UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LV, RC, AD, NA, ADJ, YG, LO, AP, RLB, RD, and JYW, individually; and VSG, HR, CW, SS, MG, MS, ST, RZ, MC and JP, on behalf of themselves and all others similarly situated, Plaintiffs, -against- NEW YORK CITY DEPARTMENT OF EDUCATION; NEW YORK CITY BOARD OF EDUCATION; JOEL KLEIN, in his individual and official capacity as Chancellor of the New York City School District, Defendants.	No. 03 Civ. 9917 (RJH)

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the "Stipulation"), dated as of December 11, 2007, is made and entered into pursuant to Rule 23 of the Federal Rules of Civil Procedure and contains the terms of a settlement, by and among Lead Plaintiffs LV, RC, ADJ, AP, RLB, RD, and JYW, VSG, HR, CW, SS, MG, MS, ST, RZ, MC, and JP,[1] on behalf of themselves and Members of the Class (as defined below, as are other capitalized terms herein, except as otherwise noted) and Defendants New York City Department of Education, New York City Board of Education, and Joel Klein (collectively, "Defendants," and with Lead Plaintiffs, the "Parties").

[1] The Parties will ask the Court to remove Lead Plaintiffs AD, NA, YG, and LO as Lead Plaintiffs, but this request will have no impact on any claims they have as Class Members.

RECITALS

WHEREAS:

A. On December 12, 2003, Lead Plaintiffs filed the above-captioned class action (the "Action") alleging violations of the due process clause of the 14th Amendment of the U.S. Constitution; the Individuals with Disabilities Education Act ("IDEA"), 42 U.S.C. § 1983; Section 504 of the Rehabilitation Act of 1972, 29 U.S.C. § 794; and New York State Education Law §§ 4401 *et seq.*, and the regulations promulgated thereunder.

B. On February 5, 2004, Lead Plaintiffs filed a motion to certify the Action as a class action.

C. On April 15, 2004, Lead Plaintiffs filed their Second Amended Complaint (the "Complaint"). The Complaint alleges that Defendants failed to comply with Orders from December 12, 2003 through the present.

D. The Complaint further alleges that Defendants' failure to comply with the Orders is a systemic problem as the Orders are not enforced and implemented in a timely, effective, and comprehensive manner and alleges that Defendants lacked effective policies and procedures and did not develop or maintain a system to effectuate the timely, efficient, and comprehensive enforcement of Orders.

E. On April 30, 2004, Defendants filed a partial motion to dismiss the Second Amended Complaint.

F. On October 25, 2004, Plaintiffs renewed their motion for class certification.

G. By Order dated January 7, 2005, the Court denied Defendants' motion to dismiss the Second Amended Complaint.

H. By Memorandum and Order dated September 15, 2005, the Court granted Plaintiffs' motion for class certification.

I. On May 22, 2007, Defendants filed their Answer to the Complaint, in which they denied any liability, wrongdoing, or violation concerning the allegations in the Complaint and asserted affirmative defenses to the claims in the Complaint.

J. The Parties have engaged in extensive discovery relating to the claims and defenses concerning the underlying events and transactions alleged in the Complaint. Plaintiffs obtained document discovery from Defendants and took depositions of key individuals at the DOE.

K. Lead Plaintiffs, by their counsel, have conducted discussions and arm's length negotiations with Defendants and their counsel with respect to a compromise and settlement of the Action with a view to settling the issues in dispute.

L. Based upon their investigation and pretrial discovery as set forth above, Lead Plaintiffs have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate and in the best interests of the Class, and have agreed to settle the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering the substantial benefits that members of the Class will receive from settlement of the Action; the attendant risks and costs of litigation, including the expense and length of continued proceedings; the difficulties and delays inherent in such litigation; and the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

M. This Stipulation is intended by Lead Plaintiffs and the Defendants to fully, finally, and forever resolve, discharge, and settle the Settled Claims against all Released Parties, upon and subject to the terms and conditions hereof and subject to the approval of the Court.

NOW, THEREFORE, without any admission or concession by Lead Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in their defenses whatsoever by Defendants, it is hereby STIPULATED AND AGREED, by and among the Parties to this Stipulation, through their respective attorneys, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, that all Settled Claims as against all Released Parties and all Settled Defendants' Claims shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

I. DEFINITIONS

1. As used in this Stipulation and for purposes of the Settlement only, the following terms shall have the following meanings:

a. "2004 Summer Related Services Compensation Program" means Defendants' program in the summer of 2004 where students who had received Orders that required the provision of related services were given the opportunity to access related services.

b. "Action Item" means a specific identifiable action in an Order that, as determined by the Independent Auditor, requires implementation by the DOE. In determining the Actions Items in an Order, the Independent Auditor will take into account, but will not be bound by, DAITS or any successor computer system.

c. "Authorized Claimant" means a Class Member who submits a timely and valid Proof of Claim form to the Claims Administrator, as described more fully in Paragraphs 27-29.

d. "Benchmark Measurement Period" means any given period of time during which the Independent Auditor shall measure the percentage of Orders and Action Items that the DOE has Timely Implemented to determine whether the DOE has complied with a given benchmark, as set forth more specifically in Paragraph 4.

e. "Claims Administrator" means The Garden City Group, Inc.

f. "Class" means the Compensatory Relief Subclass and the Injunctive Relief Subclass.

g. "Class Members" means the set of members of the Class, excluding any members of the Compensatory Relief Subclass who have timely and properly opted out of the Class.

h. "Commencement Date" means December 12, 2003.

i. "Compensatory Educational Services" means educational services and all attendant costs and/or assistive technology for the benefit of the student who was the subject of the Order provided by approved providers or approved by the Independent Auditor as described in Paragraph 34.e. A preliminary list of approved providers is attached hereto as Exhibit A.

j. "Compensatory Relief Subclass" means the class of all persons who, on or after December 13, 2000 and on or before January 31, 2008, (1) have obtained a favorable Order by an Impartial Hearing Officer against the DOE or a

stipulation of settlement placed on the record at an impartial hearing with the DOE and (2) failed to obtain full and timely implementation of such Order or settlement.

k. "Corrective Action Plan" means a plan devised by Defendants to address their past failure to implement Orders fully and timely and to increase the full and timely implementation of Orders following implementation of the Corrective Action Plan.

l. "Defendants' Counsel" means the Corporation Counsel of the City of New York.

m. "DOE" means the New York City Department of Education, the New York City Board of Education, their past or present affiliates, successors and predecessors.

n. "Effective Date" means the date set by the Court in accordance with the approval process for this Stipulation, as described in Paragraph 38.

o. "Final" with respect to an order of the Court means an order as to which there is no pending appeal, stay, motion for reconsideration or motion to vacate or similar request for relief, and as to which the period of time for appeal has expired. For purposes hereof, if no appeal or motion for reconsideration, to vacate, or for similar relief is filed within forty-five (45) days after entry of the Order and Final Judgment in the District Court, the Order and Final Judgment shall be deemed to be Final.

p. "Impartial Hearing Officers" means individuals who conduct hearings pursuant to 20 U.S.C. § 1415(f)(1)(A), Section 504 of the Rehabilitation Act, and any successor statutes.

q. "Independent Auditor" means the individual or entity appointed by the Court pursuant to the procedures set forth in Paragraph 12.

r. "Injunctive Relief Subclass" means the class of all persons who, on or subsequent to the Commencement Date, (1) obtain or obtained a favorable Order by an Impartial Hearing Officer against the DOE or stipulation of settlement placed on the record at an impartial hearing with the DOE and (2) fail or failed to obtain full and timely implementation of such Order or settlement.

s. "Non-Implementation Notice" means the notice to be sent to parents following the Effective Date if the Independent Auditor determines that a particular Order is Unimplemented. All Non-Implementation Notices shall be in the form, and contain the information set forth in, the form of Non-Implementation Notice attached hereto as Exhibit B.

t. "Order" means a decision, determination, order or statement of agreement and order (in its entirety, including all Action Items contained therein) issued by an Impartial Hearing Officer in New York City, under the IDEA, Section 504 of the Rehabilitation Act of 1972, 29 U.S.C. § 794, New York State Education Law §§ 4401 *et seq.*, any equivalent federal or state statute or law enacted subsequent to the Effective Date and which becomes the basis for adjudication by Impartial Hearing Officers, and all regulations promulgated thereunder.

u. "Order and Final Judgment" means the proposed order to be entered approving the Settlement substantially in the form attached hereto as Exhibit C.

v. "Payment Order" means an Order, or all Action Items within an Order, requiring the DOE to make a direct payment to a parent, private service provider, or private school.

w. "Plaintiffs' Counsel" means Advocates for Children of New York and Milbank, Tweed, Hadley, & McCloy LLP.

x. "Preliminary Order for Notice and Hearing in Connection with Settlement Proceedings" means the proposed order preliminarily approving the Settlement and directing notice thereof to the Class substantially in the form attached hereto as Exhibit D.

y. "Prospective Payment Order" means a Payment Order requiring DOE to pay for services (including, where specified, any attendant costs) that had not been rendered or tuition (including, where specified, any attendant costs) that had not been paid as of the date of the Payment Order.

z. "Publication Notice" means the Summary Notice of Proposed Settlement of Class Action and Settlement Hearing substantially in the form attached as Exhibit E. To the extent there are any discrepancies between this Publication Notice and the Stipulation, the terms of the Stipulation govern.

aa. "Quarterly Measurement Period" means any given three-month period of time during which the Independent Auditor shall measure the percentage of Orders and Action Items that the DOE has Timely Implemented.

bb. "Reimbursement Payment Order" means a Payment Order requiring the DOE to pay expenses already paid by a Class Member.

cc. "Released Parties" means any and all of the Defendants, their past or present affiliates, subsidiaries, parents, successors and predecessors, officers, directors, agents, employees, attorneys, advisors, insurers, and investment advisors, auditors, accountants, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest, or assigns of the Defendants.

dd. "Service Order" means an Order, or all Action Items within an Order, that requires the DOE to take any action other than make a payment directly to a parent, private service provider, or private school.

ee. "Settled Claims" means any and all claims, debts, demands, rights, or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, or liabilities whatsoever), whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class or individual in nature, (i) that have been asserted in this Action by the Lead Plaintiffs, Class Members, or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by the Lead Plaintiffs, Class Members, or any of them against any of the Released Parties which arise out of, relate to, or are based upon the

allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Complaint. Settled Claims do not include (i) claims to enforce the Settlement or any provisions thereof, (ii) claims by members of the Compensatory Relief Subclass who opt-out or, (iii) individual claims by members of the Injunctive Relief Subclass concerning orders issued on or after February 1, 2008.

ff. "Settled Defendants' Claims" means any and all claims, rights, or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory, or common law or any other law, rule or regulation, that have been or could have been asserted in the Action or any forum by any Released Parties against any of the Lead Plaintiffs, Class Members, or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the Settlement or any provisions thereof).

gg. "Settlement" means the settlement contemplated by this Stipulation.

hh. "Settlement Notice" means the Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees, and Settlement Fairness Hearing, which is to be sent to members of the Class substantially in the form attached hereto as Exhibit F. To the extent there are any discrepancies between this Settlement Notice and the Stipulation, the terms of the Stipulation govern.

ii. "Timely Implemented" means an Order or Action Item that was implemented within the length of time specified in the Order or, if no such time is specified in the Order, within 35 days of issuance (of the Order itself or of the

Order containing the Action Item), except that particular Orders or Action Items will also be considered to have been timely implemented for measurement purposes if:

i. the DOE has provided the parent with a notice that it is considering appealing the relevant Order or some part thereof in the form attached hereto as Exhibit G, but the DOE does not actually pursue an appeal, and (a) the DOE pays any monetary reimbursements required by the Order within 70 days of the date of issuance of the Order and (b) implements any other parts of the Order within 60 days of the date of issuance of the Order, provided that, except for Orders that require only monetary reimbursement, no more than 40 Orders per calendar year, and no more than 25 Orders in any particular six-month period, shall be eligible to be counted as Timely Implemented pursuant to this provision; or

ii. the DOE has demonstrated that it has taken all steps necessary to implement the Order or Action Item, but could not Timely Implement the Order or Action Item because implementation was dependent upon further steps that, in the determination of the Independent Auditor, could not be completed because of the action or inaction of a third party. Service providers with whom the Defendants have contracts to provide services shall not be deemed "third parties" for purposes of this provision.

jj. "Total Action Items" means the number of Action Items subject to consideration in each Quarterly or Benchmark Measurement Period, as described in more detail in Paragraph 15.

kk. "Total Orders" means the number of Orders subject to consideration in each Quarterly or Benchmark Measurement Period, as described in more detail in Paragraph 15.

ll. "Uncounted Orders" and "Uncounted Action Items" means particular Orders or Action Items that the Independent Auditor would otherwise consider during a particular Quarterly or Benchmark Measurement Period, but which shall not be considered during such Quarterly or Benchmark Measurement Period (and shall be excluded from the calculations of "Total Orders," "Orders Implemented," "Total Action Items," and "Action Items Implemented") if the Independent Auditor determines that:

i. The Order or Action Item cannot be Timely Implemented because it requires the DOE to take action that would either violate applicable law or is factually impossible. In each such instance, the DOE must either appeal the relevant Order or provide the parent with an appropriate written alternative to the requirements of the Order or Action Item and implement that alternative within 35 calendar days of the issuance of the Order. Absent these steps, the Order or Action Item will be included in "Total Orders" or "Total Action Items" but will not be counted as Timely Implemented.

ii. The Order or Action Item cannot be Timely Implemented because the DOE has made a substantial showing of attempts to reach the parent and attempts to obtain compliance with the parent's obligations under the Order. Absent these steps, the Order or Action Item will be included in

"Total Orders" or "Total Action Items," but not counted as Timely Implemented.

iii. The Order or Action Item cannot be Timely Implemented because it required the provision of occupational therapy, physical therapy or bilingual counseling, or services to be provided by hearing teachers, vision teachers, bilingual special education teachers, bilingual speech teachers, or monolingual speech teachers, (all of which the DOE maintains are shortage areas) and the DOE has made a substantial showing that it offered the parent an appropriate substitute service within 35 calendar days of the issuance of the relevant Order or Action Item. Absent these steps, the Order or Action Item will be included in "Total Orders" or "Total Action Items," but will not be counted as Timely Implemented.

iv. The Order, in its entirety, or the Action Item was timely appealed by the DOE.

mm. "Unimplemented" or "Unimplemented Order" means an Order or Action Item that is found by the Independent Auditor to have not been Timely Implemented.

II. SCOPE AND EFFECT OF SETTLEMENT

2. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Settled Claims as against all Released Parties and any and all Settled Defendants' Claims against any of the Lead Plaintiffs, Class Members, or Plaintiffs' Counsel.

3. (a) Upon the Effective Date of this Settlement, the Class Members, on behalf of (i) themselves, and (ii) their past or present legal representatives shall, with respect to each and every Settled Claim, release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Claims against any of the Released Parties.

(b) Upon the Effective Date of this Settlement, each of the Defendants, on behalf of themselves and the Released Parties shall, with respect to each and every Settled Defendants' Claim, release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Defendants' Claim against any of the Lead Plaintiffs, Class Members, or Plaintiffs' Counsel.

III. INJUNCTIVE RELIEF

4. Upon the Effective Date and subject to the requirements of Paragraph 10, the DOE must comply with the following benchmarks. For purposes of these benchmarks, compliance will be measured by the Independent Auditor for Payment Orders and Service Orders by both a percentage of Orders and a percentage of Action Items that have been Timely Implemented. Whether a particular benchmark has been met will be determined solely by the Independent Auditor, as provided below.

a. First Benchmark: For the period ending six months after the Effective Date (the "First Benchmark Measurement Period"), the DOE shall Timely Implement 75% of Action Items or Orders. If the DOE Timely Implements 75% or more of Action Items within the First Benchmark Measurement Period, then it must also Timely Implement 70% or more of Orders within the First Benchmark Measurement Period in order to be deemed in compliance with the First Benchmark. Alternatively, if the DOE Timely

Implements 75% or more of Orders within the First Benchmark Measurement Period, then it must also Timely Implement 70% or more of Action Items within the First Benchmark Measurement Period in order to be deemed in compliance with the First Benchmark.

b. Second Benchmark: For the six month period that immediately follows the monitoring period for which the DOE has been determined to have achieved the First Benchmark (the "Second Benchmark Measurement Period"), the DOE shall Timely Implement 85% of Action Items or Orders. If the DOE Timely Implements 85% or more of Action Items within the Second Benchmark Measurement Period, then it must also Timely Implement 80% or more of Orders within the Second Benchmark Measurement Period in order to be deemed in compliance with the Second Benchmark. Alternatively, if the DOE Timely Implements 85% or more of Orders within the Second Benchmark Measurement Period, then it must also Timely Implement 80% or more of Action Items within the Second Benchmark Measurement Period in order to be deemed in compliance with the Second Benchmark.

c. Third Benchmark: For two consecutive years ("Year 1" and "Year 2") following the monitoring period for which DOE has been determined to have achieved the Second Benchmark (the "Third Benchmark Measurement Period"), the DOE shall Timely Implement 91.5% of Action Items or Orders. If the DOE Timely Implements 91.5% or more of Action Items within the Third Benchmark Measurement Period, then it must also Timely Implement 88% or more of Orders within the Third Benchmark Measurement Period in order to be deemed in

compliance with the Third Benchmark. Alternatively, if the DOE Timely Implements 91.5% or more of Orders within the Third Benchmark Measurement Period, then it must also Timely Implement 88% or more of Action Items within the Third Benchmark Measurement Period in order to be deemed in compliance with the Third Benchmark.

5. Except as specified in Paragraph 7, the DOE will be deemed to have complied with a benchmark for a particular Benchmark Measurement Period if it complies with that benchmark on an aggregate basis for the full Benchmark Measurement Period (even if it was not in compliance for all separate Quarterly Measurement Periods within the Benchmark Measurement Period).

6. If a later Benchmark is met earlier than otherwise required by this Stipulation, then the provisions of this section shall operate as follows:

a. If, at the end of the First Benchmark Measurement Period, the DOE has met the Second Benchmark, then the Third Benchmark Measurement Period will commence instead of the Second Benchmark Measure Period.

b. If, at the end of the First Benchmark Period, the DOE has met the Third Benchmark, then the Third Benchmark Period will be deemed to have commenced at the beginning of the First Benchmark Measurement Period.

c. If, at the end of the Second Benchmark Measurement Period, the DOE has met the Third Benchmark Measurement Period, then the Third Benchmark Measurement Period will be deemed to have commenced at the beginning of the Second Benchmark Measurement Period.

7. If, after the Independent Auditor certifies that the Third Benchmark has been met for Year 1, the Independent Auditor concludes that the DOE did not meet the Third Benchmark for Year 2, but the DOE met or exceeded the Second Benchmark for Year 2, the time periods for compliance with the Third Benchmark will be extended for one year (the "Extension Period"). At the end of the Extension Period, if the DOE meets the Third Benchmark in the aggregate (i.e., the DOE has implemented at least (x) 91.5% of Total Action Items or Total Orders and (y) 88% of the other measure in a consecutive three-year period), then the provisions of Paragraph 22 will go into effect. However, if at the end of the Extension Period the DOE fails to meet the Third Benchmark in the aggregate, then the Parties will follow the provisions of Paragraph 10.b.

8. If, after the Independent Auditor certifies that the Third Benchmark has been met for Year 1, the Independent Auditor concludes that the DOE did not meet the Third Benchmark for Year 2 and also did not meet the Second Benchmark for Year 2, the provisions of Paragraph 10 shall apply. The success of any Corrective Action Plan required under this Paragraph will be measured with reference to the Third Benchmark.

9. Timely Implementation of Payment Orders and Service Orders will be measured separately for purposes of Paragraphs 10, 11, 15, 16, 21, 22, and 23.

10. Failure to Meet Benchmarks:

a. If the DOE (i) fails to meet the First Benchmark or the Second Benchmark at the required date or (ii) fails to meet the Third Benchmark at the end of Year 1, the DOE must, within three months of issuance of the final Benchmark Report (as defined below) notifying the parties of the missed

benchmark, formulate and implement a Corrective Action Plan designed to correct the problems that caused the DOE to miss the benchmark at issue.

b. If the DOE fails to meet the required benchmark for the six month period following implementation of the Corrective Action Plan, then Lead Plaintiffs may ask the Court, by motion within 60 days of the date of the relevant final Benchmark Report, or such longer time as the Court may grant by application, to hold that the DOE has violated this Stipulation and thereby impose a remedy on the DOE.

i. In connection with such a motion, Plaintiffs may request any remedy they deem appropriate.

ii. In connection with such a motion, the DOE may oppose the relief requested by Lead Plaintiffs.

iii. In connection with such a motion, the DOE may oppose the motion by arguing that the Court should decline to grant relief because the DOE has implemented the percentage of Orders required by the Benchmark at issue, even though it did not implement a sufficient percentage of the Action Items to satisfy the benchmark at issue, or the DOE has implemented the percentage of Action Items required by the Benchmark at issue, even though it did not implement a sufficient percentage of the Orders to satisfy the benchmark at issue

iv. In connection with such a motion, the record shall be limited to the Independent Auditor's Quarterly and Benchmark Reports (as defined below) and the documents and information available to the

Independent Auditor, even if not utilized by the Independent Auditor. The Lead Plaintiffs may rely on that record to support the relief they seek by motion, and the DOE may rely on that record to challenge the conclusions in the Independent Auditor's Reports and oppose the relief sought by Lead Plaintiffs in their motion.

v. If Lead Plaintiffs file such a motion, the DOE shall provide Lead Plaintiffs' Counsel with all documents concerning any aspect of the Independent Auditor's report that the DOE intends to dispute in defending against Lead Plaintiffs' motion within 60 days of the filing of the motion.

c. In the event that Lead Plaintiffs' Counsel do not timely file a motion, the missed benchmark will be deemed to have been met.

11. The Parties will not use any benchmark for any purpose in any litigation except for the purpose of showing compliance with their obligations under this Stipulation or in connection with motion practice contemplated by this Stipulation. In particular, the Parties will not argue, in any litigation, that these benchmarks (i) establish a basis for evaluating compliance with Defendants' obligations under federal or state law or (ii) establish a basis for Defendants' failure or refusal to implement any Orders (as to categories of Orders or as to individual Orders).

Independent Auditor

12. The Parties will ask the Court to select an individual or entity to act as the Independent Auditor. If the parties are able to agree on the selection of an Independent Auditor before December 21, 2007, the Parties shall submit a joint request to the Court. If the Parties are not able to agree on the selection of an Independent Auditor prior to

December 21, 2007, then on December 21, 2007, Lead Plaintiffs and Defendants shall each submit letter briefs (not to exceed 3 single-spaced pages, exclusive of attachments) proposing their respective suggestions for appointment as Independent Auditor. Lead Plaintiffs and Defendants shall each propose one individual or entity for appointment as Independent Auditor. The Parties may respond to each other's submissions regarding proposals for the Independent Auditor no later than January 4, 2007; any such responses shall be in the form of letter briefs not to exceed three single-spaced pages, exclusive of attachments.

a. The Independent Auditor appointed by the Court shall perform his, her or its duties at all times in an independent and unbiased manner. Upon appointment by the Court, the Independent Auditor shall do equal right to the poor and to the rich, shall not allow any of its decisions or determinations to be influenced by the prospect of obtaining future business from any individual or entity (including but not limited to the Parties), and will faithfully and impartially discharge and perform all the duties of the Independent Auditor set forth in the Stipulation and the orders of the Court.

b. Following the appointment of the Independent Auditor and before the Independent Auditor begins its substantive work, the Independent Auditor shall (i) meet with representatives of Lead Plaintiffs and Defendants jointly and (ii) meet with the representatives of Lead Plaintiffs and Defendants separately to enable Lead Plaintiffs and Defendants to give the Independent Auditor their views regarding the work to be done by the Independent Auditor and approaches the Parties believe the Independent Auditor should consider in performing such work.

Following the aforementioned meetings, the Independent Auditor may request advice from representatives of Lead Plaintiffs and/or Defendants on any issues that arise in the course of the Independent Auditor's work; the Independent Auditor shall have the sole discretion to determine whether to seek such advice and, if it does seek such advice, whether to follow any such advice it might receive.

c. The Independent Auditor appointed by the Court may retain a firm and/or individual with special education experience to assist in fulfilling the Independent Auditor's obligations hereunder, and who will be bound by the obligations of the Independent Auditor as specified in Paragraph 12.a. and can be removed by the same procedures specified in Paragraph 16.h.-i.; in the event the Independent Auditor does so, it shall provide notice of its retention of such firm and/or individual to counsel for the Parties, but shall not be required to seek the Court's permission for such retention. In addition, each report by the Independent Auditor shall disclose the names and affiliations of all individuals who participated or assisted in the preparation of such report.

13. As set forth herein, the Independent Auditor will determine whether particular benchmarks have been met.

14. The DOE will pay all costs and fees for the Independent Auditor's work.

15. The Independent Auditor will measure compliance with benchmarks as follows:

a. During each Quarterly or Benchmark Measurement Period, the Independent Auditor shall separately calculate the percentage of Orders and

Action Items for Payment and Service Orders that were timely implemented during that Quarterly or Benchmark Measurement Period by calculating the following metrics for each measurement period:

$$100 * \frac{\text{Orders Implemented}}{\text{Total Orders minus Uncounted Orders}} \quad \text{and} \quad 100 * \frac{\text{Action Items Implemented}}{\text{Total Action Items minus Uncounted Action Items}}$$

16. The Independent Auditor will generate reports concerning the DOE's implementation of Orders and Action Items for all Quarterly Measurement Periods (each a "Quarterly Report") and Benchmark Measurement Periods (each a "Benchmark Report") beginning on the Effective Date until the prospective relief provisions of this Stipulation have ceased to be in force, pursuant to the provisions in Paragraphs 22-23.

a. The Independent Auditor's reports will be based on information from the DOE's various Order tracking databases, samples of individual students' records (as the same are selected by the Independent Auditor), and interviews with staff of the New York City Impartial Hearing Office, Office of Nonpublic School Payables, DOE paralegals, Implementation Liaisons, and other staff responsible for implementing Orders. These interviews shall be conducted during a two-week period chosen by the Independent Auditor following the last date of each quarter.

b. In preparing its reports for each measurement period, the Independent Auditor shall consider Orders, except Uncounted Orders, that were issued at least 35 calendar days before the end of each Quarterly or Benchmark Measurement Period, that require the DOE to take action, and that the DOE has

not timely appealed. Where the Independent Auditor determines that a particular Order requires the DOE to take multiple actions that are dependent upon one another, and that the DOE cannot complete all such actions within 35 days, the Independent Auditor shall consider that Order and/or those Action Items during the Quarterly or Benchmark Measurement period during which implementation should have been completed under the terms of the Order.

c. Each Quarterly Report and Benchmark Report will address the implementation of Service Orders and Payment Orders separately.

d. When the Independent Auditor issues a report to assess compliance with a benchmark for a Benchmark Measurement Period, it shall aggregate the results for any previously reported quarters within that measurement period and shall report compliance on both a quarterly basis and for the Benchmark Measurement Period at issue.

e. Each Independent Auditor's Quarterly and Benchmark Report will identify any Orders that the Independent Auditor determines were Unimplemented by case number.

f. The Independent Auditor shall provide counsel for the Parties with drafts of its reports by email for comment before finalizing its reports no later than 45 calendar days following the end of each quarter, unless the parties agree otherwise. Counsel for the Parties may comment on those drafts within 15 calendar days of receiving the drafts from the Independent Auditor. The Independent Auditor may reflect comments from counsel for the Parties in its final reports based on its judgment of the merits of any such comments.

g. The Independent Auditor shall provide his or her final Quarterly and/or Benchmark Reports to Counsel for the Parties no later than 15 calendar days after the deadline for counsel for the Parties to provide comments to the Independent Auditor.

h. Any Party may apply to the Court for the removal of the Independent Auditor at any time. Such removal shall require a showing of (a) corruption or malfeasance by the Independent Auditor that suggests to the Court that the Independent Auditor is no longer able or suitable to perform the duties set forth in this Stipulation; (b) a material failure of the Independent Auditor to perform the duties set forth in this Stipulation, or (c) the death or unforeseen permanent or temporary unavailability of the Independent Auditor.

i. In event of the removal or resignation of the Independent Auditor, the Parties will agree on the individual(s) or entit(ies) to replace the Independent Auditor. If the parties are unable to reach an agreement within 60 calendar days of the Independent Auditor's removal or resignation, then the Parties will ask the Court to appoint a successor Independent Auditor; in such event, each Party may propose candidates or challenge candidacy proposed by the other Party.

Rights Retained by Injunctive Relief Subclass

17. Orders issued on or after February 1, 2008 and before the Effective Date will not be counted for purposes of Benchmark Compliance. However, the Independent Auditor will determine whether such Orders were Timely Implemented. No more than 60 days after the Effective Date, the Independent Auditor will provide to the DOE, based on the information described in Paragraph 16.a., a list of Unimplemented Orders issued

during the period between February 1, 2008 and the Effective Date. Within 14 calendar days of receipt of this list, DOE shall send a Non-Implementation Notice to each Class Member who received an Unimplemented Order during the period between February 1, 2008 and the Effective Date, and shall provide copies of such Non-Implementation Notices to Class Counsel as set forth in Paragraph 19.

18. Members of the Injunctive Relief Subclass whose Orders are issued on or after February 1, 2008 shall retain all rights to seek appropriate individual relief in an appropriate forum.

19. Within 14 calendars days after each Quarterly Report is issued in final form by the Independent Auditor, the DOE shall send a Non-Implementation Notice to each parent and child with an Unimplemented Order during that quarter. If the parent or child were represented by counsel in connection with the Order, the Non-Implementation Notice shall also be sent to counsel. All Non-Implementation Notices shall be sent by first-class mail and copies of all Non-Implementation Notices sent during each quarter shall be provided to Lead Plaintiffs' Counsel within 30 calendar days after each Quarterly Report is issued in final form by the Independent Auditor.

20. In the event that a parent or child who is sent a Non-Implementation Notice elects to commence litigation to enforce an Unimplemented Order, the Non-Implementation Notice shall be deemed *prima facie* evidence that the Order at issue was not Timely Implemented, and such parent or child shall not be required to come forward with additional evidence of failure to Timely Implement his or her Order unless the court concludes that the DOE has successfully proven that the Order at issue was in fact Timely Implemented. In seeking to prove Timely Implementation of the Order at issue,

the DOE shall be limited to the Independent Auditor's report pursuant to which the Non-Implementation Notice was sent and the documents and information available to the Independent Auditor in connection with the preparation of that report, all of which shall be made available to the parent or child (with such confidentiality restrictions as may be deemed appropriate) upon request (without the need for a formal discovery request) as soon as the DOE indicates an intent to seek to prove that the Order at issue was Timely Implemented.

Sunset Provisions

21. The DOE may meet the Third Benchmark at any time.

22. If the Independent Auditor certifies that DOE has met the Third Benchmark for either (i) each of Year 1 and Year 2 of the Third Benchmark Period (measured for each such year individually) or (ii) in the aggregate for three consecutive years if the provisions of Paragraph 7 or 8 have been triggered, the injunctive and prospective provisions of the settlement agreement will expire.

23. If the injunctive and prospective provisions of the Stipulation have not terminated pursuant to the provisions of Paragraph 22 within four years following the end of the monitoring period for which the DOE has been determined to have achieved the Second Benchmark, then the provisions of Paragraph 10.b will be followed.

IV. COMPENSATORY RELIEF

24. For members of the Compensatory Relief Subclass who have not opted out by sending in the form attached hereto as Exhibit H by June 30, 2008, the DOE will provide compensatory relief as provided below. For Compensatory Relief Subclass Members whose Orders can be classified as multiple types, i.e. Service Orders,

Prospective Payment Orders, and/or Reimbursement Payment Orders, such members can seek each type of relief set forth below that is applicable to their respective Orders.

a. For Authorized Claimants whose Services Orders were not Timely Implemented, the DOE will pay for either:

i. the provision of Compensatory Educational Services, or

ii. the reimbursement of costs for educational services or assistive technology incurred by Authorized Claimants.

b. For Authorized Claimants who received a Prospective Payment Order issued prior to July 1, 2006 and who did not receive the services for which prospective payment was ordered, the DOE will pay for either:

i. the provision of Compensatory Educational Services, or

ii. the reimbursement of costs for educational services or assistive technology incurred by Authorized Claimants.

c. For Authorized Claimants who received a Prospective Payment Order issued between July 1, 2006 and June 30, 2007 and who did not receive the services for which prospective payment was ordered, the DOE will pay for either

i. the amount specified in the Prospective Payment Order that was never paid (provided that payments will not be made for services incurred more than two years after the Effective Date), or

ii. the provision of Compensatory Educational Services, or

iii. the reimbursement of costs for educational services or assistive technology incurred by Authorized Claimants.

d. For Authorized Claimants who received a Prospective Payment Order issued after June 30, 2007 and who did not receive the services for which prospective payment was ordered, the DOE will pay any amounts specified in the Prospective Payment Order that were not previously paid.

e. For Authorized Claimants who received a Prospective Payment Order and who received the services for which prospective payment was ordered, the DOE will pay any amounts specified in the Prospective Payment Order that were not previously paid.

f. Subject to the provisions of Paragraphs 29 and 30(i), (a), (b), and (c)(i) below, for Authorized Claimants whose Reimbursement Payment Orders were never paid, the DOE will pay any amounts ordered to be paid by the Reimbursement Payment Orders.

Administration and Administration Expenses

25. The Claims Administrator shall administer the claims for compensation for the Compensatory Relief Class subject to the jurisdiction of the Court.

26. The DOE shall pay all costs of administering such claims and making such payments, as well as the costs of giving notice of the Settlement.

Authorized Claimants

27. To be treated as an "Authorized Claimant," each member of the Compensatory Relief Subclass shall be required to submit a Proof of Claim (in the form attached Exhibit I). To the extent that there are discrepancies between the Proof of Claim form and the Stipulation, the Stipulation governs.

28. All Proofs of Claim must be submitted to the Claims Administrator on or before June 30, 2008. Any member of the Compensatory Relief Class who does not opt out and who does not submit a valid Proof of Claim by that date will not be entitled to receive any of the relief set forth in Paragraph 24, but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or claim against the Released Parties concerning the Settled Claims. A Proof of Claim shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed by first class Mail and addressed in accordance with the instructions thereon.

29. Each Proof of Claim will indicate which of the forms of relief outlined in Paragraph 24 it seeks. Each Proof of Claim must be supported by the documentation described below:

a. To the extent an Authorized Claimant seeks the reimbursement of education- or service-related costs incurred in connection with Orders that were not implemented, then the Authorized Claimants' Proof of Claim shall be accompanied by:

i. an invoice on provider letterhead detailing the amount owed or owing and the service provided, or an affidavit from the provider detailing the amount owed or owing and the service provided,

ii. both sides of a cancelled check, a credit card statement, a bank statement or on-line screen showing electronic debits, an Authorized Claimant affidavit of payment, or a copy of a loan agreement.

The Independent Auditor may excuse for good cause shown an Authorized Claimant's failure to provide the documents required under (i).

b. To the extent an Authorized Claimant seeks payment on a Payment Order that was never paid in full, and except where the Authorized Claimant seeks payment of a Prospective Payment Order issued on or before June 30, 2006, the Authorized Claimant must submit the following documentation with his or her Proof of Claim.

i. If the Authorized Claimant's Reimbursement Payment Order specified a dollar amount to be paid without submission of further documentation, the Authorized Claimant shall not be required to submit additional documentation in order to be paid and the Payment Order itself shall be the only evidence necessary to support the proof of claim.

ii. If (x) the Authorized Claimant seeks payment of a Prospective Payment Order issued on or before June 30, 2006 or (y) the Authorized Claimant's Reimbursement Payment Order (i) did not specify a dollar amount to be paid, (ii) specified only a maximum amount to be paid, or (iii) mandated reimbursement of a specified dollar amount upon submission of further documentation, the Authorized Claimant shall be required to submit:

(a) an invoice on provider letterhead detailing the amount owed or owing and the service provided, or an affidavit from the provider detailing the amount owed or owing and the service provided, and

(b) if payment relating to the Authorized Claimant's Order was made in whole or in part by the Authorized Claimant, both sides of a cancelled check, a credit card statement, a bank statement or on-line screen showing electronic debits, an Authorized Claimant affidavit of payment, or a copy of a loan agreement.

iii. Payment under Paragraph 29.b shall be made to the Authorized Claimant and/or service provider, as appropriate. Where payment is to be made to a service provider, DOE may request of that provider additional documentation (such as a substitute W-9 Form) if and only if (i) such additional documentation is required to process such payment and (ii) the DOE does not already have current documentation containing the same information for that provider on file. For the avoidance of doubt, the prior sentence shall only authorize a request for additional documentation to any particular provider once, regardless of how many Proofs of Claim relate to that provider. The Independent Auditor may excuse for good cause shown an Authorized Claimant's failure to provide the documents required under Paragraph 29.b.ii.a.

c. Where an Authorized Claimant seeks payment on a Prospective Payment Order issued on or after July 1, 2006, the Authorized Claimant shall be required to submit to the Claims Administrator the following documentation upon completion of the service:

(i) an invoice on provider letterhead detailing the amount owed or owing and the service provided, or an affidavit from the

provider detailing the amount owed or owing and the service provided,

(ii) and, if payment relating to the Authorized Claimant's Order was made in whole or in part by the Authorized Claimant, both sides of a cancelled check, a credit card statement, a bank statement or on-line screen showing electronic debits, an Authorized Claimant affidavit of payment, or a copy of a loan agreement.

Notwithstanding anything to the contrary in this Stipulation, no payment shall be authorized in connection with Prospective Payment Orders issued on or after July 1, 2006 for services incurred more than two years after the Effective Date.

30. For any Proof of Claim submitted, the DOE shall have the right to submit documentation by which the DOE can seek to demonstrate either that (i) the Order at issue was in fact Timely Implemented or (ii) the student suffered no or only *de minimis* harm despite the failure to Timely Implement the Order that is the subject of the Proof of Claim.

a. Any such challenge shall be submitted in full by the DOE no later than thirty-five (35) days after the Proof of Claim sought to be challenged is postmarked and shall be submitted by means of a written objection accompanied by documentary support. A full copy of any such challenge shall be sent to the claimant at the address specified in the Proof of Claim, by return receipt. A copy

will also be sent to any advocate identified by the Claimant on the Proof of Claim form.

b. A claimant shall have the right to respond to any challenge by the DOE by disputing any or all of the DOE's submission within sixty (60) days after receiving the DOE's challenge.

c. If the DOE's submission demonstrates to the satisfaction of the Independent Auditor that (i) the student's Order was in fact Timely Implemented or (ii) the student suffered no or only *de minimis* harm despite the failure to Timely Implement the student's Order, the claimant shall be entitled to no or *de minimis* Compensatory Educational Services, as determined by the Independent Auditor.

Distribution to Authorized Claimants

31. Subject to the following additional provisions, an Authorized Claimant seeking Compensatory Educational Services shall be presumed to be entitled to a voucher entitling the Authorized Claimant to $8,000 in educational services or assistive technology:

a. An Authorized Claimant shall be entitled to a voucher entitling the Authorized Claimant to $15,000 in Compensatory Educational Services if the student was out of school or in a grossly inappropriate placement for more than 45 school days within a 60 school day period, unless the DOE can demonstrate that its failure to Timely Implement the Authorized Claimant's Order was not the cause of the Authorized Claimant's grossly inappropriate placement or being out of school. Unless an Authorized Claimant establishes otherwise to the

Independent Auditor's satisfaction, Authorized Claimants who received home instruction will not be considered to be out of school or in a grossly inappropriate placement.

b. An Authorized Claimant for whom the DOE is able to demonstrate to the Independent Auditor's satisfaction that any harm to the child was *de minimis* shall receive a voucher for up to $2,000 in Compensatory Educational Services. Where the DOE demonstrates to the Independent Auditor's satisfaction that an Order was implemented within 60 calendar days from issuance, *de minimis* harm will be presumed unless the Authorized Claimant demonstrates otherwise to the Independent Auditor's satisfaction.

c. An Authorized Claimant for whom the DOE can demonstrate that it only failed to provide one of speech therapy, occupational therapy, physical therapy, or counseling pursuant to an Order shall receive a voucher entitling the claimant to $4,000 in Compensatory Educational Services.

d. An Authorized Claimant with multiple Orders during the Class Period will receive compensatory relief relating to no more than one Order per school year during the Class Period. An Authorized Claimant with multiple Orders issued in one school year during the Class Period shall receive compensatory relief under this Paragraph 31 relating to the Order that would entitle him or her to the greatest amount of relief for that school year.

e. Where the DOE affirms that it sent an invitation to participate in the 2004 Summer Related Services Compensation Program to a particular Authorized Claimant, the face value of such Claimant's voucher shall be reduced

by 50% or $4,000, whichever is less, unless the Independent Auditor determines that the Authorized Claimant has demonstrated that he or she did not receive the invitation or has established a reasonable justification for not using it. In no event shall application of this provision result in the elimination of the full value of an Authorized Claimant's voucher.

f. An Authorized Claimant who received a local or Regents high school diploma on or before January 31, 2008, shall not be entitled to receive a voucher for Compensatory Educational Services, but may make a claim for the reimbursement of costs incurred because his or her Order was not implemented, or for the payment of a Payment Order that was never paid.

32. Where an Authorized Claimant seeks payment on a Payment Order that was never paid in full, that Payment Order shall be paid in full by the DOE within 60 days of the later of (i) submission of the Proof of Claim, (ii) the submission of supporting documentation pursuant to Paragraph 29.b., (iii) submission by the provider of any documentation that may be required of it for the DOE to process such payment, or (iv) resolution in the Authorized Claimant's favor of any challenge brought by the DOE pursuant to Paragraph 30(i), (a), (b), and (c)(i).

Administration of the Settlement

33. Each Proof of Claim shall be reviewed and approved by the Claims Administrator, subject to the following provisions for review of certain Proofs of Claim by the Independent Auditor:

a. All Proofs of Claim seeking vouchers for Compensatory Educational Services shall be reviewed and approved by the Independent Auditor.

The Independent Auditor shall determine the amount of Compensatory Educational Services awarded to any Authorized Claimant who submits a Proof of Claim according to the guidelines set forth above in Paragraph 31. The Independent Auditor's determination of the amount to be awarded to a particular claimant shall be conclusive and not subject to challenge.

b. Where a Proof of Claim is challenged by the DOE pursuant to Paragraph 29, the Proof of Claim form (together with any objection by the DOE and any response thereto by the claimant) will be forwarded to the Independent Auditor, who shall determine in accordance with this Stipulation the extent, if any, to which the Proof of Claim shall be allowed. The Independent Auditor's determination in this regard shall be conclusive and not subject to challenge.

Vouchers

34. Compensatory Educational Services will be provided by means of vouchers. Subject to the specific provisions below, each Authorized Claimant that receives one or more vouchers for educational services and/or assistive technology shall be permitted to use his or her vouchers as he or she determines is in the student's best interest.

a. The amount for which an Authorized Claimant can use a voucher for assistive technology will be capped at $3,000.00, unless the Authorized Claimant provides the Independent Auditor with information sufficient to establish a need for assistive technology the cost of which exceeds $3,000.00.

b. The DOE will have no obligation to support any assistive technology selected by an Authorized Claimant or provide such technology, including any upgrades or updates.

c. An Authorized Claimant may use a voucher at approved providers that have agreed to accept the voucher as payment, a preliminary list of which providers is attached hereto as Exhibit A. These providers will submit invoices for payment to the Claims Administrator. The invoices will be paid within 45 days of submission. The DOE, at all times, will make sufficient funds available for payment of these invoices within 45 days of submission.

d. Vouchers may be used for a combination of services or technology, from one or more providers, up to the limit of their face value.

e. An Authorized Claimant may request approval from the Independent Auditor for the use of a voucher at providers who have not been approved. The Independent Auditor's determination of such a request shall be conclusive and not subject to challenge. These providers will submit invoices to Claims Administrator. If such providers do not provide assistive technology to an Authorized Claimant, the invoice must describe the Authorized Claimant's attendance at the provider's school or location of service, a description of the provider's school or the service provided, and the amount due.

f. An Authorized Claimant must begin using his or her voucher within one year of receiving the voucher and must complete using the voucher within two years of receiving the voucher.

Right to Opt Out of the Settlement

35. Any member of the Compensatory Relief Subclass may request to be excluded from the Compensatory Relief Subclass by returning the opt-out form attached hereto as Exhibit H no later than June 30, 2008, but cannot request exclusion from the Injunctive Relief Subclass, to the extent that they are a member of both subclasses. Any member of the Compensatory Relief Subclass who submits a valid and timely request for exclusion shall have no rights to Compensatory Educational Services, shall not receive a voucher, and will not be deemed to have released any of the Defendants with regard to his or her right to seek appropriate individual relief in an appropriate forum.

TERMS OF ORDER FOR NOTICE AND HEARING

36. Promptly after this Stipulation has been fully executed, counsel for the Parties shall apply to the Court for entry of the Preliminary Order for Notice and Hearing in Connection with Settlement Proceedings, substantially in the form annexed hereto as Exhibit D. In connection with that application, counsel for the Parties shall ask the Court to hold the Settlement Fairness Hearing (as defined in the Order for Notice and Hearing) no earlier than February 4, 2008.

V. TERMS OF ORDER AND FINAL JUDGMENT

37. If the Settlement contemplated by this Stipulation is approved by the Court, Counsel for the Parties shall request that the Court enter the Order and Final Judgment substantially in the form annexed hereto as Exhibit C.

VI. EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

38. The "Effective Date" of the Settlement shall be the first day of the month after all of the following shall have occurred:

a. Final Approval by the Court of the Settlement, following notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

b. Entry by the Court of the Order and Final Judgment, substantially in the form set forth in Exhibit C annexed hereto, which Order and Final Judgment has become Final, or, in the event that the Court enters an order and final judgment in a form other than the Order and Final Judgment ("Alternative Judgment") and none of the Parties hereto elect to terminate the Settlement, the date that such Alternative Judgment becomes Final.

c. The Effective Date shall be no sooner than March 1, 2008.

For example, if the provisions of Paragraphs 38a. and b. are satisfied as of March 20, 2008, the Effective Date would be April 1, 2008.

39. Defendants' Counsel or Plaintiffs' Counsel shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so to all other Parties hereto within thirty (30) days of: (i) the Court's declining to enter the Order for Notice and Hearing in any material respect; (ii) the Court's refusal to approve this Stipulation or any material part of it; (iii) the Court's declining to enter the Order and Final Judgment in any material respect or the Court's entry of an Alternative Judgment; (iv) the date upon which the Order and Final Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Second Circuit or the Supreme Court of the United States; or (v) the date upon which an Alternative

Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Second Circuit or the Supreme Court of the United States (if the Settlement and this Stipulation have not been earlier terminated as a result of the entry of such Alternative Judgment).

40. Except as otherwise provided herein, in the event the Settlement is terminated, reversed, or fails to become effective for any reason, then the Parties to this Stipulation shall be deemed to have reverted to their respective positions in the Action immediately prior to the execution of this Stipulation and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered.

VII. ATTORNEYS' FEES AND EXPENSES

41. The Parties agree that Plaintiffs' Counsel are entitled to a reasonable attorneys' fee and reimbursement of expenses. Lead Plaintiffs will submit a request to Defendants' Counsel for attorneys' fees no later than January 29, 2008. After receipt of Lead Plaintiffs' request, counsel for the Parties will negotiate the fee. If counsel cannot agree within ninety (90) days of Lead Plaintiffs' request for fees, Lead Plaintiffs will apply to the Court for an award of attorneys' fees and reimbursement of expenses. Defendants shall pay the amount of any such award to Plaintiffs' Counsel within 60 calendar days after any award of attorneys' fees becomes Final.

42. The Parties agree that Plaintiffs' Counsel are also entitled to a reasonable attorneys' fee and reimbursement of expenses for time spent executing and enforcing the terms of this Stipulation set forth in Paragraphs 4-12,16.f-16.i, 19-20, 34.c, and 36-42. Lead Plaintiffs will submit requests to Defendants' Counsel for these fees no later than June 30 of each calendar year until the provisions of Paragraph 22 become effective. If

counsel cannot agree on the fees due for each yearly period within ninety (90) days of Lead Plaintiffs' request for fees, Lead Plaintiffs will apply to the Court for an award of attorneys' fees and reimbursement of expenses for such yearly period, and the Defendants shall pay the amount of any such award to Plaintiffs' Counsel within 60 calendar days after any such award of such attorneys' fees becomes Final.

VIII. MISCELLANEOUS PROVISIONS

43. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

44. The Parties to this Stipulation intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by the Class Members against the Released Parties with respect to the Settled Claims. Accordingly, Lead Plaintiffs and Defendants agree not to assert in any forum that the litigation was brought or defended in bad faith or without a reasonable basis. The Parties shall assert no claims of any violation of Rule 11 or any other provision of the Federal Rules of Civil Procedure or any statute relating to the prosecution, defense, or settlement of the Action. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's length in good faith by the Parties and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

45. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties or their successors-in-interest, or by order of the Court.

46. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

47. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation. The Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Stipulation and the orders contemplated herein.

48. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior, contemporaneous, or subsequent breach of this Stipulation.

49. This Stipulation and its exhibits constitute the entire agreement among the Parties concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents. This Stipulation supersedes and replaces any prior or contemporaneous writing, statement, or understanding.

50. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Stipulation shall exchange among themselves original signed counterparts.

51. This Stipulation and the exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of New York, and the construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal

laws of the State of New York without regard to principles relating to conflicts of laws, except to the extent that federal law requires that federal law govern.

52. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

53. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

54. Lead Plaintiffs' Counsel and Defendants' Counsel agree to cooperate fully with one another with respect to the Parties' seeking Court approval of the Order for Notice and Hearing, the Stipulation, and the Settlement, and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

55. Nothing in this Stipulation shall be deemed to be a waiver of any applicable privilege against disclosure, including but not limited to the attorney-client privilege and the attorney work product doctrine, and no party shall argue that any privilege was waived in connection with the negotiation of the Settlement or this Stipulation.

56. This Stipulation shall be binding upon, and inure to the benefit of, the Parties and their respective successors, assigns, heirs, spouses, executors, administrators and legal representatives.

57. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Stipulation.

58. Wherever in this Stipulation or in the exhibits "notice," "notification," or the like is provided for, such "notice," "notification," or the like shall be in writing, unless otherwise specified.

Dated: New York, New York
December 11, 2007

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