

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

Superior Court DEPT.

RUSSELL LOPES, on behalf of himself and all others similarly situated,)	
)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2013-01350-A
)	
City of Brockton, MICHAEL THORESON and MAUREEN CRUISE)	
)	
Defendant.)	

**STIPULATION OF
SETTLEMENT
(with Class)**

A complaint having been filed under M.G.L. c.151B in the Superior Court by the Plaintiff Class against the Defendants, the parties now desire to resolve and settle this matter as follows:

GENERAL PROVISIONS

This Stipulation of Settlement Agreement (“Agreement”) is made and entered into by and between the City of Brockton (“City of Brockton”); and the Plaintiff Class; collectively the “Parties”, or individually “Party.” This Agreement is made with the knowledge and consent of individual Plaintiff Class Representative Russell Lopes, as indicated by his respective signature.

I. Definitions

As used throughout this Agreement, the following terms will be defined as follows and the following rules of construction will apply:

1. “Action” and “Class Complaint” means the action entitled Lopes v. City of Brockton, pending before the Superior Court of Plymouth County, C.A. No. 2013-01350-A.
2. “Awards” means the following types of awards available under this Agreement:
 - a. “Additional Compensation Award” and “Class Representative Compensation Award” means such award as the Superior Court may authorize to be paid under this Agreement to the Class Representative.
 - b. “Race Discrimination Claim Award” means a pro rata payment that a Class Member is entitled to receive under this Settlement Agreement for compensatory and/or punitive damages.
 - c. “Enumerated Claim Award” means a payment a Class Member may receive under this Settlement Agreement, following submission and consideration of an Enumerated Claim Form.
 - d. “Fee and Expense Award” means such award of fees and expenses as the Superior Court may authorize to be paid to Class Counsel.
3. “Notice and Administration Costs” means all reasonable costs of notice and administration.
4. “Award Pools” means the following two pools of funds:
 - a. “Race Discrimination-based Award Pool” means that portion of the Settlement Fund set aside for uniform payment of Race Discrimination based Damages Claim Awards for both emotional and punitive damages.
 - b. “Enumerated Damages Award Pool” means that portion of the Settlement Fund set aside for additional payment of Enumerated Damages Claims.

5. “Claim Forms” means the following Enumerated Damages Claim Form sent to the Settlement Class substantially in the form attached hereto as **Exhibit A**.
6. “Claims Adjudicator” means the Claims Adjudicator approved by the Superior Court, in accordance with the terms of this Agreement. The Parties have agreed to propose Judge Nancy Gertner (Ret.) as the Claims Adjudicator. The Claims Adjudicator will be responsible for reviewing and analyzing any and all timely submitted Enumerated Claim Forms, and determining the value to assign to each submission from the Enumerated Damages Award Pool. Additionally, the Claims Adjudicator will be responsible for resolving any disputes with regard to claims from individuals who were not on the initial Class List, as defined below, or any disputes regarding individuals with claims for the Race Discrimination Based Damages Award.
7. “Claims Administrator” means the third-party settlement administration firm selected by the Parties and approved by the Court. The Plaintiff Class proposes RG2 Claims Administration LLC as the Claims Administrator and the Defendant does not object. The Claims Administrator will be responsible for the following: locating Class Members whose last-known addresses are no longer valid through commercially reasonable efforts (including the use of the Accurant database or similar database); mailing (and, if necessary, re-mailing) the Class Notice and Claim Form to the Class Members in accordance with the Preliminary Approval Order; establishing a website with information about the settlement; publishing the Class Notice in the Brockton Enterprise; responding to any Class Member inquiries; working with Claims Adjudicator in resolving any disputes between the Parties related to the calculation of the Settlement Awards; filing any Class Member objections that are timely received with the Court and mailing copies of those objections to Class Counsel and Defense Counsel; after obtaining awards from Claims Adjudicator, calculating the Settlement Awards and the amounts to be withheld for payroll taxes and other mandatory withholdings; calculating the Employer Payroll Taxes; establishing the Qualified Settlement Fund; distributing the Cost Award, the Fee Award, and the Settlement Awards in accordance with this Stipulation and the Final Approval Order; remitting all mandatory payroll taxes and other withholdings to the appropriate taxing authorities; distributing all required tax forms to City of Brockton, the Class Members, and Class Counsel; reporting on the state of the Settlement upon request of any Party; providing information related to the administration of the Settlement to Class Counsel and Defense Counsel upon request of any Party; preparing an affidavit attesting to its due diligence in administering the Settlement; and performing such other duties as are specified in this Stipulation or as the Parties may jointly direct.

8. “Class Counsel” means the law firm Gordon Law Group, LLP, which shall serve as Lead Class Counsel in this matter.
9. “Class List” means the list of all Class Members based upon the class members identified by Class Counsel from data kept in the ordinary course of business in the City of Brockton’s applicant databases and files. The Class List, which Class Counsel believe contains 89 class members at this time, shall also include such modifications or other individuals as may be added or deleted from that list pursuant to the terms of this Agreement. The City agrees for purposes of this Stipulation and Agreement not to contest the Class List as submitted, but – in the event that settlement is not approved consistent with this Agreement – otherwise expressly reserves its right to litigate or raise any and all objections or legal challenges with the Court, including but not limited to any such challenges related to the Class List, Class definition, certification, or membership, and as provided below in Paragraph 11.
10. “Class Members” means all qualified, non-white applicants whose claims accrued on or after October 10, 2010 through the December 18, 2019 Preliminary Approval of this Agreement.
11. “Class Representative” means Russell Lopes. Class counsel reserves the right to substitute or add Class Representatives in the event that the Court so requests. If the Court does not approve the class action settlement, the parties’ understand there is no agreement in this regard, and the City reserves its right to challenge class certification, class representative status, and the Parties have not waived their right to litigate or raise any other objections or legal challenges with the Court
12. “Defendant” means the City of Brockton.
13. “Defendant’s Counsel” means the law firm Brody Hardoon Perkins & Kesten, LLP.
14. “Final Approval Hearing” means a hearing held before the Superior Court to consider Final Approval of the Settlement, the Fee and Expense Award awarded to Class Counsel, the Notice and Administration Costs awarded to the Claims Administrator, and the merits of any objections to the Settlement.
15. “Form Submission Deadlines”
 - a. “Mailed Notice Date” is the date on which the Mailed Notice Documents were initially mailed by email and by regular mail.

- b. “Objection Deadline” means the date seventy-five (75) days following the Mailed Notice Date, or such next regularly scheduled business and banking day.
 - c. “Exclusion Deadline” means the same date as the Objection Deadline.
 - d. “Aggravated Form Submission Deadline” means the date ninety (90) days following the Mailed Notice Date, or such next regularly scheduled business and banking day.
16. “Full Settlement Amount” means \$2,050,000, of which \$1,750,000 is cash for the Settlement Fund, as defined below, plus the additional sum of \$300,000, which will be spent by the City of Brockton on first year salaries of two permanent personnel positions at \$160,000.00 total compensation with benefits, and \$140,000.00 in consulting in diversity training, as described more fully herein
17. “Mailed Notice Documents” means the Notice and Claim Form.
18. “Notice” means the notice of settlement sent to the Settlement Class substantially in the form attached hereto as **Exhibit B**.
20. “Parties” means the Class Members and the Defendant.
21. “Preliminary Approval” means that the Superior Court has entered an order substantially in the form attached hereto as **Exhibit C**, preliminarily approving the terms and conditions of the Settlement, including the manner of providing notice to the Settlement Class and the administration of the Settlement.
22. “QSF” means the qualified settlement fund.
23. “Released Claims” means those claims defined in paragraph XX.
24. “Released Parties” means Defendant, its past or present officers, directors, shareholders, officials (both appointed and elected), employees, agents, principals, heirs, representatives, accountants, auditors, consultants, successors and predecessors in interest, assigns, subsidiaries, affiliates, parents and attorneys.
25. “Settlement”, “Settlement Agreement” and “Stipulation” means the terms and conditions set forth in this Stipulation and Settlement Agreement, including the exhibits and schedules hereto.

27. "Settlement Award" means the Class Member's pro rata or determined portion of the Race Discrimination Based and/or Enumerated Award Pools remaining after deduction for the Notice and Administration Costs, and the Fee and Expense Award.
28. "Settlement Class" means a class certified by the Superior Court for settlement purposes and consisting of all Class Members who have not otherwise been excluded from the Settlement.
29. "Settlement Class Period" means the period from October 10, 2010, through the date of December 18, 2019 for purposes of the award, and the date of Preliminary Approval by the Superior Court for purposes of inclusion in the class.
30. "Settlement Fund" means the sum of \$1,750,000 to be paid by Defendants as described in this Settlement Agreement.
31. "Settlement Order and Judgment" and "Final Order and Findings of the Superior Court" means an order issued by the Superior Court, in substantially the form attached hereto as **Exhibit D** (entitled "[Proposed] Final Order and Findings Granting Final Approval of Class Action Settlement"), approving the Settlement and this Stipulation as binding upon the Parties and the Settlement Class, dismissing the Released Claims, and making the final award and determination of Notice and Administration Costs, Fee and Expense Awards, if any.

III. Settlement for Hiring, Diversity Training and Monetary Relief.

Defendant shall pay for the following:

- A. \$1,750,000 in cash for the non-white applicant Class Members.

Class Counsel shall work with the Claims Administrator to set aside a portion of such funds for the Race Discrimination Based Award Pool, after deductions for fees, costs, and expenses contemplated herein. Class Members whose names appear on the Class List do not need to submit a claim form in order to receive the basic Race Discrimination-Based Claim Award. The Race Discrimination Based Award Pool shall be increased or decreased in the event of an increase or decrease in the Notice and Administration Costs and/or the Fee and Expense Award.

Class Counsel shall work with the Claims Administrator to set aside the remaining portion of such funds for the Enumerated Award Pool. The Enumerated Claim Awards are in addition to, and not to be reduced by, any Race Discrimination-Based Claim Awards granted to any Class Member. Payments to the Settlement Class Members who submit a timely Enumerated Claim Form for an award from the Enumerated Award Pool shall be made from the Settlement Fund in accordance with the procedures described in this Agreement. Up to 50% of any individual's recovery may be allocated to lost wages.

The Enumerated Claim Award Pool shall be increased or decreased in the event of an increase or decrease in the Notice and Administration Costs and/or the Fee and Expense Award.

Class Counsel shall cause to be reimbursed to Class Representative his costs of his dedicated service as class representative in litigating this matter and bringing about this Settlement. Class Representative will not seek any other Class Representative Compensation Award from the Settlement Fund, or any incentive payment as a result of his own individual settlement with Defendant.

Class Counsel shall cause to be paid reasonable costs of the Claims Administrator and the Claims Adjudicator (“Notice and Administration Costs”), in accordance with this Agreement. In the event the Settlement Effective Date does not occur, any portion of the Claims Administrator’s Notice and Administration costs already spent shall be nonrefundable, and Defendants shall have no recourse to recover such expended monies from the Class Members or Class Counsel, provided that unexpended portions of the Notice and Administration costs shall be returned to Defendants. If the aggregate amount of the Settlement Awards, Enumerated Claim Awards, the Notice and Administration Costs, and the Fees and Expense Award which are awarded, claimed and cashed, is less than the full amount of the Settlement Fund, or amounts otherwise remain in the Settlement Fund, all such remaining funds shall be distributed or otherwise disposed of as determined by the Superior Court, first to satisfy any outstanding obligations of the Settlement Fund and then for purposes of diversity advancement related programs or any other initiatives as the Superior Court deems appropriate. In that event, the Parties shall be free to submit proposals to the Superior Court with regard to such disposition. Defendant has agreed not to contest Class Counsel’s formula to be presented to the court on how to allocate funds from the class settlement to the Class.

B. \$300,000 in Diversity Training, Human Resources Management of Diversity and Conflict Resolution training.

These funds will be spent by the City of Brockton for two permanent personnel positions with benefits: (1) Assistant Human Resources Director and (2) Diversity Inclusion Manager. The total annual compensation, inclusive of benefits, for each of these positions will total at least \$160,000.00 annually. The remaining funds will be allocated to additional consulting and training as provided for in this Agreement. The Parties understand that the Brockton City Council has approved the creation of these two positions, and the funding for these positions is guaranteed for at least one year. The positions approved by the City Council in 2020 have been posted. The City will fill them within 2020 with qualified candidates.

Of the \$300,000, \$140,000 will be allocated for additional consulting in diversity and anti-discrimination related training. Such funds will be utilized in fiscal year 2021 for Citywide training, with DPW employees given priority, unless the nationwide health crisis resulting from the Corona Virus makes training in this calendar year

impracticable. If the training cannot be completed in 2020, the City will use its best efforts to complete the training as soon as possible. The City will consult with Ruth Henry, experienced trainer, for at least 100 hours regarding this training and will compensate Ms. Henry at the rate of \$50.00 per hour. The City will use its best efforts to continue training employees in diversity and anti-discrimination measures in future years.

C. The Parties further agree with respect to Human Resources:

- a. The City agrees that all applications for employment, including resumes and cover letters, will first be submitted to the Human Resources Director.
- b. All postings for positions at the Brockton DPW will be posted for at least 14 days.
- c. The Assistant Director of Diversity will monitor and screen all applicants to the DPW.
- d. The Human Resources Department will transmit all application materials to the DPW without any information regarding the racial identity of the applicants on such documents.
- e. The Human Resources Department will prepare a racial impact statement for the City of Brockton annually and this statement will be a public document. The City will develop a method for receiving input from class members

D. Class Counsel, in connection with seeking Superior Court approval of this Settlement, shall apply to the Superior Court for an award of reasonable attorneys' fees and costs ("Fees and Expense Award"), which shall be paid from the Settlement Fund. Defendants will not oppose a Motion for Attorneys' Fees by Class Counsel seeking one third (1/3) of the Full Settlement Amount.

E. As a general matter, the City of Brockton will act consistent with the following existing published principles for the City:

Providing "Equal employment opportunities to all employees and applicants for employment without regard to race, color, [religion, gender, gender identity or expression, age, sexual orientation], national origin, ancestry, [disability, military status, genetic information, pregnancy or a pregnancy-related condition], or membership in any other protected class. The City of Brockton complies with all applicable federal, state and local laws governing nondiscrimination in employment in all locations in which the City operates. This policy applies to all terms and conditions of employment."

The "Department of Human Resources commits to excellence in action by attracting, retaining, and developing a community of talented and diverse individuals in support of the City of Brockton's mission and values."

The "mission of the human resources department to provide effective human resource management by developing and implementing policies, programs and services that contribute to the attainment of the City's goals and to provide our employees a stable work environment with equal opportunity for learning and personal growth. This is best achieved by continuously researching, learning, developing, and delivering innovative results-oriented service, policies, and systems for and with staff, applicants,

and external stakeholders. The Department of Human Resources is committed to offer consistent, comprehensive, and cooperative services by a competent, courteous staff.”

IV. Notice/Approval of Settlement and Settlement Implementation

As part of this Settlement, the Parties agree to the following procedures for obtaining Preliminary Approval of the Settlement, certifying the Settlement Class and notifying the Class Members:

1. Preliminary Settlement Approval Hearing. Counsel for the Parties to the litigation shall jointly request a hearing before the Superior Court to seek Preliminary Approval of the Settlement on the earliest practical date. In conjunction with such hearing, the Parties will submit this Stipulation, together with the exhibits and schedules attached hereto, and any other documents and motions they mutually deem relevant to obtaining approval of the Settlement.

2. Certification of the Settlement Class. At the time of filing of this Stipulation, and solely for purposes of this Settlement, Counsel for the Parties to the litigation will request the Superior Court enter a Preliminary Approval Order, preliminarily approving the proposed Settlement, certifying the Settlement Class, providing that notice shall be sent to the Class Members of their opportunity to join or object, and setting a date for the Final Approval Hearing.

3. Final Approval Hearing and Entry of Final Order and Findings of the Superior Court. Following the Objection Deadline, the Superior Court will conduct, at its discretion, on the 180th day following Preliminary Approval (or at such other time as designated by the Superior Court), a Final Approval Hearing to consider Final Approval of the Settlement. Class Counsel shall provide the Superior Court, at least five (5) calendar days prior to the Final Approval Hearing, a declaration by the Claims Administrator of due diligence and proof of mailing with regard to the Mailed Notice Documents. Also at such time, City of Brockton shall provide a declaration that it has complied with its notice and posting obligations under paragraph VI. Thirty days after entry of the Final Approval Order, this Settlement shall be deemed effective (the “Settlement Effective Date”).

4. Joint Certification of Completion. Three hundred and sixty-five (365) days following the Settlement Effective Date (or at such other time as designated by the Superior Court), Class Counsel and Defendant’s Counsel will file with the Superior Court a joint certification of completion of administration of the Race Discrimination Based Award Pool and the Enumerated Award Pool.

V. Claims Administrator and Claims Adjudicator

A. Retention of Claims Administrator. Within 15 days of the Superior Court’s approval of the Claims Administrator and entry of the Preliminary Approval Order, Class Counsel will finalize the contract with, and retain, the Claims Administrator.

B. Retention of Claims Adjudicator. The parties have agreed to appoint Judge Nancy Gertner (ret.) as the Claims Adjudicator. Within 15 days of the Superior Court's approval of the Claims Administrator and entry of the Preliminary Approval Order, Class Counsel will finalize said contract and retain the Claims Adjudicator.

C. Cooperation with Administrator and Adjudicator. City of Brockton shall provide the Claims Administrator and Claims Adjudicator timely and cooperative access to all persons, documents and services reasonably necessary to perform its functions within the bounds of the law.

D. Record-Keeping. City of Brockton, the Claims Administrator and the Claims Adjudicator shall maintain any records that pertain to the obligations set forth within this Agreement and its efforts to comply with it, including internal and external employment discrimination complaints and written final reports of investigations and logs reflecting participation of employees in the administration process. Class Counsel and the Superior Court shall have access to any relevant records and information within control of City of Brockton, within the bounds of the law, that are deemed reasonably relevant and necessary to ensure that there is full compliance with this Agreement upon reasonable notice of no less than 15 days to City of Brockton.

E. Designation of Liaisons. City of Brockton shall designate a liaison to communicate, coordinate and work with the Claims Administrator and Claims Adjudicator. City of Brockton shall also designate a liaison for purposes of communicating with Class Counsel and the Superior Court. Likewise, the Superior Court shall designate a liaison who shall receive all communications from City of Brockton and the Claims Administrator and Claims Adjudicator.

The City of Brockton Law Department, shall be the designated liaison to City of Brockton for all purposes related to this Agreement. The Superior Court may require Defendant at any time upon thirty (30) days written notice to verify, via written affidavit, its compliance with each paragraph of this Agreement and to clearly set forth information to support Defendants' compliance therewith or any such other information as requested by the Superior Court

VI. Settlement Funding

- A. The Settlement Fund account shall constitute a qualified settlement fund ("QSF") pursuant to Internal Revenue Code Section 1.468B-1. The Parties shall cooperate in securing an order of the Superior Court to establish the QSF in accordance with the terms hereof in conjunction with its preliminary approval of the Settlement and Notice. Upon the opening of the account, City of Brockton shall execute an election statement provided by the Claims Administrator which shall be affixed to the initial tax return of the Settlement Fund Account in order to establish the start date of the Settlement Fund account. The Settlement Fund account will be created, managed and disbursed by the Claims Administrator under the supervision of the Superior Court, Class Counsel and Defendants' Counsel. The Claims Administrator shall be the only entity authorized to make withdrawals or payments from the Settlement Fund account. City of Brockton will have no responsibilities

or liabilities with respect to the administration of the Settlement Fund account, including any distributions and the reporting for such distribution.

- B. Within fourteen (14) calendar days following the Superior Court's preliminary approval of the Settlement, City of Brockton shall transfer to the QSF all anticipated Notice and Administration Costs.
- C. Within fourteen (14) calendar days following the Effective Date, City of Brockton shall transfer to the QSF all remaining amounts due under this Agreement, and the total amount of funds due pursuant to this and the previous paragraph shall be no greater than \$1,750,000.00
- D. No monies shall be distributed from the QSF except pursuant to an order issued by the Superior Court governing the distribution of such funds.

VII. Posting

A. No later than fifteen (15) days after Preliminary Approval, City of Brockton shall conspicuously post for employees at all job locations in Massachusetts where there is a City of Brockton office, break room or otherwise accessible common space for its employees, a copy of a remedial notice, printed on its letterhead and signed by its Mayor, advising its employees that:

SETTLEMENT OF CERTAIN DISCRIMINATION CLAIMS AGAINST THE CITY OF BROCKTON

This notice is being posted as part of a program initiated by the City of Brockton and in conjunction with a voluntary Settlement Agreement with the City of Brockton arising from alleged discrimination by the City of Brockton in its hiring practices at the Department of Public Works. The City of Brockton has addressed and remedied the alleged problems by way of reform measures in cooperation and partnership with the Superior Court.

Massachusetts law prohibits employment discrimination on the basis of, among other things, race, color and national origin.

The City of Brockton fully supports and complies with Massachusetts law in all aspects, will not tolerate any forms of discrimination or retaliation in the workplace, and will not take any action against any employee who exercises her/his legal rights under the law. This includes exercising their rights as members of the Class and/or receiving money from this settlement.

IF YOU ARE A NON-WHITE INDIVIDUAL WHO APPLIED FOR A POSITION WITH THE CITY OF BROCKTON DEPARTMENT OF PUBLIC WORKS at any time from October 10, 2010 to December 19, 2019, you will receive a notice detailing your rights under the settlement. If you do not receive a notice detailing your rights prior to **[insert date 10 days after Notice Mailing]**,

please contact the [Claims Administrator] at _____] or you might waive some or all of your rights to any potential settlement. You may learn more at [www._____.com].

The City of Brockton takes great pride in its workforce and will not engage in or tolerate any unlawful discriminatory or retaliatory conduct.

This notice shall be posted in English, Spanish, Haitian, and Cape Verdean Creole within fifteen (15) days following Preliminary Approval.

VIII. Notice to Settlement Class

A. No later than fifteen (15) days following Preliminary Approval, Class counsel shall provide to the Claims Administrator a listing of all Class Members as has been determined by Class counsel, as Defendant's counsel disputes the class definition, certification, and scope, but does not contest for purposes of this settlement, reserving its right to do so if the Agreement is not accepted by the Court in full, including date of birth (if known), last known addresses, last known email addresses, and telephone numbers of each Class Member who applied for a job with the City of Brockton Department of Public Works during the Settlement Class Period (the "Class List"). The Class Members on the List shall be based upon the data kept in the ordinary course of business by the City of Brockton that was provided to Class counsel, and the contact information therein, as updated by online research and class outreach. The Class List shall be provided by Class counsel in Access, Excel or other similar format as reasonably requested by the Claims Administrator. The Parties agree that the contents of the Class List are confidential, shall be used solely for purposes of this Action, and shall not be shared with third-parties other than Class Counsel the Claims Adjudicator, and the Claims Administrator, who shall also agree to keep the contents of the Class List confidential. As noted above, the parties anticipate that there are 89 such Class Members. A copy of this list will be shared with counsel for the Defendant.

B. Any individual who did not receive a Notice (because that individual does not appear on the Class List), but otherwise believes that he or she should be a Class Member, must submit information as provided below.

C. Notice to the Settlement Class shall be provided as follows:

1. Within thirty (30) days following the Superior Court's entry of an order granting preliminary approval of the Settlement, the Claims Administrator shall mail notices to all Class Members for whom the Settlement Administrator has a mailing address, via First Class regular U.S. mail, using the most current mailing addresses presently available given to it by the Parties, or a more recent address obtained through the National Change of Address Database. Prior to mailing the Mailed Notice Documents to Class Members the Claims Administrator shall process the Class List against the National Change of Address Database maintained by the United States Postal Service. The Claim Form shall be included with the mailed notice. The mailed notice shall include a description of the Settlement Agreement, any estimated Settlement Award

(to the extent such amount is calculable) along with instructions about how to obtain and submit the Claim Form, how to object to the Settlement, and the dates set by the Superior Court for submission of claims, objections, and for the hearing on final approval of the Settlement. The documents mailed pursuant to this Section shall be referred to collectively as the “Mailed Notice Documents.”

2. The form of Enumerated Claim Form agreed to by the Parties subject to Superior Court approval is attached hereto as **Exhibit A**. The form of mailed Notice to the Settlement Class agreed to by the Parties subject to Superior Court approval is attached hereto as **Exhibit B**.

3. It shall be conclusively presumed that if the Mailed Notice Documents are not returned as undeliverable, the Class Member to whom the Mailed Notice Documents were mailed received the Mailed Notice Documents. If Mailed Notice Documents are returned with forwarding address information, the Claims Administrator shall re-mail the Mailed Notice Documents to the forwarding address. With respect to Mailed Notice Documents that are returned as undeliverable, the Claims Administrator shall use standard skip tracing devices based upon Lexis/Nexis/Accurint or similar databases to obtain forwarding address information and shall forward returned mail to ensure that the Mailed Notice Documents are sent to those Class Members for whom address information is reasonably available. If re-mailing based upon forwarding addresses or skip tracing is necessary, the Mailed Notice Documents shall be re-mailed as soon as reasonably practicable (approximately 5 days) after the receipt of the returned mail. If the Mailed Notice Documents are returned without a forwarding address after re-mailing, the Claims Administrator shall undertake one additional reasonable effort to search for the correct address through the use of publicly available internet address search facilities, and shall promptly make one final re-mailing of the Settlement Notices to any newly-found addresses. If the Mailed Notice Documents are returned without a forwarding address after this re-mailing, it shall then be presumed that the Class Member cannot be located by mail.

4. In addition to Mailed Notice Documents, notice shall also be made to the Class Members by way of publication for one full week in the newspapers set forth on the list attached hereto as **Exhibit E**. Notice by publication shall be made on the closest practicable date after the Mailed Notice Documents have been mailed.

5. In addition to Mailed Notice Documents, notice shall also be made to the Class Members by way of publication on the Internet via a dedicated website set up and operated by the Claims Administrator. The website will contain the Mailed Notice Documents, settlement documents, an online Claim Form, downloadable Claim Form and contact information.

6. Each publication notice shall include the telephone number and website information for the Claims Administrator, as well as the website information for the Class Members.

7. The Claims Administrator shall be available through a toll-free line to respond to requests from Class Members for assistance in completing and filing Claim Form.

IX. Claims Process for Race Discrimination Based Damages from the Compensatory Award Pool

A. As set forth in paragraph 5.C., the Mailed Notice Documents shall contain (to the extent calculable) the estimated Race Discrimination Based Award for each Class Member. That Award shall be an automatic and fixed payment, based upon the total number of Class Members, as set forth below.

B. A Class Member need not submit any Claim Form in order to receive the Race Discrimination Based Claim Award.

C. Unclaimed Funds. Race Discrimination Based Awards which are not cashed shall remain in the Settlement Fund to be first made available to the Claims Adjudicator in connection with Enumerated Claims or other unpaid expenses, and then, if unused, disbursed in accordance with this Agreement.

X. Claims Process for Enumerated Damages

A. Eligibility. In order to be eligible to receive an Enumerated Claim Award, a member of the Settlement Class must return to the Claims Administrator a completed Enumerated Claim Form, declaring under penalties of perjury (without a notarized requirement) that: (i) the individual qualifies as a Class Member; and (ii) that during the Settlement Class Period, the Class Member experienced enumerated circumstances involving conduct evidencing discrimination and/or retaliation. The declaration must be accompanied by a reasonable affirmation of the discrimination suffered during the Settlement Class Period and a reasonable affirmation of the nature of the resulting described damages. Known and foreseeable damages may include those enumerated in the form, or added by the claimant. Defendants will defer to discretion of class counsel and will not object to the forms used.

B. The aggravating factors may include conduct which the Settlement funds are designed to punish or deter, such as those set forth on Exhibit F.

XII. Notices and Allocation Procedure for Awards

The notices mailed or published to the Class Members shall note the Enumerated Claim Form Submission Deadline, if such Class Member desires to submit a claim for additional funds under this Settlement. All original Enumerated Claim Forms shall be sent to the Claims Administrator. If a Class Member mistakenly sends that form to Class Counsel or any Party, that recipient shall promptly forward the documents to the Claims Administrator. The following procedures will be followed:

1. The Claims Administrator shall record its receipt of all Claim Forms, and shall promptly forward those Claim Forms to the Class Counsel and the Claims Adjudicator upon receipt.

2. Class Members who fail to sign their submitted Enumerated Claim Form shall be given a reasonable opportunity to cure such defects in their submitted Enumerated Claim Form; provided that such period shall not exceed thirty (30) days from the Enumerated Claim Form Submission Deadline. An electronically submitted signature, whether by email or fax will be accepted.

3. The Enumerated Claim Form shall provide the option to provide detailed descriptions or complaints of discrimination. It shall indicate that an additional payment may be made to Class Members who have suffered damages described on the Enumerated Claim Form, with that payment to be determined based upon: (i) the date of the Class Member's application(s) for employment at City of Brockton during the Settlement Class Period; (ii) the Claims Adjudicator's evaluation of any additional claim made describing specific occurrences of discrimination against non-white Class members and or specific damages suffered by the Class member, and/or related retaliation; and (iii) amounts available in the Enumerated Award Pool.

4. The Enumerated Claim Form may be submitted to the Claims Administrator by mail or email. The Claims Adjudicator may decline to honor any Enumerated Claim Form that is not timely and/or valid. To be timely it must be postmarked or emailed by the Enumerated Form Submission Deadline or by the deadline for cure. To be valid, it must be completed in full and signed under penalty of perjury, but it need not be notarized. An electronically submitted signature, whether by email or fax, will be accepted.

5. The Claims Adjudicator shall not be obligated to allocate the entire Enumerated Award Pool.

6. The Claims Adjudicator, using specific guidelines submitted by Class Counsel, shall propose an amount to pay each Class Member who submits a timely and valid Claim Form. That determination shall be based upon the Claims Adjudicator's evaluation of each Class Member's employment information and any descriptions of discrimination and/or retaliation. The amount recoverable by each approved Class Member is subject to: (i) deductions for applicable taxes and withholdings; and (ii) a maximum amount set as a pro rata share of the Enumerated Award Pool in the event that that pool retains insufficient funds to pay out each such claim in full, as determined by the Claims Adjudicator.

7. Except at the express and explicit direction and supervision of Superior Court, no individual (including, without limitation, Class Members and City of Brockton supervisors) will be informed of any Class Member's filing, interviewed or otherwise involved in any way with the preparation of any response by City of Brockton to any Class Member's claim for Enumerated Claims, other than the designated City of Brockton representative, Defendant's Counsel, Class Counsel and City of Brockton officers.

8. Enumerated Claim Forms shall be used only for the purpose of filing a claim for compensatory damages under this Agreement, and will not be admissible in a court or other legal proceeding, or for any other purpose. Except that, at the express and explicit direction and supervision of Superior Court, Enumerated Claim Forms may be used by City of Brockton to conduct internal investigations into the substance of the allegations contained therein.

Notwithstanding such authority, any Class Member who believes that he/she or anyone else is subject to ongoing discrimination may report their allegations separately to the City of Brockton or the Superior Court for investigation and/or resolution.

9. Within twenty (20) days after the Enumerated Form Submission Deadline, the Claims Adjudicator shall provide a spreadsheet to Class Counsel that contains the following information: (i) identifying information for each Class Member who submits an Enumerated Claim Form, including name, address and last four digits of their social security number; (ii) the date each Enumerated Claim Form was received by the Administrator (or the postmark date on the envelope if the Enumerated Claim Form was received after the filing deadline); (iii) whether or not the Enumerated Claim Form was signed; and (iv) which Enumerated Claim Forms remain outstanding because the Class Member has been given the opportunity to cure and the deadline to cure has not yet passed.

10. Unless otherwise instructed by the Superior Court, City of Brockton and Class Counsel, within thirty (30) days after the Enumerated Form Submission Deadline, the Claims Adjudicator shall calculate the proposed amounts due to each approved Class Member, including any further allocations required by this Agreement on a pro rata basis against the total amount of the Enumerated Damages Award. At that time, the Claims Adjudicator shall provide an updated spreadsheet to Class Counsel that contains the following additional information: (i) which Enumerated Claims the Claims Adjudicator proposes to treat as approved claims; (ii) the amount proposed to be paid to each approved Class Member from the Enumerated Award Pool; and (iii) which Enumerated Claim Forms the Claims Adjudicator has denied and the reasons for the denial.

11. The Claims Adjudicator shall then immediately provide written notice to all Class Members who submitted Enumerated Claim Forms of the Claims Adjudicator's determination regarding payment of an Enumerated Damages Award.

12. Superior Court and Class Counsel (and each Class Member in connection with his or her own particular claim) shall, independently and/or jointly, have the right to audit the information provided in the Enumerated Claim Form as submitted by each Class Member, and to challenge the Claims Adjudicator's determinations regarding approval or denial of each Enumerated Claim Form and the amount the Claims Adjudicator proposes to pay to each Class Member, in accordance with the procedure set forth in this Agreement.

13. Unless otherwise instructed by the Superior Court, within fifteen (15) days after all audits initiated pursuant to the procedures set forth in this Agreement have been resolved with respect to the Enumerated Claims, the Claims Adjudicator shall calculate the final amounts due to each approved Class Member. At that time, the Claims Adjudicator shall provide a final updated spreadsheet to the Superior Court, City of Brockton and Class Counsel. At that same time, the Claims Adjudicator shall also provide an accounting to the Superior Court, Class Counsel, City of Brockton and the QSF itemizing the monies proposed to be distributed to each approved Class Member from the Enumerated Award Pool along with an account of the initial amount of remaining funds expected to be distributed, including amounts to pay for the Claims Adjudicator.

14. Enumerated Claim Awards which are not cashed along with any and all amounts remaining in the Enumerated Award Pool which are not awarded by the Claims Adjudicator, shall remain in the Settlement Fund to be disbursed in accordance with this Agreement. If there are any funds remaining in the Enumerated Award Pool prior to distribution of funds to the Class Members, these additional funds will be added to the Race Discrimination Based Emotional Distress Award Pool and be distributed to class members as set forth above.

XII. Audit and Challenge Procedure

A. Records and Fraud. The Claims Administrator/Adjudicator shall record their receipt of all Claim Forms. The Claims Administrator/Adjudicator shall use reasonable methods to protect against fraud with respect to the submission of Claim Forms by mail and online. The Claims Administrator (for Race Discrimination Based Claim Awards) and the Claims Adjudicator (for Race Discrimination Based Wage Claim Awards) shall retain the originals of all Claim Forms (including the envelopes with the postmarks, and all supporting materials) received from Class Members, and shall make copies or the originals available to the Superior Court, City of Brockton or Class Counsel within three (3) business days upon request.

B. Previously Unidentified Class Members. Any individual who did not receive a Notice (because that individual does not appear on the Class List), but otherwise believes that he or she should be a Class Member, must submit a declaration under penalties of perjury (without a notarized requirement) to the Claims Administrator stating: (i) the individual's name, address, telephone number and contact information; (ii) that the individual applied for a position with the City of Brockton's DPW during the Settlement Class Period; (iii) a copy of the submitted application; and (iv) proof of residency in the City of Brockton that corresponds with the date of the application. This declaration shall be submitted together with any documents or other evidence in support of such position. Counsel for the Parties shall be notified promptly of any dispute and given access to any documents or other evidence that any person submits in support of his or her position with respect to the dispute. The Claims Administrator shall then resolve the dispute and determine whether that individual should be on the Class List.

C. Change of Address. Class Members who file a Claim Form must notify the Claims Administrator/Adjudicator of any change of address. A failure to notify the Claims Administrator/Adjudicator of a change of address may result in the forfeiture of a monetary award for Enumerated damages.

D. Challenges by City of Brockton or Class Counsel. The Parties agree that they shall have, independently or jointly, the right to audit any Race Discrimination Based Claim awarded by the Claims Administrator. Within ten (10) days of having received all Former Applicant Claim Form spreadsheets, Class Counsel and Defendants' Counsel shall meet and confer regarding any issues that City of Brockton or Class Counsel believes need to be raised with the Claims Administrator. Class Counsel and Defendant's counsel agree to use their best efforts to resolve any disputes. If Class Counsel and City of Brockton cannot resolve these issues, then within ten (10) business days of the meet and confer, either Party may provide written notice of its intent to audit the determinations. Such notice shall be accompanied by paperwork supporting the

audit challenge, which shall identify the determinations that are the subject of the audit, and may be accompanied by supporting papers for each determination being audited. Within ten (10) days of receipt of the notice and supporting papers for any claims, the Party receiving the request may submit a written response for each determination being audited. The Claims Administrator shall decide any such audits presented to them within ten (10) days of final submission, which determination shall be final and binding, and not subject to appeal.

E. Challenges by Class Members or Purported Class Members. Any Class Member or purported Class Member may challenge the decision of the Claims Administrator and/or Adjudicator in regard to either: (i) that Class Member's, or purported Class Member's, qualification to submit a Claim Form; or (ii) the amount the Claims Administrator and/or Adjudicator determines that the individual is eligible to receive. Such challenges shall be made in accordance with the following procedures.

1. Challenges to Race Discrimination Based Awards. The challenge must be made within forty-five (45) days from the date on which the Mailed Notice Documents were initially mailed.

- a. The challenge shall be made in writing and directed to the Claims Administrator. It must state the reasons for the challenge, and must identify any evidence to support the challenge. The Claims Administrator shall provide copies of such challenges to the Superior Court, Class Counsel and Defense Counsel immediately upon receipt.
- b. The Claims Administrator shall then have ten (10) days from receipt of the challenge to investigate and respond in writing to the challenge. The Claims Administrator shall consult with Class Counsel and with Defense Counsel as necessary as part of the investigation.
- c. If the Class Members not satisfied with the Claims Administrator's determination, the Class Member may, within five (5) days of the date of the final determination, provide notice to the Claims Administrator, that he or she intends to appeal the decision to the Superior Court which shall have exclusive jurisdiction over such disputes. The Claims Administrator shall provide copies of such to Class Counsel and Defendants' Counsel immediately upon receipt. Class Counsel and City of Brockton shall meet and confer with each other and with the Class Member in an attempt to resolve the Class Member's concerns.
- d. If the meet and confer is not successful, the Class Member may file an appeal in writing with the Superior Court within ten (10) days of having provided notice of dissatisfaction to the Claims Administrator. The appeal must include a copy of the decision by the Claims Administrator, and must state the basis for the appeal and must identify any evidence to support the appeal. Class Counsel or City of

Brockton may respond to such appeal in accordance with the deadline for responding to motions as provided in the Superior Court's rules.

2. Challenges to Enumerated Awards. The challenge must be made within sixty (60) days from the date on which the Claims Adjudicator mailed its final determination.

- a. The challenge shall be made in writing and directed to the Claims Adjudicator. It must state the reasons for the challenge, and must identify any evidence to support the challenge. The Claims Adjudicator shall provide copies of such challenges to the Superior Court, Class Counsel and Defense Counsel immediately upon receipt.
- b. The Claims Adjudicator shall then have thirty (30) days from receipt of the challenge to investigate and respond in writing to the challenge. The Claims Adjudicator shall consult with Class Counsel and with Defense Counsel as necessary as part of the investigation.
- c. If the Class Member is not satisfied with the Claims Adjudicator's determination, the Class Member may, within thirty (30) days of the date of the final determination, provide notice to the Claims Adjudicator, that he or she intends to appeal the decision to the Superior Court which shall have exclusive jurisdiction over such disputes. The Claims Adjudicator shall provide copies of such to Class Counsel and Defendants' Counsel immediately upon receipt. Class Counsel and City of Brockton shall meet and confer with each other and with the Class Member in an attempt to resolve the Class Member's concerns.
- d. If the meet and confer is not successful, the Class Member may file an appeal in writing with the Superior Court within twenty (20) days of having provided notice of dissatisfaction to the Claims Adjudicator. The appeal must include a copy of the decision by the Claims Adjudicator, and must state the basis for the appeal and must identify any evidence to support the appeal. Class Counsel or City of Brockton may respond to such appeal in accordance with the deadline for responding to motions as provided in the Superior Court's rules.

3. The time periods set forth in this Section may be extended by the Superior Court, for good cause shown. Notice of audits, any paperwork submitted in support of, or in response to, any audit, and the decisions by the Claims Adjudicator shall be served by email and United States Mail.

XIII. Objections

A Class Member who wishes to object to the Settlement must notify the Superior Court of his or her objection, in writing, on or before the date that is seventy-five (75) days from the date on which the Mailed Notice Documents were initially mailed. The written objection must be made under penalty of perjury and include the following information:

1. A heading referring to this Action;
2. The Objector's name, address, telephone number and the contact information for any attorney retained by the Objector in connection with the objection or otherwise in connection with the Action;
3. The location(s) and the type of facility or facilities where the Objector applied for work and/or worked for City of Brockton, position and dates of employment;
4. A detailed statement of the specific factual and legal basis for each objection, including why the Objector has chosen to object;
5. A statement as to whether the Objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address and telephone number;
6. A statement that the Objector is a Class Member and is not excluded from the Settlement, along with a copy of the Objector's Claim Form(s), if any;
7. A list of any witnesses the Objector may call at the Final Approval Hearing, if any, together with a brief summary of each witness's expected testimony;
8. A list of and copies of any exhibits which the Objector may seek to use at the Final Approval Hearing;
9. A list of any legal authority the Objector may present at the Final Approval Hearing; and
10. The Objector's signature, executed under penalty of perjury.

No one may appear at the Final Approval Hearing for the purpose of objecting to the Settlement Agreement without first having filed and served her objection. Any lawyer representing a Proposed Class Member for the purpose of making objections must also file a Notice of Appearance with the Superior Court by the Objection Deadline and must also serve copies by mail to Counsel for the Parties by the Objection Deadline set forth above.

An objector may withdraw her objection at any time.

XIV. Exclusions and Complaints Pending with Superior Court

Any individuals who fall within the Class Definition are considered to be Class Members and, unless such individuals fall into the category of persons provided for in the following paragraph, she or he releases her claims consistent with this Agreement upon Final Approval.

Any Class Member who has a charge pending with the MCAD or any Court arising from conduct prior to December 27, 2019 the cut-off date for discovery and class inclusion, shall be excluded from the terms of this Settlement Agreement, unless they dismiss that claim prior to Final Approval. This Settlement will not operate to extend or otherwise toll the statute of limitations for any claim of discrimination, retaliation, or otherwise, requiring a timely charge be filed with the MCAD

XV. Distribution of Funds from the QSF

Funds transferred to the QSF for purposes of Notice and Administration Costs shall be paid to the Claims Administrator within three (3) business days of receipt of such funds by the QSF. The QSF shall distribute all monies due to the Class Members (other than the Enumerated Claim Awards), and any Additional Compensation Award due to the Class Representatives and any Fee and Expense Award due to Class Counsel, within thirty (30) days after the Settlement Effective Date, or within ten (10) days after receipt of the funds by the QSF, whichever is later.

The QSF shall distribute all monies due to the Class Members as Enumerated Claim Awards, within thirty (30) days after their final determination in accordance with paragraph XI.D.2 and XI.E.2, or within ten (10) days after receipt of the funds by the QSF, whichever is later.

The face of each check sent to Class Members to whom a payment is due shall clearly state that the check must be cashed within one (1) year. All payment checks distributed by the Claims Administrator must be accompanied by a cover letter stating words in bold to the effect that “**the check must be cashed within one year or it will become void.**” The back of each check will contain a legend stating: “By negotiating this check and accepting payment, I agree that I have waived and released all Released Claims as defined in the Settlement Agreement and in the Notice in this matter. This Release is effective as of the Effective Date.” If any monies distributed to Class Members remain unclaimed with the QSF after one year from the date the check was mailed to the Class Member’s address on file with the Claims Administrator, those monies shall remain in the Settlement Fund to be first made available to the Claims Adjudicator in connection with Enumerated Claims or other unpaid expenses, and then, if unused, disbursed in accordance with this agreement.

If a Class Member to whom a payment is due is deceased at the time of such distribution hereunder, the amount payable to such deceased Class Member shall be paid to her estate, provided that the estate provides an appropriate certification to the Claims Administrator.

Cy Pres. Subject to Court approval, any funds left over in the QSF after one year following the date the last check was mailed, will revert to a *cy pres* fund to be donated 25% to Massachusetts Law Reform Institute, 25% to the Fair Employment Project, and 50% to IOLTA (unless otherwise required by state escheatment laws). Pursuant to Mass. R. Civ. P. 23(e)(3), the Parties will provide written notice to the Massachusetts IOLTA Committee within ten (10) days of Preliminary Approval for the limited purpose of allowing the committee to be heard on whether it ought to be a recipient of residual funds beyond what is already provided for in this Agreement

XVI. Taxes

A. The Claims Administrator shall cause to be filed, on behalf of the QSF, all required federal, state and local tax returns, information returns and tax withholdings statements in accordance with the provisions of Treasury Regulation §1.468B-2. The Claims Administrator may, at the expense of the QSF, retain legal counsel and an independent, certified public accountant to consult with and advise the Claims Administrator or the Trustee with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF. Subject to any contrary findings:

1. Class Members shall be responsible for payment of appropriate federal, state and local income taxes on any claim paid out pursuant to this Agreement, and the City's contribution to the QSF in the cash amount agreed upon in the Preliminary Settlement Agreement shall be considered to have included any employer associated taxes, which shall be appropriately allocated as so by the Administrator based on any allocation of the QSF to wage related damages. No determination has been made by the Parties that any portion of the Qualified Settlement Funds are to be allocated or classified as the payment of "wages." The City shall not be responsible for contributing any funds to the QSF over and above the cash amount agreed upon in the Preliminary Settlement Agreement. The Parties agree that no portion of any distributions from the QSF to the Class Members is made in satisfaction of any excluded liability as described in Treasury Regulation § 1.468B-1(g), related to Qualified Settlement Funds.

2. All federal, state and local withholding, employment, unemployment, excise, or similar taxes that may be imposed with respect to distributions from the QSF (including, but not limited to, FICA, FUTA, Medicare taxes, and all state and local taxes and, in each instance, both the Class Members' and QSF's share of all taxes), shall be paid from the QSF.

B. It is agreed that any amounts paid under this Agreement do not represent a modification of the paid Class Members' previously credited hours of service or compensation to be taken into account under any employee benefit plan sponsored, or contributed to, by City of Brockton or any jointly-trusted benefit plans. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, City of Brockton sponsored or jointly-trusted benefit plans.

1. This Agreement and any distributions made pursuant to it will have no effect on Benefit Plan eligibility, vesting, contributions, or benefits of or on behalf of current or former employees covered by this Agreement.
 2. For purposes of this Agreement, “Benefit Plan” means each and every “employee benefit plan” as defined in 29 U.S.C. § 1002(3), and each and every other plan, fund, program, or arrangement that relates to bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit-sharing, retirement, disability, vacation, severance, hospitalization, insurance, Compensation, deferred compensation, or any other similar benefit for one or more current or former employees or their beneficiaries.
- C. The taxable year of the QSF shall be the calendar year in accordance with Treasury Regulation §1.468B-2(j). The QSF shall utilize the accrual method of accounting within the meaning of § 446(c) of the Internal Revenue Code.
- D. The QSF shall be invested in United States Treasury bills or money market funds primarily invested in the same, provided that such portions of the QSF as may reasonably be required to pay current QSF administrative expenses, taxes or disbursements to Class Members or Class Counsel may be deposited in bank accounts which are federally insured to the greatest extent practicable. All federal, state and local taxes imposed with respect to income earned by, or property of, the QSF, shall be paid from the QSF.
- E. The Claims Administrator may amend, either in whole or in part, any administrative provision of this Section or the trust instrument through which the QSF is established to maintain the qualification of the QSF pursuant to the above-described authorities provided that the rights and liabilities of the Parties hereto and the Class are not altered thereby in any material respect.

XVII. Stipulation for Class Certification

The Parties stipulate and agree to the conditional certification of a Settlement Class for purposes of this Settlement only. Should, for whatever reason, this Settlement not become final, such stipulation to class certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification is appropriate in a non-settlement context. Defendants expressly reserve their right to renew any opposition to class certification should this Settlement not become final.

XVIII. Admissibility and Inadmissibility of Settlement Agreement

A. Inadmissibility. Except for purposes of settling this Action pursuant to the terms of this Agreement, neither the Settlement, nor any of its terms, nor any exhibit hereto, nor any reports or accounts thereof, shall in any event be:

1. Construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to any of the Parties, including, but not limited to, evidence

of a presumption, concession, indication or admission by any of the Parties of any liability, fault, wrongdoing, omission, concession or damage; or

2. Disclosed, referred to or offered or received in evidence against any of the Parties in any further proceeding in the Action, or in any other civil, criminal or administrative action.

B. Admissibility. Notwithstanding the foregoing, in the event of Final Approval, this Agreement, its terms, exhibits, schedules and all reports and accounts thereof may be disclosed and used in any judicial or administrative proceeding if required by order, subpoena or administrative subpoena, or if necessary for Defendant and/or Released Parties to defend against a claim related to the allegations in the Charge.

XIX. Benefits of Settlement to the Plaintiff and Settlement Class

Class Representative and Class Counsel has considered the expense and length of continued proceedings necessary to continue the Action against the Defendant through trial and any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including the ability to collect any damages. Lastly, Plaintiff has considered Defendant's funds and their financial representations. Based upon the foregoing and the evaluation of discovered facts and law, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is fair, adequate and reasonable, and is in the best interests of both Plaintiff and Settlement Class.

XX. Comprehensive Waivers, Releases and Dismissals

This Section describes the release given by the Class Members.

Subject to final approval by the Superior Court of the Settlement, and for good and valuable consideration set forth herein the receipt and sufficiency of which is hereby acknowledged, all Class Members who were not otherwise excluded from this Settlement Agreement ("Settlement Class") do, as of the date of December 27, 2019, the date of close of inclusion of hiring data in this action, as provided in the Memorandum of Settlement Para. 2 (c), hereby irrevocably release, acquit and forever discharge the Released Parties of and from any and all claims, demands, rights, liabilities and causes of action that are asserted and that could have been asserted by Class Members up through and including December 27, 2019, based upon the alleged facts, circumstances and occurrences underlying the alleged discrimination, retaliation, and harassment set forth in the Action or any other claims under M.G.L. c. 151B or Title VII alleging discrimination, harassment, retaliation, or other unlawful conduct by the Released Parties that could have been brought in the Action ("Released Claims"). The Released Claims do not include (i) any claims accruing after Preliminary Approval, whether arising out of any alleged breach of this Agreement or otherwise, and (ii) any claims arising from facts or circumstances other than those which were alleged or could have been alleged in the Action. The Settlement Class further covenant to obtain any necessary Superior Court approval with respect to the Released Claims as they apply to any minor Class Members.

XXI. Miscellaneous

A. Entire Agreement. The parties agree that this Agreement constitutes the complete understanding of the Agreement between the Parties with respect to the matters referred to herein. No waiver, modification or amendment of any provision of this Agreement shall be effective unless made in writing and executed by authorized representatives of all parties to this Agreement.

B. Enforcement. Any of the Parties, including the Superior Court, can seek state or federal court intervention to enforce, clarify, remedy or otherwise administer any part(s) of this Agreement. In the event that any party, including the Superior Court seeks enforcement, the Parties will first confer in good faith and attempt to reach an agreement no later than 15 days after receiving written notice of the initiating party's objection. Prior to initiating such court intervention, and in the event the Parties are unable to reach an agreement among themselves, the Parties agree that they shall submit their dispute to a neutral and mutually agreeable third party for mediation as soon as practicable but in any event within 15 days of non-resolution, before pursuing any remedies with the Court. If, however, after 60 days of the initiating party's objection, the parties have been unable to reach mutual agreement, any party can seek court intervention as described above.

C. Arm's Length and Good Faith Negotiation. The Parties agree that the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

D. Cooperation by Superior Court. In this Agreement, when agency approval is required, the Superior Court shall not unreasonably withhold their approval and shall state in writing through the agencies' liaisons any reasons for any such withholding of approval.

E. Retaliation. Defendants shall not take any adverse action against the Plaintiffs or any Class Member because any of them: (a) instituted or in any way participated in this Action, or accepted money pursuant to this Agreement; or, (b) elects or indicates an intention to object to the Settlement or any order entered by the Superior Court approving its terms.

[Remainder of this page intentionally left blank.]

SIGNATURE PAGE TO:

**STIPULATION AND
SETTLEMENT
AGREEMENT (with Class for
damages)**

I have read the foregoing Settlement Agreement and I accept and agree to the provisions contained therein on behalf of the entity for whom I am signing:



ROBERT F. SULLIVAN
Mayor
City of Brockton

Russell D. Lopes
6-24-2020