



**3.** “Agency Counsel” or “Counsel for the Agency” means Angie Wiesman or such other lawyer or lawyers within the Agency to which this Matter may subsequently be referred.

**4.** “ART” means the Annual Refresher Training which is required of all Agency employees.

**5.** “Bona Fide Claimants” means Claimants whom the Claims Administrator determines are entitled to receive monetary payments from the Settlement Fund under the processes set forth in Section VI.C below.

**6.** “Claimants” means Class Members who submit a timely Claim Form.

**7.** “Claim Form” means a form that Class Counsel will submit to the Administrative Judge for approval with the motion for Preliminary Approval. If and when approved by the Administrative Judge, the Claim Form shall be sent to Class Members with the Initial Notice and must be submitted by Class Members to the Claims Administrator in order for a woman to become a Bona Fide Claimant.

**8.** “Claims Administrator” means A.B. Data, Ltd., which will administer the Settlement Fund pursuant to this Agreement and Orders of the Administrative Judge.

**9.** “Claims Administrator’s Declaration” means a declaration to be signed by the Claims Administrator containing information described in this Settlement Agreement and filed with the Administrative Judge not later than 180 days after the Initial Notice is sent to the Class Members.

**10.** “Claims Administrator Protective Order” means the proposed protective order which will be signed by the Claims Administrator prior to its receipt of any personal information covered by the Privacy Act and submitted to the Administrative Judge for approval.

**11.** “Class” means the class as previously certified and modified by the Administrative Judge, defined as:

All women who have worked in the U.S. Department of Justice, Federal Correctional Complex Coleman, Florida since February 6, 2011 who were allegedly subjected to discriminatory sexual harassment, except for the period of time that any of these women served in the position of Warden, Associate Warden, Disciplinary Hearing Officer, Executive Assistant, Camp Assistant, or Lieutenant or Captain in the Correctional Services Department, or that any of these women worked in the UNICOR or computer services (“IT”) departments.

Decision issued April 9, 2013; Order on Joint Motion to Redefine Class and Motion for Extension issued October 28, 2014.

**12.** “Class Agents” means Taronica White, Lena Londono, Tammy Padgett, Eva Ryals, and Carlisa Warren-Spurlock.

**13.** “Class Counsel” means the law firm of Mehri & Skalet, PLLC. Lead Class Counsel is Heidi Burakiewicz.

**14.** “Class Member” means any person who meets the criteria set forth in the definition of the “Class”.

**15.** “Class Representative” means the Agency employee to be selected and with the duties set forth in Part V below.

**16.** “Coleman” means Federal Correctional Complex Coleman.

**17.** “Committee” means the standing committee to address Inmate Sexual Misconduct Toward Staff at Coleman with the membership and duties set forth in Part V below.

**18.** “Complaint” means the Complaint in this Matter filed November 18, 2011.

**19.** “Complex Warden” means the Warden who has overall administrative responsibilities at Coleman.

**20.** “Depository Bank” means a bank selected by Class Counsel, to receive, hold, invest, and disburse the Settlement Fund, subject to the direction of the Claims Administrator.

**21.** “DHO” means a Disciplinary Hearing Officer.

**22.** “Effective Date” means the date on which all of the following have occurred: (1) the Administrative Judge has granted Final Approval to this Settlement Agreement and entered an order so indicating; (2) the Administrative Judge has dismissed the Matter other than to enforce this Settlement Agreement, address settlement administration matters, and address such post-decision matters as may be appropriate; and (3) the time for appeal has either run without an appeal being filed or any appeal has been finally resolved.

**23.** “EFT” means electronic funds transfer.

**24.** “Facilitators” means the Agency employees to be selected and with the duties set forth in Part V below.

**25.** “Final Approval” means the date on which the Administrative Judge grants final approval of the Settlement.

**26.** “IF” means the Institutional Familiarization training which is required of all new hires at Coleman.

**27.** “Initial Notice” means the Notice of Class Action, Proposed Settlement Agreement, and Settlement Hearing, which Class Counsel will submit to the Administrative Judge for approval along with the motion for Preliminary Approval. If and when approved by the Administrative Judge, the Initial Notice will be mailed and emailed (to the extent email addresses are available) directly to Class Members.

**28.** “Inmate Sexual Misconduct Toward Staff” means any violation of codes 205, 206, 225, or 300 committed by a male inmate at Coleman and directed at a Staff member, and any violation of any other code committed by a male inmate that is sexual in nature and directed at a Staff member as reflected in the body of the incident report.

**29.** “Institution” means either of the penitentiaries, the medium security prison, the low security prison, or the Camp at Coleman.

**30.** “Internal Coordinator” means the Agency employee to be selected and with the duties set forth in Part V below.

**31.** “Matter” means the proceedings in the Miami District Office of the Equal Employment Opportunity Commission that have been assigned EEOC No. 510-2012-00077X.

**32.** “Notice of Award” means the letter to be sent to each Bona Fide Claimant specifying the amount of that Claimant’s award, as determined by the Claims Administrator.

**33.** “Preliminary Approval” means the Administrative Judge’s order preliminarily approving this Settlement Agreement and the form of Notice to be sent to Class Members.

**34.** “Reminder Notice” means the Reminder of Claim Form Deadline, which Class Counsel shall submit to the Administrative Judge for approval along with the Motion for Preliminary Approval. If and after it is approved, the Reminder Notice shall be mailed and emailed (to the extent email addresses are available) directly to certain Class Members as set forth in paragraph III.B.3 below.

**35.** “Settlement,” “Agreement,” and “Settlement Agreement” each mean the settlement as reflected in this Settlement Agreement.

36. “Settlement Amount” is either \$20,000,000 or a lesser amount if the number of Bona Fide Claimants is less than 350, as explained in paragraph VI.A.1 below.

37. “Settlement Fund” or “Fund” means the settlement monies transferred by Defendant to the Depository Bank pursuant to this Settlement Agreement, including any interest earned thereon, to be held, invested, administered, and disbursed pursuant to this Settlement Agreement.

38. “Staff” means all employees assigned to Coleman.

39. “Valid Late Claimants” means Claimants whom the Claims Administrator determines are entitled to receive monetary payments from the second set of Settlement Fund payments under paragraph VI.C.3 below.

40. “Warden” means the CEO of each Institution.

### **III. NOTICES AND PRELIMINARY AND FINAL FAIRNESS HEARINGS**

A. **Motion for Preliminary Approval.** Within twenty days after the execution of this Settlement Agreement, Class Agents shall move the Administrative Judge for an order:

- Scheduling a Final Approval Hearing approximately 225 days after Preliminary Approval on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to Class Members;
  - Preliminarily approving the Settlement Agreement;
  - Approving as to form and content the proposed Notices;
  - Approving as to form and content the proposed Claim Form;
  - Directing the Agency to provide all contact information for Class Members to the Claims Administrator required by this Agreement within the required time frame;
- and

- Directing the Claims Administrator to mail by first class mail and email (to the extent email addresses are available) to Class Members, after receipt of contact information from the Agency as described below, within the required time frame.

In moving for the Preliminary Approval, Class Agents will submit to the Administrative Judge for her approval this Settlement Agreement and attachments, and supporting papers, which shall describe the terms of this settlement and will include proposed forms of the Notices and Claim Form and a proposed Claims Administrator Protective Order for execution by the Administrative Judge, which is necessary so that the Agency may provide the information described in paragraph III.B.1 below to the Claims Administrator.

**B. Notices to Class Members.**

**1. Provision of Data to Claims Administrator.** Within seven days after the Administrative Judge has entered the Claims Administrator Protective Order signed by the Claims Administrator and the Administrative Judge has granted Preliminary Approval to the Settlement, the Agency shall provide the Claims Administrator with the following information for each Class Member in an electronically readable spreadsheet, such as Excel: (a) first name; (b) middle or maiden name; (c) last name; (d) last known home street address; (e) last known home city, state and zip code; (f) Agency email address; (g) last known home telephone number; (h) last known cell telephone number; (i) social security number; (j) date first assigned to Coleman; (k) date transferred from Coleman or left the service of the Agency, if any; (l) each job title held while at Coleman; and (m) dates of each such job title. The information listed in categories (a) through (i) will be information gathered from the Office of Personnel Management. The information will be sent or transmitted to the Claims Administrator by a

secure means. Class Counsel also will provide the Claims Administrator with other contact information that Class Counsel may possess for Class Members.

**2. Initial Notice to Class Members.** Within the later of eight calendar days after receipt of the information from the Agency required under paragraph III.B.1 or ten business days after Preliminary Approval of the Settlement Agreement and Entry of the Claims Administrator Protective Order, the Claims Administrator will mail the Initial Notice and the Claim Form to each Class Member and, if an email address is known, email the same two documents to the Class Member. If envelopes from the mailing of the Initial Notice and Claim Form are returned with forwarding addresses, the Claims Administrator will re-mail the Initial Notice and Claim Form to the new address within three business days of its receipt of the returned mail. If an Initial Notice and Claim Form are returned to the Claims Administrator because the address of the Class Member is no longer valid, *i.e.*, the envelope is marked “Return to Sender,” the Claims Administrator shall conduct all reasonable searches to ascertain the current address of that Class Member and, if an address is ascertained, the Claims Administrator will re-send the Initial Notice and Claim Form within three business days of receiving the newly ascertained address. The Initial Notice and Claim Form shall be deemed received once it is mailed for the second time, or once the attempt to find a current address for the Class Member as described above is exhausted without success.

**3. Reminder Notice.** Approximately 60 days after the day the Initial Notice is mailed to the Class, the Claims Administrator will send the Reminder Notice and Claim Form via U.S. mail (and email if an address is available) to Class Members who have not yet submitted Claim Forms using (a) the last known address as provided by Defendant; and (b) any address newly ascertained as the result of searches by the Claims Administrator. If the Final

Approval hearing is delayed for any reason, the Claims Administrator also will send notice of the new date via U.S. mail (and email if an address is available) to all Class Members.

**4. Information to Administrative Judge about Notice.** Within 180 days after the day notice is mailed to Class Members, unless the Claims Administrator alerts Class Counsel that it requires an extension of the deadline and, upon motion of Class Counsel the Administrative Judge grants an extension, the Claims Administrator shall prepare and Class Counsel shall file the Claims Administrator's Declaration. The Claims Administrator's Declaration shall provide a proof of mailing and other information about each of the notices, including but not limited to a description of the efforts to locate any Class Members whose notice originally was returned to the Claims Administrator as undeliverable and a list of Class Members for whom efforts to obtain an alternative address failed.

**C. Objections to Settlement.** Class Member objections to this Settlement Agreement must be submitted in writing and include a description of the basis of the objection. An objector may, if she wishes, also file a Claim Form. Objections must be postmarked or emailed no later than 30 days after the day on which Notice is sent to Class Members and addressed to both Class Counsel and the Agency at the addresses in paragraph III.F below. No one may appear at the Settlement Hearing for the purpose of objecting to the Settlement Agreement without first having timely served objection(s) in writing. Any lawyer representing a Proposed Class Member for the purpose of making objections must also serve a Notice of Appearance by mail to Counsel for the parties. Class Counsel shall be responsible for filing any objections and notices of appearance along with its motion for final approval. The papers supporting a motion for final approval may contain a response to any objections.

**D. Final Approval Hearing.** No later than 20 days before the hearing on Final Approval, Class Agents shall file a Motion for Final Approval and supporting papers. At or after the hearing, the Administrative Judge will determine whether to approve the Settlement Agreement.

**E. Voiding of Settlement.** If this Settlement Agreement is not approved by the Administrative Judge or for any other reason is terminated or fails to become effective in accordance with its terms (or, if following approval by the Administrative Judge, such approval is reversed or substantively modified), the parties shall be restored to their respective positions that existed in this Matter prior to entering into this Settlement Agreement. The terms and provisions of this Settlement Agreement shall have no force or effect and shall not be used in this Matter or in any proceeding for any purpose, any decision entered by the Administrative Judge in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*, and the litigation of the Matter will resume as if there had been no Settlement Agreement.

**F. Service on Counsel.** Unless otherwise specifically provided herein, service of papers, and all notices, demands or other communications to be given to the parties, shall be in writing and shall be deemed to have been duly given either on the date of transmission by email or as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows. To the Class Agents or Class Counsel:

Heidi Burakiewicz  
**MEHRI & SKALET, PLLC**  
**ATTENTION - COLEMAN SEXUAL HARRASSMENT**  
1250 Connecticut Avenue, N.W.  
Suite 300  
Washington, DC 20036  
colemansexualharassment@findjustice.com

To the Agency or Agency's Counsel:

Angie Wiesman

Supervisory Attorney  
**FEDERAL BUREAU OF PRISONS**  
Office of General Counsel  
Employment Law Branch  
Atlanta Satellite Office  
3800 Camp Creek Parkway, SW, Bldg 2000  
Atlanta, GA 30331  
awiesman@bop.gov

Mina Raskin  
Chief  
Office of Conflict Resolution, Equal Employment and Diversity  
Federal Bureau of Prisons  
320 First Street, N.W.  
Washington, DC 20534  
mraskin@bop.gov

**IV. RELEASE OF CLAIMS AGAINST THE AGENCY**

Each Class Member releases and forever irrevocably discharges the United States Government, the Agency and its officers, agents and employees, and each of them, separately and collectively, from the claims asserted in the Complaint that may have occurred at any time from April 17, 2001 through Preliminary Approval (the “Release Period”).

**V. PROGRAMMATIC RELIEF**

**A. Programmatic Period.** The provisions of Section V will be in effect for a four year period beginning with Preliminary Approval.

**B. The Internal Coordinator, Class Representative, and Committee**

**1. Duties of Internal Coordinator, Class Representative, and Committee.**

The Agency will form a Standing Committee to address Inmate Sexual Misconduct Toward Staff. The Standing Committee will be chaired by the Internal Coordinator. The Internal Coordinator will be a supervisory level employee, selected by the Complex Warden. The Standing Committee will also include:

- The Class Representative selected by the Class Agents. The Internal Coordinator and the Class Representative will have the same access to gather data and information on inmates unless prohibited by law enforcement activities. The Class Representative will have sufficient time and resources to review this information and research issues. The Internal Coordinator will consult with the Class Representative regarding the agenda of each Standing Committee meeting. The Class Representative will have direct access to the Wardens, including the Complex Warden.
- A Facilitator from each Institution to be selected by the respective institution Warden from among that Institution's Facilitators.
- Complex Captain.
- A Staff member selected by the Union.

The Committee members will have sufficient time and resources to address issues presented to them regarding inmate sexual misconduct.

All Committee members will have access to the Complex Warden and/or institution Warden to address issues regarding inmate sexual misconduct without the need for prior approval from the Committee or the Internal Coordinator. The Committee will brief the Wardens as needed, but at least quarterly.

The Committee will meet as needed, but at least every other month. For the first six months after Preliminary Approval, the Committee will meet at least monthly.

## **2. The Selection of the Internal Coordinator and Class Representative.**

The Agency will announce the collateral duty position of the Internal Coordinator within 14 calendar days of Preliminary Approval. The announcement will remain open for 15 business

days. The Complex Warden will select the Internal Coordinator within 10 calendar days of the date the announcement closes. Agency Counsel will notify Lead Class Counsel within 3 calendar days of the date the selection is made of the identity of the person selected to serve as Internal Coordinator. Lead Class Counsel will notify Agency Counsel within 7 calendar days of the person selected to serve as Class Representative who is a current staff member at Coleman.

**3. The Selection of a Replacement Internal Coordinator or Class Representative.** If the Internal Coordinator steps down from the position or is otherwise no longer able to perform the duties of Internal Coordinator, the Agency will announce the collateral duty position of the Internal Coordinator within 14 days of the date it becomes aware that it will need to select a replacement and will select the replacement Internal Coordinator via the process outlined in paragraph V.B.2 above. If the Class Representative steps down from her position or is otherwise no longer able to perform the duties of Class Representative, the Agency will assist the Class representative in advertising the position for volunteers to apply. The Class Representative will provide the language to be used in the advertisement describing the duties of the position. The Class Representative will select her replacement based on the individuals who submit an application for the collateral duty position. The replacement Class Representative will be a female who meets the definition of the class in this case except that it is unnecessary to meet the date of employment portion of the definition.

If the Class Representative is incapacitated and unable to participate in the process of selecting her replacement, lead Class Counsel will fulfill the above outlined duties of the Class Representative in connection with selecting the replacement Class Representative.

**C. Facilitators**

**1. Position of Facilitators.** The Agency will create the collateral duty of

Facilitators. The Agency will create 5 Facilitator positions that are assigned to work at each of USP 1 and USP 2, and 3 Facilitator positions that are assigned to work at each of the Medium and the Low. There will be 1 Facilitator position that is assigned to work at the Camp.

**2. Duties of Facilitators.** The Parties agree that the Facilitators will:

- Provide assistance to Staff upon request in drafting and rewriting incident reports within the time frames outlined in the Agency's Inmate Discipline Policy.
- Answer questions from Staff about the Agency's policies, practices, and agreements to address Inmate Sexual Misconduct Toward Staff.
- Hear concerns from Staff about persons violating those policies, practices, and agreements and suggestions about how to improve those policies, practices, and agreements.
- Communicate with the Internal Coordinator, Class Representative, DHOs, Wardens and other persons as set forth below in this Section V about the questions, concerns, and suggestions of Staff members.
- All other duties set forth in this Agreement.

**3. Selection of Facilitators.** The Parties agree the Agency will announce the collateral duty position(s) of Facilitators within 14 calendar days of Preliminary Approval. The announcement will remain open for 30 business days.

Within 7 calendar days of the date the Class Representative is selected, each Warden will provide the Internal Coordinator and Class Representative with the list of candidates who have applied and the Class Representative and Internal Coordinator will attempt to agree on recommendations for the Warden's consideration for the Facilitator positions for each Institution and on the Facilitator to serve on the Committee from each Institution. To the extent that they do

not reach agreement, the Internal Coordinator and Class Representative may submit separate lists.

The Warden will select the Facilitators, including the Facilitator to serve on the Committee, within 10 calendar days of receiving the Class Representative's and Internal Coordinator's recommendations. The Warden will take into consideration the Class Representative and Internal Coordinator's recommendations when making the decision.

**4. The Selection of a Replacement Facilitator.** If a Facilitator steps down from the position or is otherwise no longer able to perform the duties of Facilitator, the Agency will announce the collateral duty position of Facilitator within 14 days of the date it becomes aware that a Facilitator position will be vacated and will select the replacement Facilitator via the process outlined in paragraph V.C.3 above.

**D. Tracking and Processing Incident Reports**

**1. Email Resource Box.** The Agency agrees to establish an Email Resource Box. Within 14 days after the training described in paragraph V.L.4 below, the Agency will require staff members to send an email notification to the Email Resource Box for each incident report concerning Inmate Sexual Misconduct Toward Staff submitted to the lieutenants' office. Staff members may submit the notification in one of two ways: (1) by sending an email with the inmate's name, inmate's register number, and incident codes or (2) forwarding a copy of the incident report (signed or unsigned) as an attachment to an email to the Email Resource Box. It is up to the staff member's discretion which option to choose.

The Internal Coordinator, Class Representative, and the Complex Captain will have read access rights to the Email Resource Box.

In addition to the notification to the Email Resource Box, staff must continue to follow

the Inmate Discipline Policy and provide hard copies of incident reports to the Lieutenant's Office. Nothing in this Agreement alters the ability of the Investigating Lieutenant, Unit Discipline Committee, and Discipline Hearing Officer to refer an incident report of Inmate Sexual Misconduct Toward Staff back to the reporting staff member for further information to support the charge.

**2. Updating DHO Docket Sheet.** The Agency agrees that within 14 days of Preliminary Approval it will add a column to the DHO Docket Sheet identifying the original charge(s) for which the staff member wrote the incident report and an additional column identifying whether the incident report was expunged. The DHO Docket Sheet will be provided to the Internal Coordinator and the Class Representative, who will not further distribute the document.

**3. DHO Training.** Beginning within 14 days of Preliminary Approval, the Regional Discipline Hearing Administrator will review each incident report involving Inmate Sexual Misconduct Toward Staff which has been expunged or downgraded for the purposes of future training on these issues.

The Internal Coordinator and Class Representative may communicate with the Regional Discipline Hearing Administrator to raise issues of concern as needed and the Regional Discipline Hearing Administrator will take into consideration these concerns when formulating training for the DHOs.

**E. Disciplinary Rules.**

**1. Explanation of 205 Violations.** In the training described in paragraph V.L.4 below, the Agency will provide training that (a) all relevant facts should be described in a 205 incident report and (b) no one fact is determinative on its own as to whether the incident

report will be sustained including whether the staff member saw the inmate's exposed genitals. If a staff member believes that an inmate was engaging in Sexual Misconduct Toward Staff, the staff member must submit an incident report even if he or she has not seen the inmate's exposed genitals.

**2. Explanation of the Differences Between 200 and 300 Level Violations.**

In the training described in paragraph V.L.4 below, the Agency will provide training regarding the differences between 200 and 300 level inmate sexual misconduct violations, the use of the "attempt" provisions, and the 299/399 provisions. The Agency will also provide training regarding the 225 violation of the Agency Inmate Discipline Policy, that an inmate must have engaged in a prior documented pattern of stalking as a prerequisite to a 225 charge, the prior documented pattern can be memorialized in a memoranda, entries in TRUSCOPE, email to supervisors, the Internal Coordinator, or the Class Representative, etc., and the circumstances in which the 299 provision may be used.

**3. Possibility of Upgrading Engaging in a Sexual Act to a 100 Level Violation.** The Agency will recommend a regulation change to establish a 100 level misconduct charge addressing Inmate Sexual Activity Toward Staff. The Agency will initiate the process within 90 days of Preliminary Approval. The Parties acknowledge the regulatory process is controlled by the rulemaking process under the APA.

**F. Practices to Deal with Inmate Sexual Misconduct Toward Staff**

**1. Oral Harassment and Window Banging.** The Agency will include methods to address conduct such as oral harassment (e.g., "cat-calls", whistling, comments, etc.) and banging on unit windows in the training provided to all Staff described in paragraph V.L.4 below. No later than the date of the training, the Agency will also issue guidance to staff in a

memorandum. The policies and practices described in the training and memorandum will go into effect no later than the training.

The memorandum will state, and the training will provide, that:

- If the inmate who commits oral harassment can be identified, a Staff member must write an incident report for the identified inmates.
- When a staff member encounters oral harassment and cannot definitively identify the perpetrator, the Staff Member will notify a lieutenant or other management official. The Staff Member will provide the identity of the inmate and/or inmates who were part of a group who may have been engaging in this behavior to the extent he or she is able to do so. The Lieutenant or other management official may have inmates brought to the lieutenant's office for questioning if possible, or address behavior through other appropriate measures.
- If the perpetrators cannot be identified methods to address repeated incidents may include:
  - holding town halls on units to clarify expectations of behavior;
  - the Warden of the Institution, or his or her designee directing the withdrawal of certain privileges (e.g., microwave access, television access, commissary access, the order in which units go to the dining hall for meals, etc.) as appropriate; or
  - other measures as appropriate.

In addition to any other managers, the Internal Coordinator and/or the Class Representative can bring the need for such consequences to the attention of the Warden.

Within 45 days of Preliminary Approval, the Agency also agrees to number cell windows

on the outside of the buildings to assist in identifying inmates engaging in this behavior. Staff will be required, if able, to assist in the identification of inmates who are engaging in oral harassment (e.g., the unit officer or other staff should go to an inmate cell in an effort to identify the inmate who a staff member sees engaging in Sexual Misconduct Toward Staff). If these measures are not effective in combating oral harassment on their own, as evidenced by the number of incident reports filed or memoranda submitted to Internal Coordinator and/or Class Representative in cases where incident reports cannot be filed, within a reasonable period of time considering the number, trend, and severity of the incidents, the Committee, the Internal Coordinator, or the Class Representative may suggest the possibility to the Warden of USP 1 or USP 2 of allowing staff to use the internal corridors when arriving and departing for their shifts.

**2. Prosecution.** The Agency will follow evidence recovery protocols whenever possible, to include the collection and preservation of substances that may be semen, and will instruct Staff to follow those protocols in the training provided to all Staff described in paragraph V.L.4 below.

Following Preliminary Approval, the Agency will refer to the U.S. Attorneys' Office for prosecution all appropriate matters of Inmate Sexual Misconduct Toward Staff.

The Complex Captain will report to the Committee about the status of referrals for prosecution unless the information is prohibited by law enforcement activities.

**G. Threat Assessment and Staff Notification**

**1. Threat Assessment.** The Agency agrees to conduct a threat assessment on any inmate who a Staff member reports as posing a threat to safety or security. The Agency will reiterate this in the training provided to all Staff described in paragraph V.L.4 below.

For inmates housed in the SHU, Staff should request that a threat assessment be

performed as soon as possible after the inmate is sent to the SHU including while the inmate is pending investigation or disciplinary segregation.

**2. Staff Notification.** Beginning within 30 days after Preliminary Approval, when an inmate who has been placed in SHU for Inmate Sexual Misconduct Toward Staff is released to general population, the Institution Captain will notify the reporting Staff member prior to the inmate's release unless exigent circumstances prevent prior notice. If prior notice is not possible and the reporting staff member is absent at the time the inmate is released from the SHU, the Captain will make reasonable efforts to notify the Staff member before that member enters the Institution.

**H. Measures to Reduce Opportunities for Inmate Sexual Misconduct Toward Staff**

**1. Inmate Uniforms.** The Agency will initiate the procurement of inmate uniforms without front/side pockets for general population and Special Housing Unit within 45 days of Preliminary Approval. The Agency will purchase such uniforms unless cost, quality, or other concerns make it unreasonable to do so.

The Agency will require inmates to be appropriately clothed in all common areas of the institution including wearing a shirt during recreation.

**2. Reduction of Exposure of Staff at USPs.** G Corridor and East Corridor Correctional Officers are available to provide assistance in the Education and Recreation Departments. Within 14 days of Preliminary Approval, when it is necessary that the Agency remove assigned G or East Corridor Correctional Officers from the G or East Corridor area, the Operations Lieutenant will notify Staff in the Education and Recreation Departments and will provide additional monitoring of these areas as appropriate, e.g., frequent watch calls, camera monitoring, other staff rounds, etc.

**3. Safeguarding Staff When Threat of Imminent Safety.** When a Staff member is concerned for his or her imminent safety as a result of Inmate Sexual Misconduct Toward Staff, the Staff member should report it to the Captain or other appropriate management official who will immediately safeguard the staff member. Options for safeguarding the staff member include separating the inmate from the staff member by reassigning the inmate to another housing unit, assigning the inmate to the Special Housing Unit or moving the inmate by an intra-complex transfer.

**4. Posted Picture File.** Within 30 days of Preliminary Approval, the Agency will include inmates who have been found to have committed sexual misconduct toward Staff in the Posted Picture File consistent with Agency policy. Staff members entering inmates into the Posted Picture File may use “history of sexual offenses” or “other” categories as appropriate.

**5. TRUSCOPE.** Staff training will include instruction on how to use TRUSCOPE to assist in monitoring inmate behavior. The Agency will give access rights to the sensitive information section of TRUSCOPE to the Internal Coordinator and Class Representative.

**I. Communications to Inmates**

**1. Institution Intake Screening Questionnaire.** The Agency will ask as part of the social intake screening whether the inmate has a history of Sexual Misconduct Toward Staff. Within 45 days of Preliminary Approval, the Agency will instruct Staff who conduct the social intake screening by memorandum to specifically ask and record information on the form about Sexual Misconduct Toward Staff.

**2. Admissions & Orientation.** Within 120 days of Preliminary Approval,

the Agency will include information about the prohibition of Inmate Sexual Misconduct Toward Staff in the Admission & Orientation materials and will within 30 days of Preliminary Approval emphasize the same during the Admission & Orientation classes including, among other topics, the prohibition of oral harassment. If the Warden addresses A&O, the Warden and the Captain will address the inmate sexual harassment issue. If the Warden is not available to attend A&O, then the executive staff member who fills in for the Warden and the Captain will address the issue.

**3. Notification on Inmate Televisions.** Within 45 days of Preliminary Approval, the Agency will begin to place the following language on the inmate television screens during lockdowns, “Reminder: FCC Coleman has zero tolerance for Inmate Sexual Misconduct Toward Staff.”

**4. Town Halls.** The Wardens of each institution, unless competing obligations make it unreasonable for the Warden to participate and he or she delegates an Associate Warden to take his or her place, will hold town halls concerning the prohibition of Inmate Sexual Misconduct Toward Staff in each unit within 60 days of Preliminary Approval.

**5. TruLinks.** After the Agency conducts the town halls discussed in the previous paragraph, the Agency will place the following notice on the electronic bulletin board of the TRULINKS system: “Reminder – as discussed during the town halls – FCC Coleman has a zero tolerance for inmate sexual misconduct toward Staff.” This posting will remain on the electronic bulletin board for 60 days.

## **J. Behavior Modification and Psychology Treatment Programs**

**1. Psychology Referrals and Interventions.** Inmates who arrive at Coleman with any history of sexual misconduct will be seen by Psychology Services within 30

days of arrival, regardless of the inmate's mental health care level. Inmates who engage in Sexual Misconduct Toward Staff while at Coleman, and who are Mental Health Care Level 2 or above, will be referred to Psychology Services. Mental Health Care Level 1 inmates will also be referred to Psychology Services after repeated instances of Sexual Misconduct Toward Staff.

Based on Psychology Services' interactions with inmates, appropriate mental health interventions will be incorporated into individualized treatment plans (e.g., individual therapy, medications, group counseling, etc.).

Inmates who have been convicted with a sex offense will be referred to Psychology Services for assessment of whether the Sex Offender Management Program or Sex Offender Treatment Program is appropriate.

Within 60 days of Preliminary Approval, a representative from the National Psychology Services Office will provide guidance and interactive training to the Psychology Department on how to comply with the provisions of this paragraph and paragraph V.J.3 below. The National Psychology Services Office will serve as a resource for psychologists if they have questions about implementing these provisions or concerning the treatment of any inmate who has engaged in Sexual Misconduct Toward Staff.

## **2. Referral for Civil Commitment Pursuant to the Adam Walsh Act.**

Unit Team staff may refer inmates who have engaged in Sexual Misconduct Toward Staff for consideration under the Adam Walsh Act. The Internal Coordinator or Class Representative may recommend that the Unit Team staff refer inmates and, if the Unit Team disagrees, take the issue to the Warden. Staff should consider the seriousness of incidents in making Adam Walsh referrals.

The Agency will notify inmates during the town halls and in the Admissions &

Orientation information outlined above that they may be referred for possible civil commitment pursuant to the Adam Walsh Act if they engage in Sexual Misconduct Toward Staff. Case Managers will remind inmates, and document the reminder in the inmate's file, after they engage in Sexual Misconduct Toward Staff of the possibility of referral for civil commitment under the Adam Walsh Act.

**3. General Programming.** Within 90 days of Preliminary Approval, Coleman will offer general programming regardless of mental health care level, which will assist the management of this issue (e.g. anger management, cognitive behavioral therapy groups, etc.). The Committee may review program offerings with Psychology and Education staff, and make recommendations to institution wardens on programs that may be beneficial.

**K. Special Housing Unit**

**1. Inmate Cell Placement.** Within 30 days of Preliminary Approval, the Complex Captain will issue a Memorandum via the institution Captains to the SHU Lieutenants and other SHU staff instructing them that: (1) the SHU Lieutenant, or other staff member making cell placement decisions, will take into consideration whether an inmate has a history of Sexual Misconduct Toward Staff, among all of the other factors that go into consideration when placing an inmate into a specific cell and (2) the SHU lieutenant, or other staff making the cell placement decision, may consider placing the inmate in a cell at the back of the range or on the range with cells only on one side. The Memorandum will be maintained in each SHU for oncoming staff to read.

**2. Video Cameras.** Within 30 days of Preliminary Approval, the Agency will allow use of video cameras in SHU for purpose of evidence collection if the Staff member requests to use a video camera and an inmate has continued to engage in Sexual Misconduct

Toward Staff after being housed in the SHU.

**3. Clarification of Policy Regarding Incident Reports for Inmates in SHU.** The Agency will instruct staff to continue to use the inmate discipline process for inmates in SHU, including preparing incident reports for inmates who violate the Inmate Discipline Policy regardless of the possibility of transfer of the inmate.

**4. Rolling Medical Screens.** The Agency will purchase and provide rolling medical screens for staff to use at their discretion. The Agency will initiate the process for purchasing the rolling medical screens within 60 days of Preliminary Approval and will keep the Internal Coordinator and Class Representative informed of its progress toward acquiring the screens.

**5. Inmate Uniforms in SHU.** The Agency will instruct inmates in SHU to be clothed at all appropriate times including during recreation, and except when sleeping, showering, using the bathroom, etc.

**6. Uniform and Consistent Enforcement of Policies.** The Agency will instruct that Agency policies, procedures, and sanctions will be applied consistently for effective management of this issue.

**L. General**

**1. Managerial Performance Appraisals.** Within 14 days of Preliminary Approval, where appropriate, supervisors may consider Staff's actions, positive or negative, taken regarding Inmate Sexual Misconduct Toward Staff under existing PWP standards.

Additionally, incidents of Staff misconduct in responding or failing to respond to Inmate Sexual Misconduct Toward Staff may be referred for investigation under current policies for possible disciplinary action.

Staff will be reminded in training under Section L.V.4 of performance and conduct responsibilities and of the possible subsequent consequences of failing to comply with those responsibilities.

**2. Ability to Identify Issues or Make Suggestions Confidentially or Anonymously.** The Internal Coordinator, Class Representative, and Facilitators may receive anonymous complaints from Staff. When the Agency explains this during the training described in paragraph V.L.4 below, Staff members will be reminded that they are required formally to report inmate misconduct that violates a disciplinary code or employee conduct that violates a standard of employee conduct.

**3. Social Climate Survey and Institution Character Profile.** , Beginning with the next administered Social Climate Survey and Institution Character Profile (“ICP”), the Agency will add language regarding inmate sexual misconduct. The Internal Coordinator and Class Representative will be interviewed as part of the ICP and Social Climate Survey and will be given the results, both overall and, to the extent available, by departments or any other appropriate subdivisions, of the ICP and social climate survey related to this issue.

**4. Initial Training.** In addition to conducting training that will take place in each IF class and each year during ART, the Agency shall provide mandatory training within 90 days of the Preliminary Approval of this Settlement Agreement to all Staff. Agency Counsel and Class Counsel may attend the first training session as observers; any concerns will be discussed between Agency Counsel and Class Counsel and will be addressed if necessary at that session, and for future sessions. Agency Counsel will inform Class Counsel if Agency Counsel decides to attend any post-initial training sessions as an observer, in which case Class Counsel may attend as well. The Internal Coordinator and Class Representative may attend each of the

training sessions and may participate by, among other things, introducing themselves and explaining their roles.

Each change listed in this Settlement Agreement will be addressed and Staff will be informed that Inmate Sexual Misconduct Toward Staff and negative comments about women working at Coleman will not be tolerated. In addition, at this training session and during ART:

- The Agency will provide training to Staff regarding appropriate responses to Inmate Sexual Misconduct Toward Staff and inform Staff that concerns about the Agency's responses to the misconduct should be reported and that concerns about the responses will be taken seriously and investigated as appropriate;
- The Agency will provide training conducted as part of this settlement agreement will include refresher information regarding Agency policies concerning Administrative Detention;
- The Agency will provide training regarding the Email Resource Box, the circumstances in which notification of an incident report must be sent to the Email Resource Box, and the options for how Staff may provide the notification;
- The Agency will provide information on the Employee Assistance Program services for staff that choose to use this service;
- The Agency will provide training to all staff regarding the ability to refer inmates for civil commitment pursuant to the Adam Walsh Act; and
- The Agency will identify the Committee members, explain how the Committee will function, describe the roles of the Committee and Facilitators, and explain that the Committee members and Facilitators are points of contact for Staff when they have questions or concerns.

- The Agency will instruct Staff to email memorandums to the Email Resource Box regarding circumstances of Inmate Sexual Misconduct Toward Staff where incident reports cannot be written including when inmates are engaging in oral harassment or knocking on housing unit windows while staff are walking on a compound.

**5. DHO Training.** Within 90 days of Preliminary Approval, the Agency's Discipline Hearing Officers will be provided training concerning the elements of offenses including the issues outlined in paragraphs V.E.1 and V.E.2, progressive discipline, the ability to return incident reports back to the reporting officer for more information, and other topics the Agency deems necessary. This training will be conducted by the Regional or National Disciplinary Hearing Administrator.

**6. Training for Committee and Facilitators.** Prior to the training provided to all Staff described in paragraph V.L.4 above, the Agency will provide training for the Committee and Facilitators regarding incident report writing, communication skills, and review of institution databases to help with research. Agency Counsel and Class Counsel may attend this training session as observers; any concerns will be discussed between Agency Counsel and Class Counsel and will be addressed if necessary at that session.

## **VI. MONETARY RELIEF**

### **A. Settlement Fund.**

**1. Settlement Amount.** The "Settlement Amount" shall not exceed \$20,000,000. It will equal \$20,000,000 if there are 350 or more Bona Fide Claimants; if there are fewer than 350 Bona Fide Claimants, the amount of the Settlement Fund will be reduced by \$40,000 times the difference between 350 and the number of Bona Fide Claimants. For

example, if there are 288 Bona Fide Claimants, the amount of the Settlement Fund will be \$17,520,000, calculated as \$20,000,000 – (62 x \$40,000).

**2. Payment of the Settlement Amount.** The Agency shall pay the Settlement Amount no later than 30 days after the Claims Administrator Declaration is submitted. If the Agency fails to pay the Settlement Amount by this date, interest shall begin to accrue on the amount owed on day 31. Interest will accrue in accordance with the formula prescribed under the Back Pay Act, 5 U.S.C. § 5596(b)(2)(A), and by the Office of Personnel Management in FPM Letter 550-78. The interest shall be computed at the rate or rates in effect under Section 6621(a)(1) of the Internal Revenue Code of 1986 and shall continue to accrue until the Agency transmits the Settlement Amount.

**3. Purpose of the Payment.** The Settlement Amount does not represent back pay, front pay, or remuneration for the services of Complainants. Rather, payments are intended to compensate Claimants for non-pecuniary harm such as emotional distress and physical harm as well as reimbursement of out-of-pocket expenses resulting from harassment from male inmates. This payment is made without any deductions, in full compromise of any and all claims for compensatory damages, as defined by the Civil Rights Act of 1991, 42 U.S.C. 1981a.

**4. Creation of the Settlement Fund.** The Settlement Amount payment will be placed in an account titled in the name of Coleman Hostile Environment Settlement Fund, a Qualified Settlement Fund organized and existing under the laws of the District of Columbia, intended by the parties to be a “Qualified Settlement Fund” as described in Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq. The monies so transferred, together with any interest subsequently earned thereon and any amounts

that remain undistributed because Bona Fide Claimants do not cash checks shall constitute the Settlement Fund.

**5. Satisfaction of Defendant's Payment Obligations.** The Agency's payment of the Settlement Amount will be made in order to satisfy the claims of the Class Agents and Class Members, as well as for other purposes identified in this paragraph. Except for any expenses incurred by the Agency to satisfy its obligations under Section V concerning programmatic relief or any other section of this Settlement Agreement, the payment of the Settlement Amount shall constitute the total Settlement cash outlay by the Agency in connection with the resolution of this Matter. This sum is inclusive of payment for: (a) all amounts paid to Class Members, including Class Agents, which are to be distributed pursuant to sections VI.C, VI.D, and VI.E below; (b) all attorneys' fees and costs awarded by the Administrative Judge pursuant to section VII below, including those in connection with securing approval of the Settlement, providing requested assistance to the Claims Administrator during the claims process, and monitoring the Settlement Agreement, other than fees and costs awarded in connection with any successful proceeding to enforce the terms of this Settlement Agreement pursuant to section IX below; (c) fees and costs in connection with the Settlement Fund, including but not limited to those related to notice, claims processing, legal advice relating to the establishment of the Settlement Fund and tax treatment and tax reporting of awards to Claimants, preparation of tax returns (and the taxes associated with such tax returns as defined below), and the Claims Administrator's fees and expenses, as set forth in paragraph VII.C below; and (d) applicable federal, state and local income taxes on income earned by the Settlement Fund.

**B. Administration by Trustee.** The Claims Administrator shall serve as a Trustee of the Settlement Fund with respect to the handling, management and distribution of the

Settlement Fund, including determining awards for valid claims and reporting such awards. In carrying out the duties of the Trustee, the Claims Administrator shall serve as a fiduciary to the Settlement Fund and consult with Class Counsel.

**C. Claims Filing Procedures.**

**1. Sending of Claim Forms to Class Members.** As described in paragraph III.B.2, the Claims Administrator will mail and (when an address is known) email a copy of the Claim Form to each Class Member along with the Initial Notice. If the Claims Administrator has appropriate technology, the Claims Administrator shall make available to Class Members the option of completing the Claim Form online.

**2. Submission of Claim Forms.** Except as set forth in paragraph VI.C.3 below, in order to be eligible for an award from the Settlement Fund, Claimants must submit a Claim Form to the Claims Administrator which must be completed online, postmarked, or e-mailed by 90 days after the day the Initial Notice is mailed to the Class, or the date established by the Administrative Judge. In order for a Claimant to receive an award, all questions on the Claim Form marked as “Required” must be completed, and the Claim Form must be signed under penalty of perjury. The Claims Administrator shall notify a Claimant who submits a Claim Form without all required information of her omissions within 21 days of receipt of the Claim Form, provided that all such notifications shall be sent within 105 days after the day the Initial Notice is mailed to the Class, and will notify the Claimant of the deadline for submitting any corrected or amended responses. Optional questions need not be answered, although failure to answer may affect the Claims Administrator’s determination whether a Claimant is Bona Fide, as described in paragraph VI.D.2 below, and even if the Claims Administrator determines that a

Claimant who submits an incomplete form is Bona Fide, the failure to answer one or more questions may affect the amount of money allocated to her.

**3. Late Submission of Claim Forms.** If a Class Member submits a Claim Form after the deadline under paragraph VI.C.2 above but no later than 180 days after the Effective Date, she will qualify as a Valid Late Claimant and receive an award if (a) the Claims Administrator determines that extenuating circumstances justified the late submission, and (b) she meets all of the qualifications for a Bona Fide Claimant under paragraphs VI.C.2 and VI.D.2. The awards for Valid Late Claimants shall come exclusively from the second set of payments from the Settlement Fund, as described in section VI.E below. A Valid Late Claimant is not a Bona Fide Claimant, and shall not be counted in determining the Settlement Amount pursuant to paragraph VI.A.1 above.

**4. Confidentiality of Claimants and Claim Forms.** The identity of Claimants, the content of Claim Forms submitted, determinations of non-eligibility for awards, and the amount of awards to Bona Fide Claimants and Valid Late Claimants will be confidential. The Claims Administrator will not disclose that information to anyone other than Class Counsel; except that, after Final Approval, the Claims Administrator will disclose to each Claimant determined not to be Bona Fide or a Valid Late Claimant the determination of non-eligibility and will disclose to Bona Fide Claimants the amounts of their awards.

**D. Determination of Award Eligibility, Award Formula, and Awards.**

**1. Corroboration of Information from Claim Form.** Subject to the sentence below, within 30 days after the Claims Administrator receives each Claim Form, it will send an email to each Claimant who submits an email address on her Claim Form and by U.S. mail to every other Claimant that lists the data that the Claims Administrator has extracted from

the Claim Form to each question that does not call for an expository response. The Claims Administrator will send the corroborating data within 15 days instead of 30 days to Claimants who submitted an incomplete form 85 days or later after the day the Initial Notice is mailed to the Class and subsequently submitted a complete form pursuant to paragraph VI.C.2 above. Information culled from expository responses will be included in the list, unless the Claims Administrator determines that it would substantially increase the costs to do so. If the Claimant provides a written communication to the Claims Administrator within 30 days of the date the Claims Administrator mailed the list correcting any errors that appear in the list, regardless whether the error occurred in the Claimant's original responses or in the Claims Administrator's entry of the data, the Claims Administrator shall correct the data. If the Claimant provides a written communication to the Claims Administrator more than 30 days after the date the Claims Administrator mailed the list correcting any errors that appear in the list, the Claims Administrator shall correct the data unless doing so would unreasonably increase its costs or unreasonably delay the processing of data or the Claims Administrator's Declaration. The Claims Administrator will not accept attempts to correct errors through telephone calls.

**2. Assessment Whether Claim Forms Are Bona Fide.** In the Claims Administrator's Declaration, the Claims Administrator shall, among other things, report its determination of the number of Bona Fide Claimants and of the number of Claimants who are not Bona Fide. To the extent that the Claims Administrator has determined whether a Claimant who submits a Claim Form after the deadline is a Valid Late Claimant by the time of the submission of the Claims Administrator's Declaration, the Claims Administrator will also report its determination of the number of Valid Late Claimants and of the number of late Claimants who are not Valid. In addition to decisions made pursuant to paragraph VI.C.2 above, the

Claims Administrator shall determine whether a Claimant is Bona Fide or Valid by assessing whether an administrative judge making a ruling under MD-110, Chapter 8, part XII, reasonably could make an award to the Bona Fide Claimant or Valid Late Claimant. In making this assessment, the Claims Administrator shall assume that the Claimant's allegations, which shall be made under penalty of perjury, are true, and will use the presumption of discrimination as to each Class Member set forth in MD-110, Chapter 8, part XII. The Claims Administrator shall consider the three following factors:

- the extent to which Claimant had contact with male inmates;
- the Claimant's experience of any sexual harassment from male inmates; and
- any damage or losses suffered by the Claimant as a result of the harassment and/or the fear or anticipation of additional harassment.

Claimants who the Claims Administrator determines are not Bona Fide Claimants or Valid Late Claimants shall not receive an award.

### **3. Creation of Formula to Determine Awards to Bona Fide Claimants.**

The Claims Administrator's Declaration also shall contain a proposed formula that it has devised and used to determine the size of awards to Bona Fide Claimants and Valid Late Claimants. Under the formula, each Bona Fide Claimant and Valid Late Claimant shall receive points based on the following factors insofar as they have existed during or with respect to the Release Period: (a) the time in which the Claimant worked at Coleman and the institution to which the Claimant was assigned during that time; (b) the amount of contact the Claimant had with male inmates; (c) the amount and type of sexual harassment from male inmates that the Claimant experienced; (d) the Claimant's efforts to bring the harassment to the attention of management; (e) the harm to the Claimant as a result of the harassment and of the anticipation of subsequent harassment,

including but not limited to mental pain and suffering, physical pain and suffering, damage to familial and personal life, and out-of-pocket expenses; and (f) level of participation in the case, including but not limited to producing documents, answering interrogatories, being deposed, interviewing with Class Counsel, and serving as Class Agent. The Claims Administrator may seek or receive input from Class Counsel and Agency Counsel in devising the formula, but the Claims Administrator shall be the final decision-maker as to the formula to propose to the Administrative Judge. The Administrative Judge may consider the reasonableness and fairness of the formula in deciding whether to grant Final Approval to the Settlement.

**4. Determination of Awards.** Within 30 days after the Effective Date, the Claims Administrator shall apply the formula, as approved by the Administrative Judge, to determine the total number of points allocated to each Bona Fide Claimant. The Claims Administrator also shall apply the formula, as approved by the Administrative Judge, to determine the total number of points allocated to each Valid Late Claimant after the Claims Administrator has determined that the Claimant is indeed Valid. The Claims Administrator will determine the value of each point by dividing the total amount of money in the Settlement Fund allocable to awards by the total number of points awarded. Each Bona Fide Claimant's award will be the value of a point multiplied by the number of points awarded to that Claimant. The Claims Administrator will adjust the value of a point as necessary if there are any Valid Late Claimants. The portion of the Settlement Fund allocable to awards to Bona Fide Claimants and Valid Late Claimants shall not exceed the net amount of the Settlement Fund after payment of all administrative and Notice costs and Class Counsel's attorneys' fees and expenses. The Claims Administrator's determination regarding each Claimant's award pursuant to the formula shall be final and not subject to review by, or appeal to, any administrative judge, court, arbitrator or

other judicial body. As will be reflected in the final order approving this Settlement, Defendant and Class Counsel shall have no responsibility, and may not be held liable, for any determination reached by the Claims Administrator.

**5. Information Obtained by Claims Administrator Outside Claims Forms.**

a. The Claims Administrator will use the information provided pursuant to paragraph III.B.1 above not only for the sending of notice or other communications to Class Members, but also for determination of the amount of awards.

b. Within 30 days after Preliminary Approval, Class Counsel shall provide the Claims Administrator with information concerning Class Members' participation in the case, which information the Claims Administrator may consider in addition to any information provided by Bona Fide Claimants and Valid Late Claimants concerning their participation in the case. Class Counsel also shall provide any other information promptly after receipt of a request from the Claims Administrator. If Class Counsel is unable to supply such information to the Claims Administrator, Class Counsel may request such information from the Agency, but the Agency shall be obligated to supply the information only if the cost in time and out-of-pocket of locating and providing the information would be *de minimis*. Any dispute between the parties shall be submitted to the Administrative Judge for a binding determination.

**6. Attribution to Compensatory Damages.** All awards to Bona Fide Claimants and Valid Late Claimants shall be attributable to compensatory damages, and shall be reported to the Internal Revenue Service on Form 1099-MISC by the Claims Administrator as set forth below in paragraphs VI.G.2.a. and VI.H.

**E. Notice and Payment of Awards.**

**1. Two Sets of Payments from Settlement Fund.** The Claims Administrator will make two sets of award payments. The first set of payments, which will be made 45 days after the Effective Date, will consist of 90% of the awards to Bona Fide Claimants, 90% of the attorneys' fee award to Class Counsel, reimbursement of the amount of expenses that the Administrative Judge determines to be payable in an order issued at or about the time of Final Approval, and reimbursement of any expenses associated with administration of the Settlement Fund that have not already been paid. The second set of payments, which will be made within one year after the Effective Date, will consist of the remaining awards to Bona Fide Claimants (which may be less than 10% of the total if there are any Valid Late Claimants), the awards to Valid Late Claimants, 10% of the attorneys' fee award to Class Counsel, and reimbursement of the amount of expenses incurred by Class Counsel since the previous award that the Administrative Judge determines to be reimbursable, and any unpaid fees and expenses of the Claims Administrator.

**2. Awards to Bona Fide Claimants.** Within 45 days after the Effective Date, the Claims Administrator shall send to each Bona Fide Claimant a Notice of Award and a payment by check or EFT in the amount of 90% of the Settlement Fund allocated to that Claimant. The Notice of Award shall remind recipients of the second distribution and inform them that they should inform the Claims Administrator if their mailing address changes. If the Claims Administrator has not received notice that a Bona Fide Claimant has negotiated a check within 60 days after its mailing, the Claims Administrator shall perform reasonable searches on the Internet to determine whether the Claimant has relocated. If the Claims Administrator locates a new address for the Claimant, the Claims Administrator will void the original check, and send a Notice of Award and check to the Claimant at the new address. If the Claims

Administrator does not locate a new address for the Claimant, the Claims Administrator will send a reminder notice concerning the check to the Claimant at the address to which the check was sent. The Claims Administrator will send each Bona Fide Claimant a payment by check or EFT in the remaining amount owed to her within one year after the Effective Date, using the mailing address then of record. If the Claims Administrator has not received notice that a Bona Fide Claimant has negotiated the second check within 60 days after its mailing, it will follow the same procedures outlined above.

**3. Awards to Valid Late Claimants.** Within one year after the Effective Date, the Claims Administrator shall send to each Valid Late Claimant a Notice of Award and payment by check or EFT in the amount the Settlement Fund allocated to that Claimant. If the Claims Administrator has not received notice that a Valid Late Claimant has negotiated a check within 60 days after its mailing, the Claims Administrator shall perform reasonable searches on the Internet to determine whether the Claimant has relocated. If the Claims Administrator locates a new address for the Claimant, the Claims Administrator will void the original check, and send a Notice of Award and check to the Claimant at the new address. If the Claims Administrator does not locate a new address for the Claimant, the Claims Administrator will send a reminder notice concerning the check to the Claimant at the address to which the check was sent.

**4. Unnegotiated Checks.** Any undistributed funds that remain at the time of the second set of distributions due to failure to negotiate a check shall be reallocated among the Bona Fide Claimants and Late Claimants who received payment by EFT or negotiated their checks in proportion to their awards, after deduction of the fees and expenses payable to Class Counsel and the Claims Administrator pursuant to paragraph VI.E.1 above. The Claims

Administrator shall send each of the Bona Fide Claimants and Valid Late Claimants a Notice of Award along with a check or EFT in the amount of her payment.

**F. Maintenance of Records.** The Claims Administrator shall maintain the records of its determinations whether a Claimant is a Bona Fide Claimant, a Valid Late Claimant, the distribution formula, and the award list for a period of five years. Defendant shall have access to individual allocation amounts only upon written notice to Class Counsel and a showing of good cause (e.g., actual litigation by a Claimant or a communication that reasonably threatens litigation by a Claimant). Any dispute as to whether good cause exists for such a requested disclosure shall be submitted to the Administrative Judge for a binding determination.

**G. Tax Treatment**

**1. Qualified Tax Status and Tax Responsibilities.** The Settlement Fund shall be established as a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq., and shall be administered by the Claims Administrator under the Administrative Judge's supervision. The parties shall cooperate to ensure such treatment and shall not take a position in any filing or before any tax authority inconsistent with such treatment.

**2. Tax Reporting and Payments.**

a. The Claims Administrator shall satisfy all federal, state, local, and other reporting requirements (including any applicable reporting with respect to attorneys' fees and other costs and expenses subject to reporting), with respect to the payments or distributions from the Settlement Fund, whether or not such payments are addressed herein.

b. All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, and (ii) expenses and costs

incurred in complying with the obligations to report transactions and make tax payments under the Settlement Agreement (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) any tax returns), shall be paid out of the Settlement Fund and treated as a cost of the administration of the Settlement Fund.

**H. The Agency Has No Further Obligation, Liability or Responsibility.** The Agency shall have no withholding, reporting or any other tax reporting or payment responsibilities with regard to the Settlement Fund or its distribution to Class Members. The Agency shall have no liability, obligation, or responsibility for the administration of the Settlement Fund, the determination of any formulas for disbursement, the determination of any award to any Claimant, or the disbursement of any monies from the Settlement Fund except for: (1) payment of the Settlement Amount no later than 30 days after the Claims Administrator Submits its Declaration; and (2) provision of information to the extent expressly set out in this Settlement Agreement.

**VII. ATTORNEYS' FEES AND EXPENSES OF CLASS COUNSEL AND CLAIMS ADMINISTRATOR**

**A. Class Counsel's Motion for Payment of Fees and Expenses.** No later than 20 days before the hearing on Final Approval, Class Counsel will move for an award payable from the Settlement Fund of attorneys' fees and reimbursement of expenses. The amount that Class Counsel shall request in fees will not exceed one-third of the Settlement Amount. Class Counsel also may seek reimbursement for the amounts reasonably incurred in litigating and settling this case, presenting the Settlement to Class Members, working with the Claims Administrator, and monitoring the programmatic relief under Section V, including but not limited to any fees and expenses paid to the Claims Administrator prior to the Agency's payment into the Settlement

Fund. The parties request that the Administrative Judge rule on this motion at the same time as the ruling on Final Approval, if Final Approval is granted. Defendant agrees not to oppose or contest the reasonableness of Class Counsel's motion as long as it conforms with the limits in this paragraph. If the Administrative Judge reduces the request for fees or expenses, the money not awarded to Class Counsel will be additional moneys available for distribution to Bona Fide Claimants and Valid Late Claimants. Class Counsel may petition the Administrative Judge prior to one year after the Effective Date for reimbursement of any expenses incurred after Class Counsel's prior request.

**B. Payment of Award of Fees and Expenses to Class Counsel.** The money awarded by the Administrative Judge shall be paid out of the Settlement Fund to Class Counsel at the times set forth in paragraph VI.E.1.

**C. Payment of Fees and Expenses of Claims Administrator.** The Claims Administrator and Class Counsel shall enter into a written agreement setting forth the rates at which the Claims Administrator will be compensated for work performed and expenses incurred under this Settlement Agreement. Class Counsel shall submit that agreement to the Administrative Judge with the motion for Preliminary Approval of the Settlement. The Claims Administrator shall submit invoices to Class Counsel from time to time, which Class Counsel shall review for conformity with the written agreement between them. Except to the extent that Class Counsel challenges any item on a Claims Administrator invoice, Class Counsel shall pay such invoices before the Agency pays the Settlement Amount to the Settlement Fund, subject to Class Counsel's right of reimbursement as set forth above. After the Agency pays the Settlement Amount, the Claims Administrator shall be paid directly from the Settlement Fund, except to the extent that Class Counsel challenges any item on a Claims Administrator invoice.

**IX. ENFORCEMENT AND DISPUTE RESOLUTION MECHANISMS**

If either party believes that the other party has violated any of its obligations under this Settlement Agreement or if either party believes that one of the Attachments to this Agreement requires a change, its counsel shall notify counsel for the other party and attempt to resolve the issue through negotiations. If they are unable to reach an agreement, the party contending that a violation has occurred or that a change is needed may file a motion and supporting memorandum with the Administrative Judge. The other party shall have ten days to respond, and the moving party shall have five days to reply. When the Administrative Judge rules on the motion, she also shall award fees and expenses that Class Counsel has reasonably incurred in briefing the issue if Complainants have prevailed, unless the Administrative Judge concludes that, as a matter of justice, Class Counsel should not be awarded fees and expenses in part or in full. If Complainants prevailed, Class Counsel shall present its fee request within 30 days after the Administrative Judge issues the ruling on the underlying motion.

**X. GOVERNING LAW**

**A.** The parties agree that federal law shall govern the validity, construction and enforcement of this Settlement Agreement. But to the extent that it is determined that the validity, construction or enforcement of this Settlement Agreement or any of the documents referenced in the Settlement Agreement is governed by state law, the law of the District of Columbia shall apply.

**B.** This Settlement Agreement contains the entire agreement and understanding of the parties with respect to the Settlement.

**C.** Except as specifically provided for herein, this Settlement Agreement may not be amended or modified except with the express written consent of the parties.

## **XI. OTHER CONDITIONS OF SETTLEMENT**

**A. Failure to Insist on Strict Compliance.** The failure of any party to insist in any one or more instances on strict compliance with the terms and conditions hereof shall not be construed to waive available remedies with respect to any other breach.

**B. Settlement Agreement Binding.** This Settlement Agreement shall inure to the benefit of, and be binding upon, the parties and their respective heirs, dependents, executors, administrators, trustees, legal representatives, personal representatives, successors and assigns.

**C. Not Precedential in Other Cases.** The terms of this Settlement Agreement and the awards to Bona Fide Claimants are attributable to the unique circumstances of this case, are agreed to and awarded in order to resolve this matter, and shall not be used as precedent in any other matter.

**D. No Drafting Presumption.** All parties have participated, through their respective counsel, in the drafting of this Settlement Agreement and, therefore, this Settlement Agreement shall not be construed more strictly against one party than another.

**E. Dispute Over Application of the Agreement.** In the event of any dispute or disagreement with respect to the meaning, effect, interpretation, or application of this Settlement Agreement, or in the event of a claimed breach of the Settlement Agreement, the parties will submit the dispute to the Administrative Judge for a binding determination. There shall be no right of appeal from the determination.

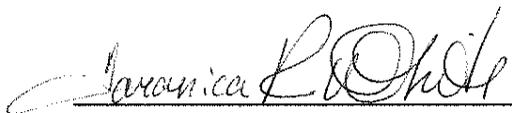
**F. Counterparts.** This Settlement Agreement may be executed in counterparts, and authentic facsimile or scanned signatures shall be deemed to be original signatures for all purposes. Each signed counterpart together with the others shall constitute the full Settlement Agreement.

DATED: December 5, 2016

/s/ Heidi R. Burakiewicz

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*Class Counsel*



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DATED: December 5, 2016

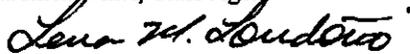
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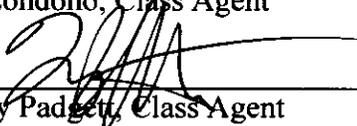
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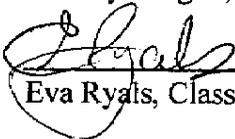
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