UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

STEPHEN M. KENNEDY and ALICIA J. CARSON, on behalf of themselves and all others similarly situated, *Plaintiffs*, v. RYAN D. McCARTHY, Acting Secretary of the Army, *Defendant*.	No. 3:16-cv-2010-CSH **STIPULATION AND AGREEMENT OF SETTLEMENT**

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the "Stipulation" or "Settlement Agreement"), dated as of November 17, 2020, is made and entered into by and between: (i) Ryan D. McCarthy, in his official capacity as Secretary of the U.S. Army (the "Army") ("Defendant"); and (ii) Stephen M. Kennedy and Alicia J. Carson, individually and on behalf of themselves and a class of persons similarly situated (the "Plaintiffs"). Plaintiffs and Defendant shall be referred to in this Settlement Agreement individually as a "Party" and collectively as the "Parties."

I. RECITALS

This Settlement Agreement is made and entered into with reference to the following facts:

A. On December 8, 2016, Plaintiff Kennedy commenced this action against Defendant to obtain judicial review of the Army Discharge Review Board's ("ADRB") denial of his discharge upgrade application (the "Initial Complaint"). (ECF No. 1.)

B. Defendant moved to remand or dismiss the Initial Complaint on March 27, 2017. (ECF No. 10.)

C. On April 17, 2017, Plaintiff Kennedy and Plaintiff Carson filed an Amended Complaint seeking to litigate this action on behalf of a class. (ECF No. 11.) The Amended Complaint alleged, among other things, that since start of military operations in Iraq and Afghanistan, the Army discharged thousands of men and women with Other Than Honorable ("OTH") or General (Under Honorable Conditions) ("GEN") statuses due to misconduct attributable to post-traumatic stress disorder ("PTSD"), traumatic brain injury ("TBI"), and related mental health conditions. Specifically, the Amended Complaint alleged that upon their return from Iraq and Afghanistan, veterans with service-connected PTSD, TBI, and other related mental health conditions received OTH and GEN discharges and were systematically denied status upgrades by the ADRB. The Amended Complaint further alleged that these veterans were denied status upgrades even as scientific and medical understanding of PTSD and TBI advanced and explained how these conditions can affect soldiers' behavior. Plaintiffs further alleged that, despite the 1944 statute creating the ADRB, longstanding regulations, and binding Department of Defense guidance that clarified the ADRB's obligation to give liberal consideration to the applications of former soldiers who incurred these mental health conditions, the ADRB systematically failed to apply appropriate decisional standards or provide Class members with due consideration, in violation of the Administrative Procedure Act ("APA") and the Due Process Clause of the Fifth Amendment.

D. On June 27, 2017, Plaintiffs filed a motion for class certification. (ECF No. 15.) Defendant opposed Plaintiffs' motion.

E. On June 30, 2017, Defendant filed a motion to dismiss the Amended Complaint or, in the alternative, remand Plaintiff Kennedy's and Plaintiff Carson's ADRB applications to the Army for further consideration. (ECF No. 16.) Plaintiffs opposed Defendant's motion.

F. On September 18, 2017, the Court denied Defendant's motion to dismiss without prejudice, granted Defendant's motion for voluntary remand, and stayed this action pending reconsideration of Plaintiff Kennedy's and Plaintiff Carson's ADRB applications. (ECF No. 29.)

G. On October 18, 2017, before the ADRB could reconsider Plaintiff Carson's application, the Adjutant General, Major General Thaddeus Martin, exercised his authority to upgrade Plaintiff Carson's characterization of service to Honorable.

H. On March 29, 2018, the ADRB upgraded Mr. Kennedy's discharge characterization to Honorable.

I. On June 4, 2018, Defendant filed a second motion to dismiss the Amended Complaint. (ECF No. 50.) Plaintiffs opposed Defendant's motion.

J. Also on June 4, 2018, Plaintiffs filed a second motion for class certification. (ECF No. 51.) Defendant opposed Plaintiffs' motion.

K. On December 21, 2018, the Court granted Plaintiffs' motion for class certification pursuant to Federal Rule of Civil Procedure 23(b)(2). (ECF No. 74.) The Court defined the class as "[a]ll Army, Army Reserve, and Army National Guard veterans of the Iraq and Afghanistan era—the period between October 7, 2001 to present—who: (a) were discharged with a less-than-Honorable service characterization (this includes General and Other than Honorable discharges from the Army, Army Reserve, and Army National Guard, but not Bad Conduct or Dishonorable discharges); (b) have not received discharge upgrades to Honorable; and (c) have diagnoses of PTSD or PTSD-related conditions or record documenting one or more

symptoms of PTSD or PTSD-related conditions at the time of discharge attributable to their military service under the Hagel Memo standards of liberal and special consideration."

L. The Court also named Plaintiff Kennedy and Plaintiff Carson as class representatives, and the Jerome L. Frank Legal Services Clinic of Yale Law School and Jenner & Block LLP as Class Counsel.

M. On January 9, 2019, the Court denied Defendant's motion to dismiss. (ECF No. 75.)

N. On March 6, 2019, Plaintiffs filed a Federal Rule of Civil Procedure 26(f) Report, which contained a proposed case management plan. (ECF No. 76.) The same day, Defendant filed a motion for a status conference, in which Defendant took the position that discovery was not warranted in this case. (ECF No. 77.)

O. On April 5, 2019, the Court ordered Defendant to produce to Plaintiffs "the full administrative records relevant to the claims of lead plaintiffs in this action in addition to any relevant policy memoranda, regulations and other documents, to the extent that these documents might provide background information." The Court also determined that it would "consider whether discovery is necessary thereafter." (ECF No. 80.) Defendant filed the administrative record on May 31, 2019. (ECF Nos. 82–85.)

P. On June 18, 2019, Plaintiffs moved for additional discovery. (ECF No. 97.) Defendant opposed Plaintiffs' motion.

Q. On September 6, 2019, the Court ruled that it would allow Plaintiffs to conduct discovery outside of the administrative record and referred the case Magistrate Judge Robert M. Spector to supervise discovery. (ECF No. 101.)

R. On February 19, 2020, Defendant and Plaintiffs participated in a settlement conference before Judge Spector. (ECF No. 142.) Over the subsequent months, the Parties engaged in protracted and extensive settlement negotiations supervised by Judge Spector. (*See* ECF Nos. 145, 149, 154, 156, 158, 189, 162, 165, 167, 169, 176, 177, 178, 180, 181.)

S. On October 7, 2020, after extensive arm's-length negotiations and exchange of multiple proposals, Plaintiffs and Defendants reached an agreement in principle to settle the Litigation.

T. Based on Class Counsel's investigation and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiffs and Class Counsel agreed to settle the Litigation pursuant to the provisions of this Stipulation after considering, among other things: (1) the substantial benefits available to the Class under the terms herein; (2) the attendant risks and uncertainty of litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; and (3) the desirability of consummating this Settlement Agreement to provide effective relief to the Class.

U. Defendant has denied and continues to deny each and all of the claims and contentions alleged by Plaintiffs. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in this Litigation.

V. Nonetheless, Defendant has concluded that further defense of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement. Defendant also has taken into account the uncertainty and risks inherent in any litigation.

Defendant, therefore, has determined that it is desirable and beneficial to it that the Litigation be settled in the manner and upon the terms and conditions set forth in the Settlement Agreement.

W. This Stipulation effectuates the resolution of disputed claims and is for settlement purposes only.

II. DEFINITIONS

As used in this Stipulation the following capitalized terms have the meanings specified below. Unless otherwise indicated, defined terms include the plural as well as the singular.

A. "Army Discharge Review Board" or "ADRB" means the U.S. Army board that reviews discharges of former soldiers on the basis of issues of propriety and equity. 10 U.S.C. § 1553; 32 C.F.R. § 581.2.

B. "Army Review Boards Agency" or "ARBA" means the U.S. Army agency that administers the ADRB.

C. "Applicant" means any individual that seeks a discharge review through submission of the Department of Defense Form 293 to the ADRB.

D. "Case Data" means any materials associated with an applicant's case file, whether submitted by the applicant or obtained or produced by the ADRB in the course of an adjudication, that were used in ARBA's effort to identify Special Cases.

E. "Class" or "Settlement Class" means members and former members of the Army, Army Reserve, and Army National Guard who served during the Iraq and Afghanistan era—the period between October 7, 2001 to the Effective Date of Settlement—who:

1. were discharged with a less-than Honorable service characterization (this includes GEN and OTH discharges from the Army, Army Reserve, and Army National Guard, but not Bad Conduct or Dishonorable discharges);

2. have not received discharge upgrades to Honorable; and

3. have diagnoses of PTSD or PTSD-related conditions or records documenting one or more symptoms of PTSD or PTSD-related conditions at the time of discharge attributable to their military service under the Hagel Memo standards of liberal and special consideration.

F. "Class Counsel" means, collectively, the Jerome L. Frank Legal Services Organization of Yale Law School and the law firm of Jenner & Block LLP.

G. "Class Notice" means the notice substantially in the form attached to this Settlement Agreement as Exhibit "A", to be provided to the Class as set forth in Section VI below.

H. "Court" means the United States District Court for the District of Connecticut.

I. "DD-293" means the Department of Defense Form 293, Application for the Review of Discharge or Dismissal from the Armed Forces of the United States.

J. "Defendant" means Ryan D. McCarthy, Secretary of the U.S. Army, in his official capacity.

K. "Effective Date of Settlement" means the date of the Final Approval Order.

L. "Fairness Hearing" means the hearing to be held by the Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to determine whether the settlement set forth in this Settlement Agreement should be approved.

M. "Final Approval Order" means the order by the Court, after notice and the holding of the Fairness Hearing, granting approval of this Settlement Agreement under Rule 23(a) of the Federal Rules of Civil Procedure, substantially in the form attached to this Settlement Agreement as Exhibit "B".

N. "GEN" means a character of service of General (Under Honorable Conditions).

O. "Group A Applicants" are defined below in Section IV.A.

P. "Group B Applicants" are defined below in Section IV.B.

Q. "Hagel Memo" means the memorandum issued by then-Secretary of Defense Chuck Hagel on September 3, 2014, directing all military record-correction boards to give "special consideration" to PTSD diagnoses by the U.S. Department of Veterans Affairs and "liberal consideration" to diagnoses of PTSD by civilian providers when adjudicating discharge upgrade applications submitted by veterans.

R. "Honorable" means a character of service of Honorable.

S. "Kurta Memo" means the memorandum issued by then-Acting Under Secretary of Defense for Personnel and Readiness A.M. Kurta on August 25, 2017, issuing additional guidance clarifying that "[l]iberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions."

T. "Kurta Factors" means the four questions provided in the Kurta Memo regarding when requests for discharge relief is appropriate in Special Cases. (Kurta Memo, att. at 1.)

U. "Litigation" means the lawsuit captioned Kennedy v. McCarthy, Case No. 16-CV-02010 (D. Conn.).

V. "Military Sexual Trauma" or "MST" means physical assault of a sexual nature, battery of a sexual nature, or sexual harassment that occurred during military service.

W. "Other Behavioral Health" or "OBH" means a behavioral health condition other than PTSD or TBI and unrelated to MST.

X. "Other Than Honorable" or "OTH" means a character of service of Other Than Honorable.

Y. "Person" means a natural person, individual, corporation, partnership, association, or any other type of legal entity.

Z. "Plaintiffs" means the class representatives Stephen M. Kennedy and Alicia J. Carson, on behalf of themselves and each of the Class members.

AA. "Preliminary Approval Order" means the "Order Preliminarily Approving Class Action Settlement, Conditionally Certifying the Settlement Class, Providing For Notice and Scheduling Order," substantially in the form of Exhibit "C" attached hereto, which, among other things, preliminarily approves this Stipulation and provides for notification to the Settlement Class and sets the schedule for the Fairness Hearing.

BB. "PTSD" means Post-Traumatic Stress Disorder.

CC. "Settled Claims" means all claims for relief that were brought on behalf of Class members based on the facts and circumstances alleged in the Amended Complaint (ECF No. 11).

DD. "Special Cases" means any application for a discharge upgrade or change in narrative reason for separation that includes a diagnosis or allegation of, or evidence or allegations of symptoms of, PTSD, TBI, MST, or OBH.

EE. "Stipulation and Agreement of Settlement" or "Stipulation" or "Settlement Agreement" means this agreement, including its attached exhibits (which are incorporated herein by reference), duly executed by Class Counsel and counsel for Defendant.

FF. "TBI" means Traumatic Brain Injury.

III. CERTIFICATION OF THE SETTLEMENT CLASS

The Parties agree that the Settlement Class shall be conditionally certified, in accordance with the terms of this Settlement Agreement, solely for purposes of effectuating the settlement embodied in this Settlement Agreement. The Settlement Class differs from the class certified by

the Court on December 21, 2018 only in that it sets the end date of the Class as the Effective Date of Settlement.

IV. SETTLEMENT RELIEF

A. Reconsideration of 2011-2020 Applications

1. The ADRB will automatically reconsider its decisions that meet all of the following three criteria: (a) Special Cases, (b) issued on or after April 17, 2011 until the Effective Date of Settlement, (c) whose grant state indicates the applicant did not receive the full relief they requested. The applicants who are the subject of these decisions are defined here as Group A Applicants.

2. To identify Group A Applicants, Defendant will conduct an electronic search of ADRB data to identify individuals whose record "grant state" indicates they did not receive the full relief that they requested, and whose Case Data raises PTSD, TBI, MST, or OBH. Defendant has already identified about 3,500 decisions for reconsideration through this search algorithm, and will reconsider those applications as well as others that it finds after completing its searches.

3. Defendant will send a notice, in the form of Exhibit "D", to all Group A Applicants at their last known address on file with ARBA. That notice, as laid out in Exhibit D, will state that the ADRB will reconsider each case without a need for further responses from the applicant; state that if the applicant wishes to supplement their application, they should submit supplemental evidence within 60 days of the notice; state that submitting medical evidence in support of the application benefits the applicant; and include information regarding available legal and medical services.

4. Defendant will bear the cost of sending a notice in the form of Exhibit D to Group A Applicants by mail and of posting said notice to its website. Defendant will mail the

notice to Group A Applicants within 120 days of the Effective Date of Settlement. Defendant will also publicly post the notice on ARBA's website https://arba.army.pentagon.mil/adrb-overview.html within 120 days of the Effective Date of Settlement.

5. The ADRB will make every effort to complete its reconsideration of Group A Applicants in a timely manner, and agrees to provide a report every six months of the number of Group A cases reconsidered and decided.

6. Defendant agrees to provide Plaintiffs with the names and last-known addresses (according to ARBA data) for applicants who (a) are not identified as Group A Applicants by the ADRB; and (b) whose cases were either denied or only granted partial relief by the ADRB between April 17, 2011 and September 4, 2014. These names and addresses will be subject to the Protective Order in effect for this Litigation, and will be provided to Plaintiffs within 90 days of the Effective Date of Settlement. Plaintiffs will send a notice, in the form of Exhibit "E", to individuals on this list of names and addresses, informing them of their right to reapply and referring to the Class Notice. Plaintiffs will bear the cost of mailing notice in the form of Exhibit E. The notices sent by Plaintiffs will not include the name of any of Plaintiffs' counsel, including on any mailing information (*e.g.*, return address, non-profit mailing indicia).

B. Notice of Reapplication Rights for 2001-2011 Applicants

1. Defendant agrees to facilitate mailing notices to the last known addresses of ADRB applicants for whom the ADRB's decisions meet all of the following three criteria: (a) are Special Cases, (b) were issued between October 7, 2001 and April 16, 2011, and (c) whose grant state indicates they did not receive the full relief they requested. The applicants who are the subject of these decisions are defined here as Group B Applicants.

2. To identify Group B Applicants, the ADRB will conduct an electronic search of ADRB data to identify individuals whose record "grant state" indicates they did not receive the full relief that they requested, and whose Case Data raises PTSD, TBI, MST, or OBH. For most cases in the 2001–2004 timeframe, the only grant states recorded were "grant" or "deny." For these cases, "deny" will be used as the grant state indicating the applicant did not receive the full relief they requested. Defendant will provide the names of Group B Applicants from October 7, 2001 through April 16, 2011 within 90 days of the Effective Date of Settlement.

3. Defendant will provide the names and last known addresses (according to ARBA data) of Group B Applicants to Plaintiffs. Plaintiffs will then mail a notice in the form of Exhibit "F" to Group B Applicants. That notice, as laid out in Exhibit F, will state that the applicant may reapply to the ADRB, or to the ABCMR if the applicant's discharge date is beyond the ADRB 15-year statute of limitations, 10 U.S.C. § 1553, for reconsideration of their case; state that should the applicant wish to supplement their application, they will have the opportunity to do so; state that submitting medical evidence in support of the application benefits the applicant; include information regarding available legal and medical services; and refer to the Class Notice. Plaintiffs will bear the cost of mailing this notice to Group B Applicants, paid out of the attorneys' fees and costs set forth in V(A) below. The notices sent by Plaintiffs will not include the name of any of Plaintiffs' counsel, including on any mailing information (e.g., return address, non-profit mailing indicia).

C. Online Notice of Reapplication Rights for 2001-2011 Applicants and Reconsideration for 2011-2020 Applicants

1. Defendant will post notice of reapplication rights for 2001-2011 Applicants and reconsideration for 2011-2020 Applicants, in the form of Exhibit "G", on its

website, including at https://arba.army.pentagon.mil/adrb-overview.html, https://arba.army.pentagon.mil/adrb-faq.html, within 45 days of the Effective Date of Settlement.

D. Revised Decisional Documents & Procedures

1. The Army agrees to adopt the following language and procedure, to be incorporated as quoted below into the Military Review Boards Standard Operating Procedures:

> If the Board concludes that there is insufficient evidence per the four factors in paragraph two (2) of the Kurta Memo ("Kurta Factors"), including that the evidence in mitigation does not outweigh the severity of misconduct, so as to grant a full upgrade to Honorable in any Special Case, the Board must, in the decision document sent to the veteran (a) respond to each of the applicant's contentions; (b) describe the evidence on which it relied on consideration of each of the applicable Kurta Factors; (c) explain why it decided against the veteran with respect to each applicable Kurta Factor; (d) ensure it draws a rational connection between facts found and conclusions drawn; and, (e) distinguish any prior Board decisions cited by the applicant in accordance with applicable law and regulations.

2. The Army will revise processing language in the ADRB's decisional document template to include the Kurta Factors, consistent with the above modifications to the Military Review Boards Standard Operating Procedures.

3. The Army will consider (a) issuing a guidance memo describing the revised Standard Operating Procedure requirements stated above and/or (b) revising the format of the ADRB voting sheet to address the same. The Army will inform Class Counsel regarding any final determination made to issue or not issue any guidance memo or to revise or not revise any ADRB voting sheet after consideration made in accordance with this paragraph.

E. Universal Option for Telephonic Personal Appearance Boards

1. Defendant will complete implementation of a Telephonic Personal Appearance Board Program for the ADRB within 18 months of the Final Approval Order, available to all applicants who request a Personal Appearance hearing. Applicants will be

invited to opt-in to a telephonic ADRB hearing in the letter acknowledging receipt of their DD-293 application. Applicants will have an opportunity to participate in telephonic hearings from their personal residences, or other location of their own choice.

2. At each of six, twelve, and eighteen months after the Effective Date of Settlement, the Army shall report to the Court and to Plaintiffs its progress in implementing the Telephonic Personal Appearance Board Program. The report shall include, but is not limited to: (a) steps the Army has taken, is taking, and will take to facilitate applicants' access to telephonic personal appearance with minimal, if any, travel; (b) steps the Army has taken, is taking, and will take to enable applicants to access telephonic hearings year-round; (c) the number of telephonic hearings completed during the prior six months; and (d) the location of hearings not chosen by the applicant, and the number of hearings in those locations.

F. Training

1. The Army agrees to conduct annual training for ADRB members and staff specifically tailored to Special Cases.

2. This training will include changes made as a result of this Settlement Agreement, including training on the revised Military Review Boards Standard Operating Procedures.

G. Notice for New Applications

1. For all discharge upgrade applications submitted to the ADRB after the Effective Date of Settlement, when the Board writes the applicant to acknowledge receipt of a submitted DD-293, the Board letter shall inform applicants of how to find legal counsel and Veterans Service Organizations to assist with their application. The notice shall include a link for Stateside Legal, www.statesidelegal.org, and a link to the Department of Veterans Affairs

"Directory of Veterans Service Organizations," https://www.va.gov/vso/. This list of resources shall be updated by the Board as needed.

2. The notice shall also (a) state that the applicant may seek out and provide additional medical evidence of their Special Case condition, and state that it is to applicant's benefit to provide medical evidence for the review process; (b) invite the applicant to provide such evidence within 45 days of the date the notice is sent; and (c) advise the applicant of their right under 38 U.S.C. § 1720I to obtain mental health evaluation and treatments at Department of Veterans Affairs facilities. Defendant agrees that an ADRB applicant's failure to submit additional evidence shall not prejudice the applicant's ADRB application, and shall not be referenced for the purpose of evaluating the applicant's claims.

V. ATTORNEYS' FEES AND COSTS

With respect to the issue of attorneys' fees and costs incurred by Plaintiffs and the payment thereof by Defendant, the Parties agree to the following as a complete resolution of the issue.

A. Defendant agrees to pay $185,000 in attorneys' fees and costs to Class Counsel.

B. Defendant agrees to submit payment of attorneys' fees to Class Counsel within 90 days of either (a) the Effective Date of Settlement, or (b) Defendant's receipt of Class Counsel information (including banking information) necessary to effectuate the attorneys' fee transfer, whichever occurs later.

VI. NOTICE AND APPROVAL PROCEDURE

A. Preliminary Approval. As soon as practicable after the execution of this Agreement, the Parties shall jointly move for a Preliminary Approval Order, substantially in the form of Exhibit C, preliminarily approving this Settlement Agreement and this settlement to be fair, just, reasonable, and adequate, approving the Class Notice to the Class members as

described *infra* Section VI.C, and setting a Fairness Hearing to consider the Final Approval Order and any objections thereto.

B. Effect of the Court's Denial of the Agreement. This Settlement Agreement is subject to and contingent upon Court approval under Rule 23(e) of the Federal Rules of Civil Procedure. If the Court rejects this Agreement, in whole or in part, or otherwise finds that the Agreement is not fair, reasonable, and adequate, Parties agree to meet and confer to work to resolve the concerns articulated by the Court and modify the agreement accordingly. Except as otherwise provided herein, in the event the Settlement Agreement is terminated or modified in any material respect or fails to become effective for any reason, then the Settlement Agreement shall be without prejudice and none of its terms shall be effective or enforceable; the Parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action as of the date and time immediately prior to the execution of this Settlement Agreement; and except as otherwise expressly provided, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered. In the event that the Settlement Agreement is terminated or modified in any material respect, the Parties shall be deemed not to have waived, not to have modified, or not be estopped from asserting any additional defenses or arguments available to them. In such event, neither this Settlement Agreement nor any draft thereof, nor any negotiation, documentation, or other part or aspect of the Parties' settlement discussions, nor any other document filed or created in connection with this settlement, shall have any effect or be admissible in evidence for any purpose in the Litigation or in any other proceeding, and all such documents or information shall be treated as strictly confidential and may not, absent a court order, be disclosed to any person other than the Parties' counsel, and in any event only for the purposes of the Litigation.

C. Notice for Fairness Hearing. Not later than 14 business days after entry of the Preliminary Approval Order (unless otherwise modified by the Parties or by order of the Court), the Parties shall effectuate the following Class Notice.

1. Plaintiffs shall post the Class Notice substantially in the form of Exhibit A, as well as a copy of the Settlement Agreement, on www.kennedysettlement.com.

2. The Army shall post the Class Notice substantially in the form of Exhibit A, including a copy of the Settlement Agreement, on https://arba.army.pentagon.mil/adrb-overview.html.

3. The Army shall issue a press release that describes the Class Notice and provides a link to the website listed in Section VI.C.2.

D. Objections to Settlement. On or before 21 calendar days before the Fairness Hearing, in the above-described manner, any Class member who wishes to object to the fairness, reasonableness, or adequacy of this Settlement Agreement or the settlement contemplated herein must file with the Clerk of Court and serve on the Parties a statement of objection setting forth the specific reason(s), if any, for the objection, including any legal support or evidence in support of the objection, grounds to support their status as a Class member, and whether the Class member intends to appear at the Fairness Hearing. The Parties will have 14 days following the objection period in which to submit answers to any objections that are filed. The notice to the Clerk of the Court shall be sent to: Clerk of the Court, U.S. District Court of Connecticut, 141 Church Street, New Haven, CT 06510; and both envelope and letter shall state: "Attention: Kennedy v. McCarthy, No. 3:16-cv-2010 (D. Conn.)." Copies shall also be served on counsel for Plaintiffs and counsel for Defendants.

E. Fairness Hearing. At the Fairness Hearing, as required for Final Approval of the settlement pursuant to Federal Rule of Civil Procedure 23(e)(2), the Parties will jointly request that the Court approve the settlement as final, fair, reasonable, adequate, and binding on the Class, all Class members, and all Plaintiffs.

F. Opt-Outs. The Parties agree that the Settlement Class shall be certified in accordance with the standards applicable under Rule 23(b)(2) of the Federal Rules of Civil Procedure and that, accordingly, no Settlement Class member may opt out of any of the provisions of this Settlement Agreement.

G. Final Approval Order and Judgment. At the Fairness Hearing, the Parties shall jointly move for entry of the Final Approval Order, substantially in the form of Exhibit B, granting final approval of this Agreement to be final, fair, reasonable, adequate, and binding on all Class members; overruling any objections to the Settlement Agreement; ordering that the terms be effectuated as set forth in this Settlement Agreement; and giving effect to the releases as set forth in Section VII.

VII. RELEASES

A. As of the Effective Date, the Plaintiffs and the Class members, on behalf of themselves; their heirs, executors, administrators, representatives, attorneys, successors, assigns, agents, affiliates, and partners; and any persons they represent, by operation of any final judgment entered by the Court, shall have fully, finally, and forever released, relinquished, and discharged the Defendant of and from any and all of the Settled Claims, and the Plaintiffs and the Class members shall forever be barred and enjoined from bringing or prosecuting any Settled Claim against any of the Defendants, and all of their past and present agencies, officials, employees, agents, attorneys, and successors. This Release shall not apply to claims that arise or accrue after the effective date of Agreement.

B. In consideration of the terms and conditions set forth herein, Plaintiffs hereby release and forever discharge Defendant, and all of their past and present agencies, officials, employees, agents, attorneys, successors, and assigns from any and all obligations, damages, liabilities, causes of action, claims, and demands of any kind and nature whatsoever, whether suspected or unsuspected, arising in law or equity, arising from or by reason of any and all known, unknown, foreseen, or unforeseen injuries, and the consequences thereof, resulting from the facts, circumstances and subject matter that gave rise to the Litigation, including all claims that were asserted or that Plaintiffs could have asserted in the Litigation.

AGREED TO:

FOR PLAINTIFFS:

By: 

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