants violated G.L. c. 186, § 22, the Massachusetts water and sewer submetering statute, by failing to mail to Class Members on the commencement dates of their tenancies the readings of their apartment water submeters as of said dates.

2.2 Defendants dispute the Claims, deny any violation of law and any other wrongdoing, and assert that no relief is warranted.

2.3 Class Counsel conducted an investigation and evaluation of the facts and law related to the Claims, prepared and filed a complaint and amended complaints asserting the Claim, conducted extensive discovery, and negotiated this proposed Settlement on behalf of Plaintiff and Class Members.

2.4 The Parties wish to resolve the Claims as well as all other claims and causes of action related to or arising out of the Claims.

2.5 Counsel for the Parties engaged in extensive arm's length negotiations prior to entering into this Settlement Agreement.

2.6 The Parties believe that the Settlement, including the Class Notice Plan, is fair, reasonable and adequate, and agree to settle the Action pursuant to this Settlement Agreement after considering the substantial benefits to Class Members and the attendant risks, uncertainties, and delay inherent in continued litigation.

Section III **Settlement Terms**

In consideration of the benefits, agreements, representations, and covenants contained herein, which are hereby acknowledged as constituting good and valuable consideration, the Parties stipulate and agree that the Action will be settled on the following terms and conditions, subject to the Court's approval:

A. Settlement Benefits to Class Members and Injunctive Relief

3.1 Within fifteen (15) days of the Effective Date, Defendant will establish the Settlement Fund by depositing the sum of \$300,000 (three hundred thousand dollars) with the Administrator, which amount is inclusive of all damages, benefits, legal fees, costs, and service awards under the Settlement, as well as the costs of notice and administration except as provided below.

3.2 Defendants have produced documents to Plaintiff, entitled Occupancy Lists. These documents identify the tenant and co-tenants for each tenancy, the commencement date of each tenancy, and the amount of the initial submeter water/sewer bill issued for such tenancy. Based on these documents, there are a total of 5,887 Class Members. Defendants have attested to the accuracy of these documents, and it is understood and acknowledged that Plaintiff has relied on the accuracy of these documents in deciding to enter into this Agreement. Plaintiff retains the right to terminate and/or rescind the Agreement and this Settlement should it be determined that the documents contain any materially inaccurate, misleading, or incomplete information.

3.3 Plaintiff acknowledges that he, like other Class Members, was a tenant in an apartment occupied by multiple adult tenants, each of whom were listed as tenants and signed the leases for their apartments and are Class Members for purposes of this Settlement. To the extent that Class Members assert entitlement to any portion of any amounts paid under this Settlement to any co-tenant, it shall be the Class Members' and their co-tenants' responsibility to address such disputes. Defendants shall not be responsible for any failure by any Class Member to respond to or satisfy claims that other Class Members may assert as to amounts distributed to their co-tenants.

3.4 The Settlement Fund shall be disbursed as follows:

(a) The Attorney Fee and Expense Award and the Plaintiff's Service Award, as set forth in Sections III.B and C, shall be paid from the Settlement Fund.

(b) The Administrator's Fee shall be paid from the Settlement Fund, except as set forth in Section III.D.

(c) After payment of the amounts set forth in (a) and (b), above, payments will be distributed to Class Members who have not properly excluded themselves from the Settlement as follows: (i) for each tenancy where \$25.00 or less (but at least \$0.01) was paid toward the first submetered water/sewer bill, the sum of \$25.00 will be distributed in full to the tenant (if only one tenant), or if more than one tenant then pro rata to all co-tenants; and (ii) for each tenancy where more than \$25.00 was paid toward the first submetered water/sewer bill, the actual amount paid will be distributed to the tenant (if only one tenant), or if more than one tenant then pro rata to all co-tenants. The total amount ultimately received by each Class Member in the latter group may increase due to the re-distribution of benefit checks, if any, as set forth in section 3.4(d), below.

(d) Benefit checks to Class Members that are returned as undeliverable or that are not negotiated in a timely fashion, as set forth in Section VII, shall be re-distributed pro rata to those Class Members described in sub-section (c)(ii), above, to whom payments were effectively made. In addition, i at the time of re-distribution it appears that the total amount allocated for distribution to said group would not exhaust the Settlement Fund, then the amounts distributed to such Class Members will be increased pro rata accordingly, the goal being to fully distribute the Settlement Fund.

3.5 Defendants represent and warrant that at all of the Properties, they have instituted the practice of reading apartment water submeters on the commencement dates of all new tenancies and mailing or otherwise delivering to new tenants said submeter readings on the commencement dates of said tenancies. Defendants further represent and warrant that they will hereafter maintain said practice at all Properties, barring any change(s) in Massachusetts law with respect to said requirements.

B. Fees and Expenses of Class Counsel

3.6 Not later than ten (10) days prior to the Final Approval Hearing, Class Counsel may apply to the Court for an award of legal fees and expenses in an amount not to exceed 30% of the Settlement Fund (the "Attorney Fee and Expense Award"). Defendants agree that said amount is reasonable and shall not oppose, object to, or appeal any ruling made on Class Counsel's application. All amounts of legal fees and expenses approved by the Court will be paid from the Settlement Fund, as set forth in Section III.A.1.

C. Service Awards

3.7 Not later than ten (10) days prior to the Final Approval Hearing, the Class Representative Massimiliano Perrault and the former putative Class Representative, Emily Anderson, may each apply to the Court for a Service Award in an amount not to exceed \$5,000 (the "Plaintiff's Service Award"). Defendants agree that said amounts are reasonable and shall not

oppose, object to, or appeal any ruling made on said application. Any Plaintiff's Service Awards approved by the Court shall be paid from the Settlement Fund, as set forth in Section III.A.2.

D. Fees and Costs of Notice and Settlement Administration

3.8 The Administrator's Fee shall be paid as follows: Defendants shall pay one-half (50%) of the Administrator's Fee, said contribution not to exceed \$5,000, separate and apart from the Settlement Fund. The remainder of the Administrator's Fee shall be paid by the Settlement Fund, as set forth in Section II. In no event shall Plaintiff, Class Counsel, or any individual Class Member be liable or responsible for any costs or expenses of Class Notice or Class Administration.

E. Effective Date

3.9 The Effective Date of the Settlement is thirty-one (31) days after the Court's entry of a Final Judgment approving the Settlement or, if a timely appeal is taken, thirty-one (31) days after disposition of such appeal if the Final Judgment is affirmed with no further appeals or re-hearings provided by law. If the Settlement does not become effective, it shall be deemed null and void, shall be without prejudice to the rights of the Parties, and shall not be used in subsequent proceedings in the Action or in other litigation or in another forum.

Section IV
Class Notice Plan

4.1 Email Notice. Within fourteen (14) days of entry of the Preliminary Approval Order, Defendants will provide the Class List to the Administrator and Class Counsel, consisting of a database in an electronically searchable and readable format containing the following tenant information:

- (a) full name of each Class Member;
- (b) to the extent available in Defendants' records, each Class Member's last-known mailing address (which for current tenants will be their address at the Property), last-known email address, last-known telephone number(s); and
- (c) the projected amount of each Class Member's distribution.

4.2 All Class Member information provided to the Administrator shall be kept in strict confidence and will be used solely to effectuate the provisions of this Agreement.

4.3 Within fourteen (14) days of receipt of the above-described database, the Administrator shall send the text of the summary notice in substantially the form appended hereto as Exhibit A to each Class Member's last-known email address. The summary notice will: (i) briefly describe the Action; (ii) state that the addressee is a Class Member entitled to receive benefits under the Settlement; and (iii) state the URL for the settlement website, where the full notice and other case documents may be found and reviewed.

4.4 For each email notice returned to the Administrator as undeliverable, within ten (10) days the Administrator will mail a postcard summary notice to the Class Member's last-

known mailing address. Prior to mailing postcard notice, the Administrator will check the Class Member's mailing address provided by Defendant against the United States Postal Service National Change of Address Database and update addresses accordingly. If a postcard notice is returned without a forwarding address, within ten (10) days of receipt the Administrator shall perform a skip-trace search to locate any updated address for such Class Member and remail the postcard notice to said address.

4.5 Full Notice. The Full Notice shall: (i) explain the nature of the case, the Claims, the Class, and the rationale for Settlement; (ii) explain the relief to be provided to Class Members; (iii) describe the procedures and time frames relative to Class Members receiving payment from the Settlement Fund; (iv) identify the Settlement website and Administrator; (v) identify Class Counsel and the Class Representative; (vi) explain how to contact the Administrator and Class Counsel; (vii) explain the rights of Class Members to object to the Settlement, enter an appearance through an attorney, and/or request exclusion; (viii) explain how Class Members may exclude themselves from the Settlement; (ix) indicate the time and place of the Final Hearing; and (x) state that no payments will be made until and unless the Settlement receives final approval and the Effective Date occurs. Said Notice shall be substantially in the form attached hereto as Exhibit B.

4.6 Settlement Website. No later than the date of emailing summary notices, the Administrator will establish and host a settlement website, the content and format of which shall be approved by the Parties. At a minimum, the website will contain the following: (a) copies of the Complaint, Settlement Agreement, Preliminary Approval Order, and Full Notice; (b) a summary of the Settlement terms; (c) a list of "frequently asked questions;" and (d) a clear and conspicuous statement advising Class Members to update their contact information with the Administrator. The Settlement website shall not include a live chat feature. The Settlement website shall continue to be hosted and remain accessible for a minimum of thirty (30) days following the expiration date of the last settlement check(s) mailed to Class Members.

4.7 Class Notice Reports Beginning two (2) weeks after the initial mailing of Class Notice and every two (2) weeks thereafter, the Administrator will provide the Parties with a report stating: (i) the number of any returned Notices; (ii) the status of address updates and Notice re-mailings; and (iii) the number and nature of any objections received.

4.8 Communication/Cooperation with Administrator. Class Counsel and Defendants' Counsel may each communicate with the Administrator as needed to monitor the implementation of the Class Notice Plan and as may be necessary or helpful to effectuate the Administrator's tasks. Counsel for both Parties shall cooperate in good faith to ensure that the Administrator is performing its required actions and shall each be entitled to all reports and accounts of the Administrator.

4.9 The Parties are jointly responsible for addressing and attempting in good faith to resolve all disputes that may arise during the Settlement notice and administration process. In the event that the Parties cannot resolve a dispute, they will request a teleconference with the Court to discuss the dispute. After such teleconference, the Court will determine and resolve the dispute, and such decision of the Court shall be final and binding. This provision is not intended to bar either Party from bringing a motion to enforce this Settlement Agreement or initiating an action for breach of this Settlement Agreement.

Section V
Procedures for Preliminary Settlement Approval

Upon full execution of this Settlement Agreement, the Parties shall promptly file a joint motion requesting that the Court enter a Preliminary Approval Order.

5.1 Preliminary Approval Order. The Preliminary Approval Order will substantially provide as follows:

(a) Certify the Class conditionally in accordance with Rule 23(b)(2) of the Federal Rules of Civil Procedure;

(b) Preliminarily appoint Plaintiff as Class Representative and Plaintiff's attorneys as Class Counsel;

(c) Find on a preliminary basis that the Settlement is fair, adequate, and reasonable and preliminarily approve same;

(d) Preliminarily enjoin the prosecution of the Claims by absent Class Members;

(e) Approve the Class Notice Plan and the contents of Notice as adequate and consistent with the due process rights and other rights of Class Members;

(f) State that Class Members may object to the Settlement;

(g) Direct that Defendants provide the Class List to Class Counsel within fourteen (14) days of the date of entry of the Preliminary Approval Order.

(h) Set a date, time, and place for the Final Approval Hearing consistent with the timelines in this Settlement Agreement.

The Parties submit that the form of preliminary approval order appended hereto as Exhibit C meets the above criteria.

5.2 Resolution of issues/concerns. The Parties agree to make prompt, reasonable, and good faith efforts to address any concerns raised by the Court with respect to any provision of the Settlement Agreement and/or any language of the Preliminary Approval Order and, if such efforts are successful, to file such amended and/or supplemental documents as may be necessary to satisfy the Court's concern(s).

Section VI
Objections

6.1 Any Class Member desiring to object to the fairness, reasonableness, or adequacy of this Settlement, including but not limited to the benefits to be paid to Class Members, the provisions for Class Counsel fees and expenses, and the provisions for Service Awards to Plaintiff and the predecessor Plaintiff, must serve on Class Counsel no later than thirty (30) days prior to

the Final Approval Hearing a written statement of the objection. Class Members may object either on their own or through an attorney hired at their own expense. Each objection must state the Class Member's full name, current address, telephone number, and email address, must be signed by the Class Member, and must contain the name, address, and telephone number of any attorney representing the objector. Each objection must also state the specific reason(s) for objecting, citing any legal support the Class Member wishes to bring to the Court's attention and proffering any evidence the Class Member wishes to introduce in support of the objection. In order to appear and be heard at the Final Approval Hearing, any attorney representing an objector must file a notice of appearance with the Court and serve a copy of same on counsel for all Parties.

6.2 Any Class Member who fails to comply with the foregoing provisions for objecting to the Settlement may be deemed to have waived and forfeited any and all rights he or she may have to appear and/or object, and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders, and judgments in the Action.

6.3 Promptly upon receipt of any objection, Class Counsel will provide a copy of same to Defendants' Counsel.

6.4 No later than five (5) days prior to the Final Approval Hearing, Class Counsel will file a declaration with the Court setting forth any unresolved objections received and attaching copies thereof.

Section VII

Class Member Exclusion Rights

7.1 Any class member may choose to be excluded from this settlement agreement and from the class. This right may be exercised by notifying Class Counsel no later than thirty (30) days prior to the Final Approval Hearing by email and first-class mail. Any class member exercising this right shall not be bound by the terms of this settlement agreement nor entitled to any of its benefits.

Section VIII

Procedures for Payment of Settlement Benefits

8.1 Within seven (7) business days following the Effective Date, the Administrator shall establish a Settlement Fund Account at Citizens Bank, a bank that will cash settlement checks without charging a check cashing fee.

8.2 Within fifteen (15) days of establishment of the Settlement Fund, as set forth in Section III.A above, the Administrator shall distribute the Settlement Fund in accordance with Section III. All uncashed checks issued from the Settlement Fund shall be void after one hundred twenty (120) days from the date of issuance (the "First Void Date"), regardless of whether the check was returned as undeliverable with or without a forwarding address.

8.3 No later than fifteen (15) days after the First Void Date, any funds intended for Class Members that remain in the Settlement Fund because checks could not be delivered or were not cashed by the First Void Date shall be re-distributed on a *pro rata* basis to certain Class

Members, as specified in Section 3.4(d), above. All uncashed re-distributed checks shall be void sixty (60) days from the date of issuance (the “Second Void Date”).

8.4 No later than fifteen (15) days after the Second Void Date, any funds intended for Class Members that remain in the Settlement Fund because checks could not be delivered or were not cashed or deposited shall be returned to Defendants.

8.5 No Party to this Agreement has made any representations to any other Party or to Class Members as to the tax consequences of any aspect of this Settlement.

8.6 Neither Class Counsel, Defendants’ Counsel, nor the Court will entertain or address disputes between Class Members (whether co-tenants or otherwise) as to the allocation of settlement payments between them.

8.7 Within thirty (30) days after the Second Void Date, the Administrator shall provide Class Counsel and Defendant’s Counsel with a final report of the administration of the Settlement.

Section IX **Effect of Settlement**

9.1 Release of Claims. Upon the Effective Date, Plaintiff and all Class Members shall be deemed to have released and discharged Defendants and Defendants’ Released Persons from the Released Claims, including but not limited to any claims, demands, and liability whatsoever for damages and/or declaratory, injunctive, equitable, or other relief arising from or related to said Released Claims, whether known or unknown, foreseen or unforeseen, through September 6, 2024. The releases given in this section shall be binding upon all Class Members, even if they have not received a payment under this Settlement, including any Class Members who have, may have, or may claim the right to seek payment of some or all of any amount paid to a co-tenant under the Settlement. The releases given to Defendants’ Released Persons are without prejudice to the rights of any Class Member to assert any claims that they may have against any other Class Member with respect to any amounts that may have been received by such Class Member out of any payments made to or on behalf of the Class under this Settlement.

9.2 Upon the Effective Date, Defendants shall be deemed to have released and discharged Plaintiff and Plaintiff’s Released Persons from the Released Claims, including but not limited to any claims, demands, and liability whatsoever for damages and/or declaratory, injunctive, equitable, or other relief arising from or related to said Released Claim, whether known or unknown, foreseen or unforeseen, through September 6, 2024.

9.3 Upon the Effective Date, Plaintiff and Defendants shall be deemed to have released and discharged each other and the other’s Released Persons from any and all claims, demands, and liability whatsoever for damages and/or declaratory, injunctive, equitable or other relief arising from or related to Plaintiff’s tenancy at Tewksbury Commons, except as otherwise provided in the Settlement Agreement in the separate case captioned *Emily Anderson et al. v. DSF IV Tewksbury Owner LLC, d/b/a The Residences at Tewksbury Commons*, Case No. 22H77CV000105 (Northeast Housing Ct.).

9.4 With respect to the Released Claims, the Parties and all Class Members agree that they are expressly waiving and relinquishing to the fullest extent permitted by law, subject to:

(a) The provisions rights and benefits conferred by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party;

and

(b) Any law of any state of the United States, federal law or principle of common law which is similar, comparable or equivalent to Section 1542 of the California Civil Code.

9.5 Covenant Not to Sue or Raise Defenses. Upon the Effective Date, Plaintiff and all Class Members, acting individually or together, shall not institute, maintain, or prosecute any suit, action, or proceeding of any kind or in any forum whatsoever asserting the Released Claims.

9.6 Failure to Receive Class Notice. The failure of any Class Member to receive a Class Notice or any other document described in this Settlement Agreement shall not be a basis for invalidating the Settlement, the Settlement Agreement, or any order issued pursuant thereto.

Section X

Final Approval and Entry of Judgment

10.1 No later than five (5) days prior to the date established for the Final Approval hearing, the parties shall file a joint motion for Final Approval of the Settlement. At the Final Approval Hearing the Court shall: (i) determine whether to grant final approval to this Settlement Agreement; (ii) consider any timely and proper objections to this Settlement and all responses to such objections; (iii) rule on Class Counsel's application for the Attorney Fee and Expense Award; and (iv) rule on the application for Plaintiff's Service Awards. The Parties will submit with said motion a proposed Final Approval Order and Final Judgment agreed to by the parties in the form appended hereto as Exhibit D. Said Order, shall, among other things:

- (a) Determine that the Settlement is fair, adequate and reasonable;
- (b) Finally certify the Settlement Class for settlement purposes only;
- (c) Make final the appointment of Plaintiff as Class Representative and his attorneys as Class Counsel;
- (d) Determine that Class Notice was provided in accordance with the Settlement Agreement and the Preliminary Approval Order, and satisfies Due Process;

- (e) Approve an award of attorneys' fees and costs for Class Counsel;
- (f) Approve a service award to Plaintiff and the predecessor Plaintiff as deemed appropriate; and
- (g) Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement and all Class Members to administer, supervise, construe and enforce this Agreement in accordance with its terms.

10.2 No later than ten (10) days prior to the date established for the Final Approval Hearing, the Class Administrator shall file an affidavit with the Court attesting to its compliance with the Class Notice Plan and shall include the number of Class Notices which could not be delivered to Class Members after exhaustion of all procedures specified herein.

10.3 Resolution of issues/concerns. The Parties agree to make prompt, reasonable, and good faith efforts to address any concerns raised by the Court with respect to any provision of the proposed Final Judgment and to file such amended and/or supplemental documents as may be necessary to satisfy the Court's concern(s).

Section XI
Appeals

11.1 If the Final Approval Order and Judgment is appealed, the Parties shall each bear their own attorneys' fees, costs, and expenses in responding to such appeal. Recoupment of such fees, costs, and expenses may be sought against the appealing party from the appropriate court as allowed by law.

Section XII
Termination of the Settlement

12.1 Either Plaintiff or Defendants may terminate the Settlement and this Settlement Agreement by providing written notice of their election to do so ("Termination Notice") to the other Party, through their counsel, no later than fourteen (14) days after the occurrence of any of the following:

- (a) The refusal of the Court to enter the Preliminary Approval Order in any material respect following prompt, reasonable, and good faith efforts as described in Section V, above;
- (b) The refusal of the Court to enter the Proposed Final Judgment in any material respect following prompt, reasonable, and good faith efforts as described in Section IX, above; or
- (c) The modification or reversal of the Court-Approved Final Order and Judgment in any material respect by any appellate court of competent jurisdiction (other than any adjustment to the Attorney Fee and Expense Award that might be ordered by an appellate court).

12.2 In the event the Settlement is terminated pursuant to this paragraph, the Parties will revert to their respective status in the Action immediately prior to the execution of the Settlement Agreement and the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered.

Section XIII **Additional Terms**

13.1 Strict Performance; No Waiver. The failure of any Party to insist upon the strict performance of any provision of this Settlement Agreement shall not be deemed a waiver of any other provision of this Settlement Agreement or the strict performance thereof.

13.2 Best Efforts. The Parties shall cooperate fully with each other and shall use their best efforts to obtain Court approval of this Settlement Agreement and to implement the Settlement.

13.3 Arm's Length Transaction; No Reliance. The Parties negotiated the terms and conditions of this Settlement Agreement at arm's length. All terms and conditions are material to this Settlement Agreement and have been relied upon by the Parties. The Parties, with the advice of counsel, relied wholly upon their independent investigation, judgment, belief, and knowledge in making this Settlement Agreement and did not rely on any statement or representation made by any other Party.

13.4 Joint Participation. Each Party participated jointly in drafting this Settlement Agreement. Therefore, the terms of this Settlement Agreement shall not be construed against any Party by virtue of draftsmanship.

13.5 Signatures/Counterparts. This Settlement Agreement may be executed electronically in counterparts that, together, form one instrument for all purposes. Photocopies, facsimiles, or digital scans of execution copies shall be treated as originals.

13.6 Beneficiaries. This Settlement Agreement shall inure to the benefit of the Parties and the Released Persons. This Settlement Agreement may be enforced and relied upon by any Released Person without the aid or participation of any Party.

13.7 Further Acts Each of the Parties, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Settlement Agreement.

13.8 Captions and Headings. The captions and headings of the sections of this Settlement Agreement are for convenience only and shall have no effect upon the construction or interpretation of any part of this Settlement Agreement.

13.9 Governing Law. This Settlement Agreement shall be governed by the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles.

13.10 Notice to Counsel. Notices to counsel shall be made by e-mail and first-class mail as follows:

- (a) If to Representative Plaintiff or Class Members, to Class Counsel.
- (b) If to Defendants, to Defendants' Counsel.

13.11 Entire Agreement; Waiver, Modification, Amendment. No representations, warranties, or inducements have been made to any of the Parties to this Settlement Agreement, other than those representations, warranties, and covenants expressly set forth herein. This Settlement Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior negotiations and understandings between the Parties shall be deemed merged into this Settlement Agreement. No waiver, modification, or amendment of the terms of this Settlement Agreement, other than extensions of time agreed by the Parties, shall be valid or binding unless in writing, signed by all Parties, and, as necessary, approved by the Court. Unless the Court orders that such a waiver, modification, or amendment of the terms of this Settlement Agreement materially affects the rights of the Class Members and, therefore, orders additional notice to the Class Members, no subsequent or additional notice to the Class Members shall be required.

13.12 Attorneys Consulted. The Parties consulted with their respective attorneys concerning this Settlement Agreement and understand all of its provisions.

13.13 Modification/Amendment. The Parties will cooperate to amend this Settlement Agreement as suggested or urged by the Court in order to obtain preliminary or final approval of the Settlement, as more particularly described herein. However, neither Party is obligated or bound to agree to any material amendment of any material term of this Agreement. No modification or amendment of this Agreement shall be valid or enforceable unless memorialized in a writing signed by the Parties and the Parties' Counsel.

11.14 Construction of Settlement Agreement. Unless otherwise indicated, the "Definitions" and other defined terms in this Agreement include the plural as well as the singular. Reference to any law, rule, or regulation includes any amendment, modification, or successor thereto. The words "include," "includes," and "including" are not limiting and shall be deemed to be followed by the words "without limitation" whether or not followed by such words or words of like import. The terms "hereof," "herein," "hereunder," and comparable terms refer to this entire Settlement Agreement and not to any particular article, paragraph, section, or other subsection or subdivision thereof. The words "and" and "or" shall be construed conjunctively and disjunctively as necessary to make a provision inclusive rather than exclusive. The words "and" and "all" shall be construed to include "each" and "each and every."

ONLY SIGNATURES TO FOLLOW