

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

FRED HEIDARPOUR, individually  
and on behalf of a class of all persons  
and entities similarly situated,

Plaintiffs,

v.

CENTRAL PAYMENT CO., LLC,

Defendant.

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Case No: 4:15-cv-139 (CDL)

**CLASS ACTION SETTLEMENT AGREEMENT**

This class action settlement agreement (“Agreement” or “Settlement Agreement”) is entered into as of December 20, 2016, by and among Fred Heidarpour (“Plaintiff”), individually and on behalf of the class of persons he seeks to represent (the “Settlement Class” defined below), and Central Payment Co., LLC (“Central Payment”) (Plaintiff and Central Payment are collectively referred to as the “Parties”). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (defined below), upon and subject to the terms and conditions of the Agreement, and subject to the final approval of the Court.

## RECITALS

A. On August 18, 2015, Plaintiff filed a putative class action complaint against Central Payment, in the United States District Court for the Middle District of Georgia, captioned *Fred Heidarpour v. Central Payment Co., LLC*, No. 15-cv-139 (the “Action”), alleging, that Central Payment made telemarketing calls to telephone numbers in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”).

B. On November 7, 2016, the Parties participated in a full-day mediation with the Honorable Morton Denlow (Ret.) of JAMS. The Parties reached an agreement in principle on the material terms of a class settlement. Through this proposed settlement the Parties seek to consummate that agreement.

C. Central Payment at all times has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it violated the TCPA, or committed any other wrongful act or violation of law.

D. Plaintiff believes that the claims asserted in the Action have merit. Nonetheless, Plaintiff and his counsel recognize and acknowledge the expense, time, and risk associated with continued prosecution of the Action against Central Payment through dispositive motions, class certification, trial, and any subsequent appeals. Plaintiff and Plaintiff’s counsel also have taken into account the uncertainty, difficulties, and delays inherent in litigation, especially in complex

actions. Therefore, Plaintiff and Plaintiff's counsel believe that it is desirable that the Released Claims be fully and finally compromised, settled, dismissed with prejudice, and barred pursuant to the terms set forth herein. Based on their evaluation, which they have confirmed by consulting with their own experts and by performing confirmatory discovery, Plaintiff and Plaintiff's counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate for the Settlement Class, and that it is in the best interests of the Settlement Class to settle the Released Claims pursuant to the terms and provisions of this Agreement.

E. The Parties agree that the Action was resolved in good faith, following arm's-length bargaining presided over by Judge Denlow in a full-day mediation.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, by and through their undersigned respective counsel, subject to final approval by the Court after a hearing or hearings as provided for in this Settlement Agreement, and in consideration of the benefits flowing from the Settlement Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

**AGREEMENT**

**1. DEFINITIONS**

As used in this Settlement Agreement, the following terms have the meanings specified below:

**1.1 “Central Payment Counsel” means:**

Alan G. Snipes  
Thomas F. Gristina  
PAGE, SCRANTON, SPROUSE,  
TUCKER & FORD, P.C.  
1111 Bay Avenue, Third Floor  
P.O. Box 1199  
Columbus, Georgia 31902

**1.2 “Class Counsel” means:**

Edward Broderick  
Anthony Paronich  
BRODERICK & PARONICH, P.C.  
99 High St., Suite 304  
Boston, Massachusetts 02110

Matthew P. McCue  
THE LAW OFFICE OF MATTHEW P. MCCUE  
1 South Avenue, Suite 3  
Natick, Massachusetts 01760

Steven H. Koval  
THE KOVAL FIRM, LLC  
3575 Piedmont Road  
Atlanta, GA 30305

**1.3 “Class Representative” means Fred Heidarpour.**

1.4 **“Court”** means the United States District Court for the Middle District of Georgia.

1.5 **“Effective Date”** means the date one (1) business day after which all of the conditions precedent specified in Paragraph 10.1 have been satisfied.

1.6 **“Fee Award”** means the amount of attorneys’ fees and reimbursement of expenses awarded by the Court to Class Counsel.

1.7 **“Final”** means one (1) business day following the later of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Approval Order and Judgment; or (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of final dismissal or completion – in a manner that finally affirms and leaves in place the Final Approval Order and Judgment.

1.8 **“Final Approval Hearing”** means the hearing before the Court where the Parties will request that the Court enter the Final Approval Order and Judgment, approve the Settlement Agreement, and approve the Fee Award and the incentive award to the Class Representative.

1.9 **“Final Approval Order and Judgment”** means a document substantially in the form of Exhibit 1 or in such form as may be ordered by the Court, to be entered by the Court following the Final Approval Hearing.

1.10 **“Mediator”** means the Honorable Morton Denlow (Ret.) of JAMS.

1.11 “**Notice**” means the notice of this Settlement Agreement and Final Approval Hearing, which is to be provided to the Settlement Class in accordance with this Agreement and substantially in the form of Exhibit 3 hereto, or in such form as may be ordered by the Court.

1.12 “**Claim Form**” means the notice and claim form that is to be provided to the Settlement Class in accordance with this Agreement and substantially in the form of Exhibit 2 hereto or in such form as may be ordered by the Court.

1.13 “**Notice Plan**” means the plan, as set forth in Paragraph 5.2 and as executed and administered by the Settlement Administrator, for disseminating notice to members of the Settlement Class of the Settlement Agreement and of the Final Approval Hearing.

1.14 “**Objection/Exclusion Deadline**” means the date by which (1) a written objection to this Settlement Agreement, or (2) a request for exclusion, must be postmarked, which shall be no later than eighty-one (81) calendar days after entry of the Preliminary Approval Order, or such other date as may be ordered by the Court, which deadline shall be posted to the Settlement Website listed in Paragraph 5.2(b).

1.15 “**Preliminary Approval Order**” means the document substantially in the form of Exhibit 4 or such other order as may be entered by the Court for purposes of preliminarily approving the Settlement Agreement, certifying the

Settlement Class solely for settlement purposes, and approving the form of the Notice and the Notice Plan.

1.16 “**Released Claims**” means the claims released in paragraph 4.

1.17 “**Released Parties**” means (1) Central Payment; (2) Central Payment Deployment, Inc.; (3) Korthals, LLC d/b/a CPay WI; (4) Total System Services, Inc.; and (5) TSYS U.S. Holdings, Inc., and each and all of the past, present, and future parents, subsidiaries, affiliated companies and corporations of the foregoing, and each and all of their respective past, present and future directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, successors, divisions, joint venturers, and assigns, and each and all of their respective executors, successors, assigns, and legal representatives.

1.18 “**Releasing Parties**” means: (a) Plaintiff; (b) Settlement Class Members who do not otherwise timely opt out of the Settlement Class (whether or not such members submit claims) and their respective present, former or subsequent assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, agents, employees and anyone working on their behalf.

1.19 “**Settlement**” means the settlement contemplated by this Agreement.

1.20 **“Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice, and mailing checks for Settlement Class Members. Settlement Administration Expenses shall be paid from the Settlement Fund.

1.21 **“Settlement Administrator”** means DRRT, Ltd. (“DRRT”).

1.22 **“Settlement Class”** means all persons or entities who, at any time from August 18, 2011 through the date of the Settlement Agreement, received one or more of the Covered Calls. “Covered Calls” means a call to a residential or wireless telephone number, made by Korthals, LLC (“Korthals”) on behalf of Korthals and/or Central Payment, where the call either (1) utilized a pre-recorded message; or (2) was made through the use of automated dialing equipment; or (3) was made to a telephone number that was registered on the National Do Not Call Registry, where the call described in (1), (2), and/or (3) relates in any way to Central Payment’s and/or Korthals’ products or services or was intended to generate a sales lead to be delivered to Central Payment and/or Korthals. Covered Calls include calls initiated by Korthals relating in any way to Central Payment’s and/or Korthals’ business. Covered calls include any such calls, whether or not authorized by, approved by, or known by Central Payment and/or Korthals.



1.23 **“Settlement Class Member”** means any individual or entity who is included within the definition of the Settlement Class and who has not submitted a valid request for exclusion.

1.24 **“Settlement Class Recovery”** means the amount of the Settlement Fund available for distribution to the Settlement Class Member claimants, after payment of Settlement Administration Expenses, the Fee Award to Class Counsel (together with Attorney expenses) and any approved incentive award to the Class Representative.

1.25 **“Settlement Fund”** means the Six Million and Five Hundred Thousand Dollars (\$6,500,000) that Central Payment has agreed to pay pursuant to the terms of this Settlement Agreement, including but not limited to Paragraph 3.1 below.

1.26 **“Settlement Website”** means the website to be created by the Settlement Administrator containing full details and information about the Settlement, including this Agreement and the Notice.

## **2. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS**

Central Payment disputes that a litigation class would be manageable and further denies that a class could be properly certified pursuant to Fed.R.Civ.P. 23 in the Action. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Central Payment does not oppose the

certification for settlement purposes only of the Settlement Class. Preliminary certification of the Settlement Class shall not be deemed a concession that certification of a litigation class is appropriate, nor would Central Payment be precluded from challenging class certification in further proceedings in the Action, or in any other action, if the Settlement is not finalized or finally approved. If the Settlement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated certification proceedings in the Action or elsewhere.

### **3. SETTLEMENT RELIEF**

3.1 **Settlement Fund.** Central Payment agrees to provide a Settlement Fund in the amount of Six Million Five Hundred Thousand Dollars (\$6,500,000.00) for the purpose of making payments with respect to all Settlement Class Members under this Agreement, all Settlement Administration Expenses, any incentive award to the Class Representative, and any Fee Award to Class Counsel, together with attorney expenses. Central Payment will fund the Settlement Fund as follows: Within fourteen (14) days following entry of the Preliminary Approval Order, Central Payment will transfer \$6,500,000.00 to the Settlement Administrator (via wire instructions provided by the Settlement Administrator to Central Payment). The Settlement Administrator will hold those amounts in escrow

until such time as the Settlement Administrator is authorized in writing by Central Payment Counsel and Class Counsel to use or pay those funds, including for any authorized up-front notice costs and other costs of administration, pursuant to the Settlement Agreement, the Preliminary Approval Order, or the Final Approval Order and Judgment or as otherwise ordered by the Court.

**3.2 Remedial Measures.** As an additional benefit to all Settlement Class Members, Central Payment shall, for a period of at least two years from the Effective Date, maintain a policy (applicable to Central Payment and all of its Independent Sales Agents), of not making telemarketing calls promoting Central Payment's products and services using pre-recorded messages or knowingly purchasing leads that were generated through telemarketing using pre-recorded messages. In addition, for a period of at least two years from the Effective Date, Central Payment shall include a provision in the independent contractor agreements with respect to all of Central Payment's Independent Sales Agents who execute an independent contractor agreement after the Effective Date, requiring that they refrain from making telemarketing calls promoting Central Payment's products and services using pre-recorded messages, or knowingly purchasing leads that were generated through telemarketing using pre-recorded messages.

These restrictions on the use of pre-recorded messages described in this paragraph will include any call using an artificial or pre-recorded voice to deliver a

message with or without consent, that is made for the purpose of marketing Central Payment's products or services. The restriction does not apply to (i) calls made for non-solicitation purposes, including, but not limited to, calls for appointment scheduling and confirmation, and calls regarding service issues or advisories, or (ii) calls made by an Independent Sales Agent to market products or services that do not relate to Central Payment.

Plaintiff and the Settlement Class Members agree that Central Payment's obligation is limited to maintaining policies requiring its Independent Sales Agents to agree to refrain from making telemarketing calls using pre-recorded messages, and that neither Central Payment nor any of the Released Parties shall be liable for breach of this Settlement Agreement should any Independent Sales Agent of Central Payment make any such calls using pre-recorded messages. Central Payment expressly denies that it is responsible for the conduct of its Independent Sales Agents.

To the extent Congress, the Federal Communications Commission, the Federal Trade Commission, the Consumer Financial Protection Bureau, or any other relevant regulatory authority promulgates any law or regulation that would govern Central Payment's obligations described in this paragraph, or promulgates

different requirements under the TCPA, those laws and regulatory provisions shall govern the conduct of Central Payment rather than those in this paragraph.

### 3.3 Monetary Payments

(a) As soon as practicable but no later than sixty (60) days after the Effective Date or such other date as the Court may order, the Settlement Administrator shall pay from the Settlement Fund (after the payment of attorney's fees and expenses, costs of administration and such other expenditures as may be authorized by the Court ("Net Settlement Proceeds")) all Settlement Class Members who filed a valid claim, which shall be mailed to those Settlement Class Members via first-class mail. Settlement Class Members shall be paid a pro rata share of the Net Settlement Proceeds. Each Settlement Class Member shall be entitled to make only one claim regardless of the number of calls she or he received, and the payment will depend on the number of claims of Settlement Class Members.

(b) All payments issued to Settlement Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance.

(c) To the extent that any checks to Settlement Class Members expire and become null and void, the Settlement Administrator shall distribute the leftover funds associated with those checks to Settlement Class Members who

cashed their check from the previous round of distribution on a *pro rata* basis, if doing so is administratively feasible. Any remaining funds, including to the extent a second distribution is not administratively feasible, shall be distributed as a *cy pres* award to such organization(s) as the Court may elect in its sole discretion. The Parties agree that Plaintiff will propose the Electronic Privacy Information Center as the *cy pres* recipient and Central Payment will propose the TSYS Center for Cybersecurity at Columbus State University and/or the Center for Financial Services Innovation as the *cy pres* recipient(s). The Court, in its sole discretion, shall determine any *cy pres* award.

#### **4. RELEASES**

4.1 The Parties intend that this Settlement Agreement will fully and finally dispose of the Action, which shall be dismissed with prejudice, along with any and all Released Claims against the Released Parties.

4.2 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Approval Order and Judgment to have, fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from each of the Released Claims (as defined below). The Releasing Parties further agree that they will not institute any action or cause of action, suits, debts, liens, or claims, known or unknown, fixed or

contingent, which they may have or claim to have arising from or reasonably attributable to the Released Claims.

For purposes of this paragraph, Released Claims means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorney's fees of any nature whatsoever based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or un-asserted, foreseen, or unforeseen, actual or contingent, liquidated or un-liquidated, punitive or compensatory as of the date of the Final Approval Order that arise out of or relate in any way to the Covered Calls by any of the Released Parties, or anyone acting on their behalf, for any purpose whatsoever, such released claims to include all claims for violations of the Telephone Consumer Protection Act, 47 USC § 227 *et. seq.*, the Telemarketing Sales Rule, 16 C.F.R. § 310, and other statutory or common law claim arising from the use of automatic telephone dialing systems and/or an artificial or pre-recorded voice and/or the calling of one or more numbers registered with any national or state do-not-call list, including but not limited to, any claim under any federal or state unfair and deceptive trade practices statutes, invasion of privacy, and/or conversion.

Without limiting the foregoing, the Released Claims specifically extend to claims that Settlement Class Members do not know or suspect to exist in their favor at the time the Settlement, and the releases contained therein, become effective. This Paragraph constitutes a waiver of, without limitation as to any other applicable law, section 1542 of the California Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiff and the Settlement Class Members understand and acknowledge the significance of these waivers of California Code section 1542 and any other applicable federal or state statute, case law, rule or regulation relating to limitations on releases. In connection with any such waivers and relinquishment, Plaintiff and the Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to fully, finally, and forever discharge all Released Claims with respect to the Released Parties, and in furtherance of such intention, the releases of the Released Claims will be and remain in effect notwithstanding the discovery or existence of such additional or different facts.



## 5. NOTICE TO THE CLASS

5.1 Upon entry of the Preliminary Approval Order, the Settlement Administrator shall cause the Notice to be disseminated to putative Settlement Class Members. Such Notice shall comport with Rule 23 of the Federal Rules of Civil Procedure, and be effectuated pursuant to the Notice Plan, the costs of which shall be deemed part of the Settlement Administration Expenses, and which shall be paid from the Settlement Fund.

5.2 The Notice Plan, which was developed in consultation with the Settlement Administrator, includes:

(a) *Direct Notice.* Subject to the approval of the Court, within thirty (30) days after entry of the Preliminary Approval Order, the Settlement Administrator shall send direct notice to the names and addresses associated with the telephone numbers in the Settlement Class, substantially in the form provided in Exhibit 2 or such other form as may be ordered by the Court, via the U.S. Postal Service.

(b) *Settlement Website.* Within thirty (30) days after entry of the Preliminary Approval Order, Notice shall also be provided on a website, which shall be administered by the Settlement Administrator and shall include the ability to file Claim Forms online. The Notice on the Settlement Website shall be

substantially in the form of Exhibit 3 hereto, or in such form as may be ordered by the Court.

5.3 Any member of the Settlement Class who intends to object to this Agreement must send to the Court a written statement that includes: his or her full name; address; telephone number or numbers that he or she maintains were called; all grounds in detail for the objection, with factual and legal support for each stated ground; the identity of any witnesses he or she may call to testify; copies of any exhibits that he or she intends to introduce into evidence at the Final Approval Hearing; a statement of the identity (including name, address, phone number and email) of any lawyer who was consulted or assisted with respect to any objection, and a statement of whether he or she intends to appear at the Final Approval Hearing with or without counsel. Any member of the Settlement Class who fails to timely file a written objection in accordance with the terms of this paragraph and as detailed in the Notice, and at the same time provide a copy of the filed objection to the Settlement Administrator, shall not be permitted to object to this Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Agreement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding. To be timely, the objection must be filed

and sent to the Settlement Administrator on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice.

5.4 Any member of the Settlement Class may request to be excluded from the Settlement Class by sending a written request for exclusion to the Settlement Administrator postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his or her full name, address, and telephone numbers. Further, the written request for exclusion must include the following statement: "I request to be excluded from the settlement in the Central Payment action" and the personal signature of the member of the Settlement Class submitting the request. A request to be excluded that does not include all of the foregoing information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and any Person serving such a request shall be a Settlement Class Member and shall be bound as a Settlement Class Member by the Agreement, if approved. Any member of the Settlement Class who elects to be excluded shall not: (i) be bound by the Final Approval Order and Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this

Agreement; or (iv) be entitled to object to any aspect of this Agreement. So-called “mass” or “class” opt-outs shall not be allowed.

## **6. SETTLEMENT ADMINISTRATION**

6.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by completing its duties in a rational, reasonable, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices, including but not limited to a summary of work performed by the Settlement Administrator, including an accounting of all amounts paid from the Settlement Fund to Settlement Class Members. Such records will be provided to Class Counsel and Central Payment’s Counsel and to the Court along with the petition for final approval. Without limiting the foregoing, the Settlement Administrator shall receive objections and exclusion forms and in such event shall promptly provide to Class Counsel and Central Payment Counsel copies thereof.

6.2 In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

## **7. TERMINATION OF SETTLEMENT**

*Termination Notice.* To the extent that Paragraphs 10.1-10.3 below are not substantially fulfilled or Central Payment elects to exercise its rights under Paragraph 11.1 below, Central Payment, or the Class Representative on behalf of the Settlement Class, shall have the right to request the termination of this Agreement by filing written request to do so (“Termination Notice”) with the Court and serving that Termination Notice on all other Parties hereto within twenty (20) business days of any Parties’ actual notice of any of the following events: (i) the Court’s refusal to enter a Preliminary Approval Order; or (ii) the Court’s refusal to enter a Final Approval Order and Judgment or any appellate Court’s refusal to uphold the Final Approval Order and Judgment in any respect. Upon termination, the balance of the Common Fund not expended on notice and administration shall be returned to Central Payment within ten (10) business days.

## **8. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER AND JUDGMENT**

8.1 Promptly following execution of this Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for entry of the Preliminary Approval Order, which shall, among other things, preliminarily approve this Settlement Agreement (subject to the Final Approval Hearing), certify the Settlement Class for settlement purposes only, appoint Plaintiff’s counsel as Class Counsel and Plaintiff as the Class

Representative, shall set a Final Approval Hearing date, which in order to comply with the requirement of Class Action Fairness Act, 28 U.S.C. §1453 *et. seq.* shall be scheduled no earlier than one hundred (100) days after entry of the Preliminary Approval Order, or such other time as the Court shall set and approve the Notice for dissemination in accordance with the Notice Plan. Such Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Final Approval Order and Judgment set forth in Paragraph 8.2 below.

8.2 Class Counsel shall submit to the Court the Final Approval Order and Judgment as referenced in paragraph 8.1, above, which shall (among other things):

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all exhibits hereto;

(b) grant final approval of the Settlement Agreement and likewise approve the proposed Settlement as fair, reasonable and adequate as to, and in the best interests of Settlement Class Members; direct the Parties and their counsel to implement the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have preclusive effect on, all pending and future

lawsuits or other proceedings maintained by or on behalf of Plaintiff and the Releasing Parties;

(c) find that the Notice and the Notice Plan implemented pursuant to the Agreement (1) constitute the best practicable notice under the circumstances; (2) constitute notice that is reasonably calculated to apprise members of the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Settlement, and to appear at the Final Approval Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all entities and individuals entitled to receive notice; and (4) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

(d) find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including, without limitation, all individual claims, Settlement Class Member claims and Released Claims asserted therein against the Released Parties) on the merits and with prejudice, without fees or costs to any Party except as provided in the Settlement Agreement;

(f) approve and incorporate the releases set forth herein, make those releases effective as of the date of entry of the Final Approval Order and

Judgment, and forever discharge the Released Parties from the Released Claims as set forth herein; and

(g) without affecting the finality of the Final Approval Order and Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Approval Order and Judgment, and for any other necessary purpose; and

(h) incorporate any other provisions, as the Court deems necessary and just.

8.3 The Settlement Administrator, with approval by the Parties, shall be responsible for compliance with the applicable provisions of CAFA, including the notice requirements in 28 U.S.C. § 1715.

## **9. CLASS COUNSEL'S FEE AWARD; INCENTIVE AWARD**

9.1 Subject to the Court's approval, Central Payment has agreed that the Settlement Fund can be used to pay the Fee Award to Class Counsel. Class Counsel shall apply, subject to the approval of the Court, for a fee award of up to one-third of the Common Fund of \$6,500,000, plus out-of-pocket costs incurred by Class Counsel in this litigation. Nothing in this Agreement requires Central Payment or its counsel to take any position with respect to this paragraph.



9.2 In lieu of any payments to which he may be entitled as a Settlement Class Member under the Settlement Agreement, and in recognition of his efforts on behalf of the Settlement Class, the Class Representative shall be awarded an incentive award in the amount to be determined and approved by the Court in its sole discretion. Class Counsel intends to request that the Class Representative be awarded twenty-five thousand dollars (\$25,000.00).

#### **10. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

10.1 The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events has occurred and shall be the date upon which the last (in time) of the following events occurs:

- (a) This Agreement has been signed by Plaintiff, Central Payment, Class Counsel and Central Payment Counsel;
- (b) The Court has entered the Preliminary Approval Order;
- (c) The Court has entered the Final Approval Order and Judgment, following Notice to the Settlement Class and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure, and has entered the Final Approval Order and Judgment, or a final approval order and judgment substantially consistent with this Agreement (the “Alternative Final Approval Order and Judgment”); and

(d) The Final Approval Order and Judgment has become Final, as defined in Section 1.7 herein.

10.2 If any one or all of the conditions specified in Paragraph 10.1 is not met, or Central Payment in its sole and absolute discretion elects to set aside or rescind this Settlement Agreement pursuant to Paragraph 11.1, herein, or in the event that this Agreement is not approved by the Court, then this Settlement Agreement shall be canceled and terminated and be deemed null and void unless Plaintiff's counsel and Central Payment mutually agree in writing to proceed with this Agreement or such mutually agreeable alternative agreement as approved by the Court.

10.3 If this Agreement is terminated or fails to become Effective, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Approval Order and Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into.

## **11. RIGHT TO SET ASIDE SETTLEMENT AGREEMENT**

11.1 Central Payment, in its sole and absolute discretion, shall have the right, but not the obligation, to set aside or rescind this Settlement Agreement, if