

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Ex. 1

)	
ANTHONY HARDY, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 09-cv-01062 (RLW)
)	
DISTRICT OF COLUMBIA,)	
)	
Defendant.)	

STIPULATION AND AGREEMENT OF SETTLEMENT

1. This Stipulation and Agreement of Settlement (“Settlement”) is entered into on the date signed below, by and between Plaintiffs Anthony Hardy and Donnell Monts, individually and on behalf of the classes they represent (“Plaintiffs”), and Defendant Government of the District of Columbia (“Defendant” or “District”) (Plaintiffs and Defendants are collectively referred to herein as the “Parties”), through their respective undersigned attorneys, providing for a full and final settlement, subject to Court approval, of the above-captioned class action case on the following terms and conditions:

I. RECITALS

- 2.** On June 8, 2009, Plaintiffs filed a Complaint in the District Court for the District of Columbia against the Defendant on behalf of themselves and a putative class of individuals who were arrested by the Metropolitan Police Department, and had their money taken and administratively forfeited, which the Plaintiffs alleged was without adequate notice and due process.
- 3.** The issues and claims have further developed in this case as reflected in the various court filings.
- 4.** The Plaintiffs obtained discovery, including Rule 30(b)(6) depositions, answers to interrogatories, and production of documents, to obtain information relating to class certification issues.
- 5.** On August 22, 2012, following a motion for class certification, the Court certified two classes for Rule 23(b)(3) class action status (Docket Nos. 44 and 45).
- 6.** Thereafter, the parties engaged in a joint process to identify persons meeting the class definitions through scanning, coding, and analysis of tens of thousands of forfeiture documents, and through the use of the D.C. Department of Corrections database (“JACCS”).
- 7.** The parties were able to identify the names of persons meeting the class definitions, their last known addresses, their incarceration status at the time of the forfeiture mailing, and the amount forfeited.
- 8.** The parties then engaged in substantial arm’s length negotiations over a period of months, including two Court-ordered mediation sessions before Magistrate Judge Kay.

9. The parties have engaged in significant factual and legal analysis of the issues implicated by the Litigation.

10. Plaintiffs have claimed, and continue to claim, that each and all of the claims asserted by them have merit.

11. Defendant denies all liability for both Classes and all allegations, and it does not concede any infirmity in the defenses that it has asserted or intended to assert in the Litigation.

12. After considering the risks and difficulties involved in attempting to establish a right of recovery on behalf of the Classes, the expense necessary to continue the Litigation through trial and the appeals which might follow, the uncertainty inherent in any complex litigation, and the substantial benefits of the Settlement for the Settlement Class Members, including the fact that even if Plaintiffs and the class they represent ultimately prevailed on their claims, there is no assurance that the Settlement Class Members would receive any greater recovery than they will receive from the Settlement, Plaintiffs and Settlement Class Counsel have concluded that the proposed Settlement on the terms and conditions of this Settlement is fair, reasonable, and adequate, and is in the best interests of the Settlement Class.

13. The Settlement contemplated by this Settlement is the product of extensive, good faith, and arm's-length negotiation between Class Counsel and Defendant's Counsel.

14. WHEREFORE, in consideration of the foregoing Recitals and the agreements, covenants, representations and warranties set forth herein, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, by and through their counsel, that, subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Released Claims shall be finally and fully compromised, settled, released and forever discharged as to the Released Party, subject to the following terms and conditions:

II. SETTLEMENT CLASS DEFINITIONS

15. **Failed Notice Class.** All individuals meeting the following criteria:

- (1) The person was arrested by an officer of the District of Columbia Metropolitan Police Department (MPD).
- (2) The MPD took cash from the person.
- (3) The District kept (or keeps) the person's cash (whether by storing, using, or depositing).
- (4) On or after June 8, 2006, and on or before May 24, 2012, the District mailed an administrative forfeiture notice to the person, but the District did not receive back a signed mail receipt.
- (5) The District did not re-send a notice regarding the cash upon failure to receive a signed mail receipt.
- (6) The District did not within one year of the conclusion of the person's criminal case (or release without charge) file a civil forfeiture action.

16. **Jailed Notice Class.** All individuals meeting the following criteria:

- (1) The person was arrested by an officer of the District of Columbia Metropolitan Police Department.
- (2) The MPD took cash from the person.
- (3) The District kept (or keeps) the person's cash (whether by storing, using, or depositing).
- (4) The District mailed an administrative forfeiture notice to the person on or after June 8, 2006 (or on or after June 8, 2005, but the person was in the custody of the District

at the time and released from custody on or after June 8, 2006), and on or before May 24, 2012.

(5) At the time of mailing, the person was held by or in the custody of the District of Columbia Department of Corrections.

(6) The District did not mail or deliver an administrative forfeiture notice to the person at the place of incarceration, and did not re-send notice to the person after their release from custody.

(7) The District did not within one year of the conclusion of the person's criminal case (or release without charge) file a civil forfeiture action.

III. CONDITIONAL SETTLEMENT AND DISCLAIMER OF LIABILITY

17. Conditional Settlement. Except where otherwise indicated, this Settlement is expressly conditioned upon the Preliminary Approval, Final Approval, and Final Judgment of the terms of this Settlement. The class periods set forth above are an essential condition of this Settlement.

18. Disclaimer of Liability. This Settlement Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in, this Settlement Agreement or its exhibits, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as, any admission of the validity of any claim or any fact alleged by any Plaintiff or Class Member in either this action or in any other pending or future action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the District or admission by the District of any claim or allegation made in this action or in any other action. Defendant denies all allegations of wrongdoing and denies any liability to Plaintiffs or to any Class Member. The Parties have agreed that, in order to avoid long and costly litigation, this dispute should be settled pursuant to the terms of this Settlement Agreement, subject to the approval of the Court.

IV. DEFINITIONS

19. Administrative Expenses. All expenses arising out of the administration of the Settlement, including but not limited to, the cost of preparing a list of Class Members, and the cost of the Claims Administrator, including, but not limited to, the cost of preparing and mailing Notice, the cost of publication of Summary Notice, the cost of creating and maintaining a website to post relevant information regarding the Settlement, the cost of reviewing and processing claims, the cost of handling phone calls, emails, and other correspondence from Class Members, the costs of issuing payment, and any other costs attendant to the administration of the Settlement as may be necessary to provide notice, process Claims, and handle Opt-Outs and other communications.

20. Approved Claim. A Claim qualified for payment under this Settlement.

21. Attorneys' Fees. The attorneys' fees awarded to Class Counsel in connection with the Litigation.

22. Attorneys' Expenses. Filing fees, deposition costs, investigative fees, expert fees, and other expenses incurred by Class Counsel in connection with this Litigation.

23. Claim. A Claim Form submitted.

24. Claim Form. The Claim Form in substantially the form attached to this Settlement Agreement as Exhibit C.

25. Claimant. Any person who submits a Claim Form.

26. Claims Period. The period of time ending 134 days subsequent to preliminary approval.

27. **Class Administrator.** Class Action Administration Inc. (“CAA”) of Westminster, Colorado (“Class Action”), who will be retained by Class Counsel.
28. **Class Counsel.** Henry Escoto and Sean Day.
29. **Class List.** The list of persons mutually created by the parties listing the persons meeting the definition of one or both Classes, together with the amount of the Forfeited Money.
30. **Class Members.** All persons meeting the definitions of the Failed Notice Class, the Jailed Notice Class, or both.
31. **Class Notice.** The Notice of Class Action, Proposed Class Settlement, and Hearing, in substantially the form attached to this Settlement Agreement as **Exhibit A**.
32. **Class Representatives.** Anthony Hardy and Donnell Monts.
33. **Court.** The United States District Court for the District of Columbia.
34. **District/Defendant.** The Government of the District of Columbia.
35. **Forfeited Money/Amount.** The monies of the Settlement Class as inventoried by Class Counsel and the District in the creation of the Class List.
 - a. **Large Claims.** The largest one-third of Forfeited Amounts appearing on the Class List (calculated to be \$225 or more as of the date of the Agreement, subject to change with final calculations).
36. **Final Approval.** The Court's issuance of a final order approving this Settlement pursuant to Rule 23(e) in a form to be agreed to by Settlement Class Counsel and Defendants' Counsel consistent with the provisions hereof, providing final approval of the Settlement.
37. **Final Judgment.** Final Approval not appealed, or finally upheld on appeal.
38. **Litigation.** The above-captioned civil action.
39. **“MPD.”** The Metropolitan Police Department of the District of Columbia.
40. **Opt-Out.** A request by any person not to participate in the Settlement as provided for herein or otherwise agreed to by the Parties or allowed by the Court.
41. **Preliminary Approval.** The Court's determination that the Settlement is within the range of fairness, reasonableness, and adequacy, and therefore a notice should be sent to the Classes and a hearing should be held with respect to fairness and Final Approval.
42. **Preliminary Approval Order.** An order substantially in the form of **Exhibit E** attached herein and described below that memorializes the Court's Preliminary Approval.
43. **Proof of Claim.** A completed Claim Form together with any supporting information and/or documents sufficient to allow the Claims Administrator and Class Counsel to determine whether a Person is a Settlement Class Member entitled to participate in this Settlement.
44. **Released Party.** The Government of the District of Columbia and all its agencies, employees, agents, attorneys, insurers, representatives, administrators, predecessors, successors and assigns.
45. **Releasing Parties.** The Plaintiffs and all Settlement Class Members on behalf of themselves and each of their predecessors, successors, custodians, agents, assigns, representatives, heirs, executors, trustees, administrators, and any other Person or entity having any legal or beneficial interest in the Forfeited Money.
46. **Settled Claims.** All claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, in law or equity, known or unknown, asserted or that might have been asserted, either directly or indirectly, in a representative or in any other capacity, by any Releasing Party against the Released Party for any matter, arising out of, relating to, or in connection with the forfeiture of the Forfeited Money.
47. **Settlement/Stipulation.** The settlement set forth in this document.

- 48. Settlement Class Members.** All Class Members who do not Opt-Out.
- 49. Summary Notice.** The notice approved by the Court for publication disclosing the Settlement and Final Approval Hearing as provided for herein, in substantially the form attached to this Settlement Agreement as **Exhibit B**.

V. SETTLEMENT FUND

- 50.** Subject to Court approval and pursuant to the terms and conditions of this Settlement, and except as otherwise provided expressly conditioned on the Final Approval by the Court of the Settlement Class Definitions, and in full and final disposition, settlement, discharge, release and satisfaction of the Settled Claims, the following fund shall be created by the Defendant:
- 51. Settlement Fund.** The total sum of \$855,000.00 U.S. Dollars. The Settlement Fund shall be held by the City subject to the transfers as provided in Article VII.
- 52. Extent of Defendant's Monetary Obligations.** Defendant's monetary obligations under this Settlement are limited to the Settlement Fund. Defendants shall not be called upon or required to contribute additional monies under any circumstance.
- 53. Settlement Fund Allocation.** The Parties estimate that the Settlement Fund will be allocated as follows, and the Defendant will not in any way contest such allocation and awards by the Court:
- a. \$5,000 (\$2,500 each) to the Class Representatives as an incentive payment in consideration of their services as Class Representatives.
 - b. \$21,667 for Attorneys' Expenses.
 - c. \$283,333 for Attorneys' Fees.
 - d. \$45,000 for Administrative Expenses.
 - e. \$500,000 Residuary for payments of Approved Claims.
- 54. Payment of Settlement Fund.** The Settlement Fund shall be paid as follows:
- a. **Administrative Expenses.** Within 45 days after Preliminary Approval, the District shall transfer \$45,000 to the Class Administrator for Administrative Expenses. This sum, to the extent used and accounted for (including refunds to Class Counsel for any advances made toward Administrative Expenses), will be non-refundable and not conditioned upon Final Approval. The District's deadline to pay the Class Administrator is expressly conditioned upon the Class Administrator's timely and satisfactory completion and submission of all necessary paperwork for the District's procurement process. This paperwork includes but may not be limited to an original W-9 form and registration in the District's "PASS" system.
 - b. **Attorney's Fees, Attorney's Expenses, and Incentive Payments.** Within 45 days of Final Judgment, the District shall transfer to Class Counsel the sums awarded for Attorney's Fees and Expenses, and for incentive payments for the Class Representatives.
 - c. **Residuary.** Within 45 days of Final Judgment, the District will pay the remaining amount (Settlement Fund minus Payment for Administrative Expenses, Attorney's Fees, Attorney's Expenses, and Incentive Payments) to the Class Administrator. The Residuary may exceed \$500,000 if additional funds are available from the \$855,000; however, under no circumstances whatsoever shall the total Settlement Fund exceed \$855,000.

VI. REVERSION OF SETTLEMENT FUND, CLASS COUNSEL FEES

55. Reversion to the District. Within 4 months of the payment of the Residuary to the Class Administrator, the Class Administrator will refund to the District any funds not used, together with a statement accounting for the use of all funds.

56. Class Counsel Fees. Class Counsel agrees and acknowledges that they are personally and solely responsible for any taxes owed on the fees received pursuant to this Settlement. Plaintiffs and Class Counsel agree to defend, indemnify, and hold harmless the District with respect to any liability to any taxing authority, whether federal, state or local, arising from payments contemplated by this Settlement. Class Counsel and Plaintiffs acknowledge and understand that the District will report payments set forth in this Settlement to the U.S. Internal Revenue Service.

VII. NOTICE AND ADMINISTRATION OF SETTLEMENT

57. Adequacy of Notice. The Parties agree that compliance with the procedures described in this Article constitutes due and sufficient notice to Class Members of this Settlement and Final Approval Hearing, and that it satisfies the requirements of due process. Nothing else shall be required of the Parties, Class Counsel, or Defendants' Counsel to provide notice of the Settlement and the Final Approval Hearing.

58. Proofs of Claim. Subject to the approval and further Orders of the Court, Claimants who submit Proofs of Claims shall be entitled to the return of their respective Forfeited Money in accordance with the terms of this Settlement. Persons who are Class Members of both classes will be entitled to only one recovery, the same as if they were a member of one Class or the other.

59. Submissions Required. Each Person claiming to be a member of the Settlement Class will be required to submit a Proof of Claim which shall include sufficient information and documentation to establish that the person submitting the Claim is a member of the Settlement Class, signed under penalty of perjury.

60. Proof on Large Claims. For Large Claims where a Claimant is not incarcerated, the Proof of Claim shall include proof of identity, such as a legible photocopy of an official state, D.C., or federal-issued identification, or the providing of information satisfactorily establishing that the Claimant is a Class Member. Any copy of identity documentation may be reviewed by the District.

61. Class List. Claimants appearing on the Class List will be entitled to participate in the Settlement by submitting a completed and timely Claim Form and, where required, proof of identification, without further proof. Any other Claimant will be required to submit documentation satisfactorily establishing Class Membership.

62. Timely Proof of Claim Required. To be processed for payment, a Proof of Claim must be received by the Class Administrator within the Claims Period.

63. Review of Proof of Claim. The Class Administrator shall review the Proofs of Claim and any supporting documentation timely received. The Class Administrator shall determine whether a person submitting a Proof of Claim is entitled to share in the distribution from the Settlement Fund. The Class Administrator, in consultation with Class Counsel, may approve, in whole or part, any or all untimely or deficient Proofs of Claims submitted by Class Members before final judgment. During the Claims Period, on a rolling weekly basis, the Class Administrator shall e-mail the designated MPD contact(s) the name, property control numbers, and any other identifying information from received Claims Forms so that MPD can cross-check

said information against its internal database to verify that the cash property associated with the Claim Form was not already returned. The Class Administrator shall wait 10 business days from its e-mail to MPD to approve any Claim to provide MPD sufficient time to conduct the cross-check.

64. Class Administrator's Records. The Class Administrator shall maintain accurate records, for inspection by Class Counsel and the District with reasonable notice, of all Claims records and financial records related to the Settlement.

65. Denied Claims. If the Claims Administrator denies a claim in whole or part, the Class Administrator shall notify the Claimant in writing of its determination with a brief description of the deficiency.

66. Failure to Correct Deficiency. If, as determined by the Class Administrator, the Claimant fails to correct or argue against such deficiency by information and/or documents within 14 days of the date of the deficiency letter, or by the end of the Claims Period, whichever is later, the Claims Administrator will deny the claim via a letter of final determination.

67. Request for Review. Any Claimant who wishes to contest the final determination by the Class Administrator may, within 14 days after the date of letter of final determination, file with the Court a Request for Review of the Class Administrator's determination. Unless the request is filed through ECF, the Claimant must mail a copy of the request to counsel for all parties. If the Court does not receive a Request for Review within said 14 days, the final determination of the Class Administrator will stand. Any response(s) to the Request for Review will be due within 14 days of the filing of the Request for Review.

68. Defendant's Cooperation and Review of Claims. Defendant shall cooperate and participate in the review and processing of Claims as is necessary and reasonable, including providing information as may be in its possession and readily obtained and necessary to verify a Claim.

69. Amount to Be Paid on Approved Claims. Approved Claims will be paid in an amount equal to the Forfeited Money unless the aggregate total of Approved Claims exceeds the Residuary of the Settlement Fund, in which case payment will be a pro-rated amount (reduced in the same percentage for all Approved Claims).

70. Time Period to Cash or Deposit Checks. Checks issued on claims will be good for 90 days from the date of issue.

71. Effect of Failure to File Proof of Claim. Any Settlement Class Member who does not file a valid Proof of Claim with the Class Administrator will not be entitled to receive any of the proceeds from the Settlement, but will otherwise be bound by all terms of the Settlement, including the terms of the Final Judgment and Order to be entered and the releases provided for herein, and will be barred from bringing any action against any Released Party concerning the Settled Claims.

72. JACCS Update. At such reasonable time as requested by Class Counsel, the District will provide Class Counsel with an updated JACCS production and any additional information that will enable Class Counsel to identify Class Members who are jailed at the time of the mailing of Class Notice, together with the location of incarceration, and an inmate identifier such as DCDC number that can be reasonably provided, so that Class Notice can be mailed to any incarcerated Class Members at the place of incarceration.

73. Mailing. Within 67 days after entry of the Preliminary Approval Order, the Class Administrator shall send on behalf of the Court, copies of the Notice and Claim Form, by United States Mail, postage prepaid, to Class Members appearing on the Class List. If the Class

Member is incarcerated as indicated in the District's JACCS database, Notice will be mailed to the Class Member at his or her place of incarceration.

74. Addresses-Checking. For all Claims, the Class Administrator will use the U.S. Postal Service's address verification and mail forwarding databases for pre-checking the validity of all Class Members' last known addresses before mailing the Notice.

75. Posting at DC Jail. From the time of Preliminary Approval until Final Judgment, the District shall allow the Class Notice and blank Claim Forms to be posted and maintained at a conspicuous location at the D.C. Jail.

76. Undelivered Notices. The Class Administrator shall use a skip-tracing service to attempt to locate an alternate address for any Notice returned as "undeliverable" and will re-send the Notice to the Class Members at an alternate address if located.

77. Reminder Notices. For Large Claims, where the Class Member has not responded by 30 days before the end of the Claims Period, the Class Administrator shall promptly mail a reminder postcard (**Exhibit D**).

78. Additional Efforts. Class Counsel may, at no additional cost or effort by the District, conduct any additional effort to locate any number of Class Members, provide notice, and assist in submitting Claims (and at no fee or cost to any such Claimant).

79. Envelopes. Class Administrator will conspicuously mark envelopes as follows: "NOTICE OF CLASS ACTION SETTLEMENT REGARDING CASH SEIZURE/ YOU MAY BE ENTITLED TO CASH PAYMENT" or comparable statement.

80. Publication. Within 67 days of Preliminary Approval, the Class Administrator shall publish the Summary Notice, in a form to be agreed to by counsel for the Parties consistent with the provisions hereof, in a local newspaper of general circulation.

81. Email List-Serve. Within 60 days of Preliminary Approval, Class Counsel will send a copy of the Notice and a blank Claim Form to the email list serve of the Superior Court Trial Lawyers Association of D.C.

82. Website. The Class Administrator will launch and maintain a website that provides information about the settlement; a copy of the Class Notice; printable and downloadable Claim Forms; a copy of this Settlement; Court orders relating to Preliminary and Final Approval; Court dates; and a list of Class Members with dates of administrative forfeitures, notices, amounts, dates of letters, and any other identifying information upon agreement of the parties that Class Counsel determines is necessary or desirable for Class Members to be able to determine that they are on the Class List. The website shall be at a minimum bookmarked at the time of Preliminary Approval or as soon as reasonably possible thereafter, and substantially operational within 5 calendar days thereafter, and maintained until Final Judgment. However, the District shall not be obligated to make payments to the Class Administrator sooner than set forth previously; Class Counsel will advance such costs as necessary and receive reimbursement from the Class Administrator when the Class Administrator receives payment from the District.

83. Costs of Notice. Costs of printing and mailing the Notice, the Summary Notice, the publication of the Summary Notice, and creation and maintenance of a website will be considered Administrative Expenses as defined herein.

84. Affidavit of Compliance. Prior to the Final Approval and Fairness Hearing, Class Counsel shall file an affidavit of mailing and publications with the Court stating that the Notice was duly provided to the Class Members and Summary Notice published in accordance with the Preliminary Approval Order.

85. Notice under Class Action Fairness Act. The District shall serve the appropriate state official of each state in which a class member resides and comply with their other obligations under 28 U.S.C. § 1715(b) not later than 10 days after Agreement is filed in the Court. The motion seeking Final Approval shall inform the Court of the date of the District's notifications under 28 U.S.C. § 1715(b) and request Final Approval no fewer than ninety (90) days following the last such notification.

VIII. KNOWING AND VOLUNTARY DISCHARGE OF ALL CLAIMS

86. Release by Plaintiffs and Settlement Class Members. The Settlement, as of Final Approval, resolves in full all claims against the District by all of the Settlement Class Members, (including named Plaintiffs), involving violations of law or constitutional rights, including, without limitation, their Fifth Amendment rights, or any other federal or District of Columbia law, regulation, duty, or obligation, or any other legal theory, action or cause of action, which are based upon or could be based upon or arise from the facts alleged in the Litigation, *i.e.*, claiming damages for allegedly deficient notice of administrative forfeiture proceedings and/or the District's failure to adequately follow up on forfeiture notices returned undelivered to MPD. When the Settlement is final, as of Final Approval, all Settlement Class Members, including the named Plaintiffs, waive all rights to any and all claims relating to allegedly deficient notice of administrative forfeiture proceedings and/or the District's failure to adequately follow up on forfeiture notices returned undelivered to MPD under any theory or cause of action whatsoever under District of Columbia law and federal law. This waiver and release shall include a full release and waiver of unknown rights that may exist as of Final Approval. This release is binding on Class Members, even if they never received actual notice of the Litigation or this Settlement.

87. Future Claims Barred. It is the Parties' intent that this Settlement bars all Settlement Class Members (including named Plaintiffs) and their privies from bringing a subsequent suit or enforcement action in this Court, or another, alleging the same or similar claims for relief as contained in the complaint or in any amended complaints in this Litigation, with respect to any administrative forfeiture of cash by the District that occurred or may have occurred during the Settlement Class Periods specified herein. Notwithstanding the foregoing, and for the avoidance of doubt, the preceding sentence shall not bar or limit any action to enforce the terms of this Settlement. Upon entry of the Final Judgment, the Releasing Parties, whether or not each submits a Proof of Claim or otherwise participates in the Settlement, will be deemed by this Settlement and Final Judgment to have released and forever discharged the Released Party from any and all claims, whether such claims are direct or derivative, arising under federal or state law, known or unknown, accrued or unaccrued, which concern Plaintiffs' and the Settlement Class Members' claims related to or concerning the Settled Claims.

88. Assertion of Claims Barred. The Releases outlined in the preceding paragraphs shall bar the assertion of any and all claims related to the Settled Claims by the Releasing Parties, the Settlement Class Members, and Class Counsel against the Released Party..

89. Limitation of Liability. No Class Member will have any claim against Class Counsel, the Class Administrator, Defendant, or Defendants' Counsel, for actions taken in good faith or distributions made substantially in accordance with the Settlement or further Orders of the Court.

90. Knowledge of Claims. The Parties waive and assume the risk of any and all claims that exist as of the date of this Settlement, which that Party does not know of or suspect to exist,

whether through ignorance, oversight, error, negligence, or otherwise, with respect to either facts or law, and which, if known, would materially affect its decision to enter this Settlement.

IX. OPT-OUTS AND OBJECTIONS TO SETTLEMENT

91. Opt-Outs. All persons who satisfy either Settlement Class definition shall have the option to be excluded from the Settlement Class, and thereby elect not to participate in the Settlement, by mailing a timely and valid Opt-Out pursuant to the instructions set forth in the Notice which must be received by the Class Administrator within 134 days from preliminary approval. All Persons who submit timely and valid Opt-Outs shall not be Settlement Class Members and shall have no rights or interests with respect to the Settlement. Class Representative shall not file Opt-Outs, nor shall Class Counsel encourage any Class Members to file Opt-Outs.

92. Notice of Opt-Outs. The Class Administrator shall notify Class Counsel and Defendant's Counsel of all Opt-Outs within 7 days of receiving same.

93. Objection to Settlement. A person who is a Settlement Class Member may object to the proposed Settlement if that person complies with the requirements and procedures set forth in the Preliminary Approval Order and the Notice, with respect to the time within which objections must be served and filed, and with respect to the requirements for written notices of objection. Unless otherwise permitted by the Court, any Settlement Class Member who fails to comply with the requirements of the Preliminary Approval Order for asserting objections shall be foreclosed from making any objection to this Settlement.

X. IMPLEMENTATION OF SETTLEMENT

94. Mailing Documents and Cataloguing Provided and To Be Provided to Enable Identification of Class Members. The District warrants that it has provided all documents in its possession that could be located with reasonable diligence and that are mailings of the Administrative Forfeitures from June 8, 2005 through October 29, 2009 (copies of outgoing notices of administrative forfeiture, returned notices, returned envelopes, signed receipts), and that it has provided Class Counsel with a complete and accurate catalogue of information from such documents (Property Control Number, Name, Address, Amount of Forfeited Money, Date, Type of Document (outgoing letter, letter returned undelivered, signed mail receipt)). Furthermore, the District will do the same for the remainder of the Class Period in a timing and manner that allows for the timely identification of Class Members consistent with this Settlement and the administration thereof. Nothing in this provision, however, creates any liability against the District for unintentional errors or mistakes that may have occurred and/or may occur in the ordinary course of the document retrieval, scanning and data entry process to which the parties agreed for the purposes of class identification discovery. Unintentional errors or mistakes by the District pursuant to its obligations hereunder shall not be grounds for claiming a breach of the Agreement.

95. Jail Status Information Provided and To Be Provided to Enable Identification of Class Members. The District warrants that it has provided JACCS (the District's jail database) information showing the jail status of persons mailed administrative forfeiture notices from June 8, 2005 through October 29, 2009, and that it will do the same for the remainder of the Class Period in a timing and manner that allows for the timely identification of Class Members consistent with this Settlement and the administration thereof. Prior to the mailing of Notice and Claim Forms, the District shall research (using the MPD "File on Q" system or other records or

database having the information) and provide to Class Counsel and CAA the forfeiture amounts at issue for the approximately 300-400 potential Class Members where the information is not available from the data produced by the District. Unintentional errors or mistakes by the District pursuant to its obligations hereunder shall not be grounds for claiming a breach of the Agreement.

96. Reasonable Efforts and Duty to Defend. The Parties and their respective Counsel agree to cooperate, assist, and undertake all reasonable actions to have approved and to effectuate the terms and conditions of this Settlement (including any written modification thereto made with the consent of the Parties). The Parties and their counsel agree to defend the Settlement. Class Counsel may not undertake representation of individuals opting out of the Settlement or of persons who wish to object to the Settlement. The Parties and their counsel shall take no positions contrary to, or inconsistent with, the terms of the Settlement. This paragraph will be effective regardless of and not conditioned upon Preliminary or Final Approval.

97. Preliminary Approval of Settlement. Before this Settlement becomes final and binding on the Parties, Class Counsel shall submit this Settlement to the Court for its consideration and shall request entry of an order substantially in the form of the Preliminary Approval Order attached hereto as Exhibit E.

98. Final Approval Hearing. Before this Settlement becomes final and binding on the Parties, the Court shall hold a Final Approval and Fairness Hearing. At said hearing, the Parties will request the Court to approve the fairness of the Settlement, including the reasonableness of Class Counsel's request for Attorney's Fees and Expenses.

99. Entry of Final Judgment and Order. Prior to the Final Approval Hearing, counsel for the Parties shall jointly submit to the Court a proposed Final Judgment and Order, in a form to be agreed to by counsel for the Parties, that:

- (a) Certifies the Settlement Classes pursuant to Federal Rules of Civil Procedure 23(b)(3), as may be necessary.
- (b) Approves the Settlement as fair, reasonable, adequate, and in the best interests of the Class Members, and directing consummation of the Settlement in accordance with the terms and conditions of the Settlement.
- (c) Dismisses the Complaint on the merits and with prejudice as to the Settlement Class.
- (d) Bars and permanently enjoins Settlement Class Members, either directly, representatively, or in any other capacity, from instituting or prosecuting the Settled Claims against the Released Party;
- (e) Orders that all Class Members who have not filed timely and valid Opt-Outs, whether or not they filed a Claim, and whether or not they have an Approved Claim, be barred from asserting any Settled Claims and all Settlement Class Members shall be conclusively deemed to have released the Released Party from the Settled Claims.
- (f) Orders the payments agreed to be made herein.
- (g) Finds that Class Counsel and the Class Representatives adequately represented the Classes for the purpose of entering into and implementing the Agreement;
- (h) Maintains jurisdiction over the Parties and this case as to all matters relating to the administration, consummation, enforcement, and interpretation of the terms of the Settlement and the Final Approval and Judgment.

XI. EFFECT AND CONSTRUCTION OF SETTLEMENT

100. Settlement not admission of wrongdoing. Regardless of whether consummated, the fact of entering into or carrying out this Settlement, any exhibits attached to this Settlement, and any negotiations, proceedings, communications or agreements related hereto, shall not be construed as, offered into evidence as, or deemed to be evidence of, an admission or concession of liability by or an estoppel against any of the Parties, a waiver of any applicable statute of limitations or repose, and shall not be offered or received into evidence, or considered, in any action or proceeding against any Party in any judicial, quasi-judicial, administrative agency, regulatory or self-regulatory organization, or other tribunal, or proceeding for any purpose whatsoever. However this provision does not limit, restrict, or in any way hinder a Party that requires evidence of this Settlement to enforce the provisions of this Settlement or the provisions of any related agreement agreed to by the parties and approved by the Court, release, or exhibit thereto, or in the case of any subsequent action against any of the Released Party, Plaintiffs or Class Counsel on any or all of the Settled Claims, in order to support a claim or defense of res judicata, collateral estoppel, accord and satisfaction, release or other theory of claim or issue preclusion or similar defense.

101. Contract. This Agreement is a contract binding upon the Parties. The Court shall retain jurisdiction over this matter and the Parties for the purpose of enforcing the terms of this Agreement. Plaintiffs' acceptance of this Agreement is reflected by Class Counsel's signature(s) upon this Agreement and is binding on the Class. The Parties agree that failure to comply with the provisions of this Settlement shall not be a basis for entry of contempt or sanctions against the District.

102. Captions. The captions contained in this Settlement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Settlement or the intent of any of its provisions.

103. Definitions and Recitals. The definitions and recitals set forth above are essential elements of this Settlement.

104. Entire Agreement. This Settlement and any exhibits attached hereto set forth the entire agreement of the Parties with respect to the Settlement and supersedes all prior oral or written agreements, arrangements, understandings, inducements, promises, and warranties, not embodied or incorporated herein, relating to the subject matter of the Settlement.

105. No Representations. Plaintiffs acknowledge, for themselves and for the Settlement Class, that they have not relied upon any representations, warranties, guarantees, promises, statements or estimates, whether written or oral, express or implied, by the Released Party, or anyone representing or purporting to represent the Released Party. Plaintiffs acknowledge that they or Class Counsel have undertaken such investigation as they have deemed necessary in connection with entering into the Settlement.

106. Modifications. The terms and provisions of this Settlement may not be changed, waived, modified, or varied in any manner unless in writing signed by Defendant's Counsel and Class Counsel, and with consent of the Court.

107. Waiver. The failure of any Party to enforce at any time any provision of this Settlement shall not be construed as a waiver of such provisions, nor be construed in any way to effect the validity of this Settlement or any part hereof or the right of any Party thereafter to insist upon strict performance of each and every provision of this Settlement. No waiver of any breach of this Settlement shall be held to constitute a waiver of any other breach.

108. Successors, Assignment and Delegation. This Settlement shall be binding upon and inure to the benefit of the Parties and their successors. No Party may assign or delegate its rights or obligations under the Settlement without the prior written consent of all of the other Parties. Plaintiffs and Settlement Class Counsel represent and warrant that none of Plaintiffs' alleged claims or causes of action against Defendants have been assigned, encumbered or in any manner transferred in whole or in part.

109. Third Parties. Nothing in this Settlement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Settlement on any person other than the Parties and their respective successors and assigns, nor is anything in this Settlement intended to relieve or discharge the obligations or liabilities or any third parties to any Party, or shall any provision give any third parties any right of subrogation or action over or against any Party.

110. Governing Law. This Settlement shall be governed by and construed and enforced in accordance with the laws of the District of Columbia.

111. Collaborative Effort. This Settlement, and any exhibits, was executed after arm's length negotiations among the Parties and reflects the conclusions of counsel for the Parties that the contemplated Settlement is fair, equitable and in the best interests of their respective clients. This Settlement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's length negotiations described above, Parties and their Counsel have contributed substantially and materially to the preparation of this Settlement.

112. Terminology and Construction. All personal pronouns used in this Settlement, whether used in the masculine, feminine or neutral gender, shall include all other genders, and the singular shall include the plural and vice versa. All dates referenced herein shall be calendar days unless otherwise indicated. Should any of the provisions of this Settlement conflict with the terms of any exhibits hereto, the terms of the Settlement shall control unless otherwise ordered by the Court.

113. No Severability. Invalidation of any material portion of this Settlement or any exhibit hereto shall invalidate the Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

114. Counterparts. This Settlement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Provided that all Parties hereto execute a copy of this Settlement, the Settlement shall be deemed fully executed and entered into on the date of execution by the last required signatory.

IN WITNESS WHEREOF, the Parties have caused this Settlement to be executed, by their duly authorized attorneys, as of the date set forth below.

Anthony Hardy and Donnell Monts,
on behalf of themselves and as
Class Representatives of the
Settlement Classes, by:



Sean R. Day
[D.C. Bar No. 452420]

11-4-13

Date



Henry A. Escoto
[D.C. Bar No. 448408]

11/4/13

Date

Counsel for Plaintiffs

The Government of the District of Columbia,
by:

IRVIN B. NATHAN
Attorney General for the District of Columbia

ELLEN A. EFROS
Deputy Attorney General
Public Interest Division



GRACE GRAHAM [D.C. Bar No. 472878]
Chief, Equity Section

11/4/13

Date



DOUGLAS ROSENBLOOM
[D.C. Bar No. 1016235]
Assistant Attorney General
Public Interest Division, Equity Section

11/4/13

Date

Counsel for Defendant