

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Moises Jimenez, Devaun Longley, R.O. by his guardian
Doris Afumaa, individually and on behalf of all others
similarly situated, and INTEGRATENYC Inc.,

Plaintiffs,

- against -

THE NEW YORK CITY DEPARTMENT OF
EDUCATION and THE PUBLIC SCHOOLS ATHLETIC
LEAGUE,

Defendants.

**STIPULATION
AND ORDER
OF SETTLEMENT**

Index No. 155825/2018

Hon. Lyle E. Frank

WHEREAS Plaintiff INTEGRATENYC Inc. commenced this action against the New York City Department of Education (“DOE”), the Public Schools Athletic League (“PSAL”),¹ and Donald J. Douglas² by filing a complaint in the Supreme Court of the State of New York, County of New York, on or about June 21, 2018 (the “Complaint”);

WHEREAS Plaintiffs Moises Jimenez, Devaun Longley, and R.O., by his guardian Doria Afumaa, individually and on behalf of the certified class, joined this action via the First Amended Class Complaint, which was filed on or about September 9, 2020 (the “Amended Complaint”);

WHEREAS Plaintiffs allege in the Complaint and the Amended Complaint that Defendants’ policies and practices regarding the allocation of sports teams violate the New York City Human Rights Law by creating a disparity in access to PSAL sports teams for Black and

¹ PSAL is a DOE program.

² Donald Douglas passed away in February 2021. Therefore, the parties stipulate, and the Court orders, that his name be removed from the caption.

Latinx high school students in the City of New York as compared to high school students of other racial or ethnic backgrounds in the City of New York;

WHEREAS Defendants deny all of the material allegations in the Complaint and the Amended Complaint;

WHEREAS Defendants have produced discovery regarding the claims and defenses in this action;

WHEREAS the Plaintiffs and Defendants (the “Parties”) share the goal of reducing barriers to access to PSAL sports teams for Black and Latinx high school students and increasing meaningful access to PSAL sports teams citywide for students with few opportunities to play PSAL sports;

WHEREAS the Parties have engaged in extensive settlement negotiations since 2019;

WHEREAS by Stipulation of the parties and Order of the Court on September 10, 2020 (Dkt. 30), a Plaintiff Class was certified in this case pursuant to Article 9 of the CPLR; and

WHEREAS the Parties are entering into this Stipulation of Settlement (the “Stipulation”) for the purpose of settling the disputes between them and so as to avoid further litigation, and without Defendants admitting any fault or liability, and to settle this action on terms and conditions just and fair to all the parties;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned counsel, that this action is settled, subject to the approval of the Court pursuant to CPLR Rule 908, as follows:

SECTION I: DEFINITIONS

1. “Access” to PSAL sports teams means the opportunity to participate in team try-outs, and if the student is invited to be a member of a PSAL sports team following try-outs, to participate in team practices and inter-scholastic competition.

2. “Athletic Director Coordinator” means a DOE staff member who will be responsible for supporting the implementation of the Shared Access Programs and Individual Access Programs as defined below and as contemplated by this Stipulation.

3. “Average Access” means the average number of PSAL sports teams to which a student has Access within a district, whether at a student’s school or campus or through a Shared Access Program, weighted by the high school population within the district.

4. “Black and Latinx high school students” means high school students who identify as belonging to a Black, African-American, Hispanic, or Latinx racial or ethnic group.

5. “Class” for purposes of this Stipulation is defined as all Black and Latinx New York City high school students who during the pendency of this action and the effective period (as defined *infra* in Paragraph 20) attend a DOE high school and who are eligible for participation in high school sports. A copy of the Stipulation and Order certifying the Class is annexed hereto as **“Exhibit A.”**

6. “Class Counsel” means Plaintiffs’ counsel New York Lawyers for the Public Interest, Patterson Belknap Webb & Tyler LLP, and Emery Celli Brinckerhoff Abady Ward & Maazel LLP.

7. “Class Member” means a person who is a member of the class, as defined *supra* in Paragraph 5.

8. “District” means a community school district within the city school district of the City of New York.

9. “Individual Access Program” refers to the model by which individual students are permitted to apply for, try out for, and/or participate in a sports team that is not offered at either (a) the high school or campus that they attend or (b) through any Shared Access Program in which their high school participates, as further described *infra* in Paragraph 31.

10. “Plaintiffs” refers to Moises Jimenez, Devaun Longley, and R.O. by his guardian Doris Afumaa, individually and on behalf of all others similarly situated, and INTEGRATENYC Inc., and Class Members.³

11. “Defendants” refers to DOE and PSAL.

12. “Initial SAP Districts” refers to Districts 1, 9, 12, 23, and 32, which were (prior to Spring 2019) the five districts with the lowest citywide average access to PSAL sports, accounting for school enrollment, selected to participate in Shared Access Programs, as defined *infra* in Paragraph 14, through a PSAL pilot program that began in the spring of 2019.

13. “School” or “high school” means a general academic school of the city school district of the City of New York serving grades nine through twelve; this definition does not include charter schools or non-public schools.

14. “Shared Access Program” (or “SAP”) refers to the model by which high schools that are geographically proximate to one another are grouped to share access to PSAL teams and through which students that attend the participating high schools are given access to PSAL sports

³ Class Counsel has learned that Plaintiff A.A. by his guardian Francisco Ballester no longer wishes to be a plaintiff in this case. Therefore, the parties stipulate, and the Court orders, that his name be removed from the caption.

teams, including any PSAL sports teams at the participating high schools that predate the formation of the Shared Access Program and any PSAL sports teams that were created as a result of the SAP.

15. “Student Sports Survey” refers to a questionnaire designed to measure student interest in PSAL sports participation.

16. “Fairness Hearing” refers to the hearing set by the Court for determining whether the Stipulation and Order of Settlement are fair, reasonable and adequate to the Class.

17. “Preliminary Court Approval” refers to the date on which the Court grants preliminary approval of the Stipulation prior to notice to the Class and the Fairness Hearing.

18. “Effective Date” refers to the date on which the Court grants final approval of this Stipulation and “So Orders” it, following notice to the Class and the Fairness Hearing, and this Stipulation is filed with the Clerk of Court for the Supreme Court of the State of New York, New York County.

19. “Class Notice” means the notices to Class Members as described in Section II of this Stipulation and substantially in the form attached as “**Exhibit B**,” providing a summary of this Stipulation in a form approved by the Court, in English and Spanish, and translated as necessary pursuant to Chancellor’s Regulation A-663.

20. “Effective Period” means the period of time from the Effective Date until the termination of the Court’s continuing jurisdiction over this action pursuant to Paragraph 58, below.

SECTION II: RELIEF TO THE CLASS

A. Expansion of Shared Access Program

21. The Parties agree that the creation and expansion of SAPs will be the primary means employed by the DOE to increase access to PSAL sports teams for the Class.

22. In order to gauge interest in school sports in districts targeted for expansion of SAPs, Defendants will design a Student Sports Survey. Each school will have the discretion to choose whether it will administer the survey in an electronic or printed format. Defendants will provide this survey, and a list of schools at which it will be administered, to Plaintiffs for review and comment no less than two weeks before it is to be administered (except that for the 2021-2022 school year, Defendants shall provide the survey to Plaintiffs for review and comment within 45 days from the date this Agreement is fully executed). Defendants will allow Plaintiffs no less than one week to review this survey and provide their comments.

23. By June 25 of each school year during the Effective Period, DOE will administer the Student Sports Survey to the student body at each of the DOE high schools newly selected for participation in a SAP during the following school year. The information gathered will be used in the DOE's procedure for granting PSAL sports teams to high schools during the subsequent spring, fall, and winter seasons. For the 2021-2022 school year, the DOE will administer this survey within 45 days from the date this Agreement is fully executed.

- a. Defendants shall provide Class Counsel with a copy of the Student Sports Survey results no later than 45 school days following the final day for receiving responses to the Student Sports Survey each year. These results may be anonymized.

24. When granting new team(s) to a SAP, the DOE will consider the following factors: the sports which are most desired by students at the participating high schools; availability of fields, gymnasiums, or swimming pools; legal requirements contained in Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*; funding; and input from principals and other school administrators. In considering "availability of fields, gymnasiums, or swimming pools," the

PSAL will work with schools and sports programs to identify appropriate athletic spaces that may be available to them without regard as to whether that sports program has had access to said spaces in the past.

25. The DOE will expand the current availability of SAPs beyond the Initial SAP Districts on the schedule described in this Paragraph. In each year, the SAPs from the prior year are to remain in place. Before establishing SAPs in additional districts, the DOE shall prioritize maximizing school participation in existing SAPs, as well as the number of teams available to existing SAPs, in the districts in which they are already operating, consistent with available funding. The specific districts included below may be subject to change, and any such changes are subject to the Reporting Requirements defined below in Section III.

- a. By the opening day of the spring sports season of 2022, the DOE will be operating at least fourteen (14) total SAPs in eight (8) districts, with priority for districts where students' Average Access to PSAL sports teams is fewer than twelve (12) teams per student. The minimum 14 SAPs will be created as follows:
 - i. The DOE will increase the total number of SAPs in the Initial SAP Districts to ten (10) SAPs.
 - ii. The DOE will increase the total number of teams at Bronx Early College Academy ("BECA"), so that BECA will have access through a SAP to at least eight (8) teams.
 - iii. The DOE will create at least one (1) SAP in each of the following districts: Districts 14, 15, 16 ("2021 Districts").

- b. By the opening day of the spring sports season of 2023, the DOE will be operating at least twenty-one (21) SAPs in a total of thirteen (13) districts, with priority for districts where students' Average Access to PSAL sports teams is fewer than 15 teams per student.
 - i. The DOE will increase the total number of SAPs in the 2021 Districts to at least five (5), maximizing the number of SAPs and the teams available to those SAPs in those districts.
 - ii. The DOE will also create SAPs in at least five additional districts ("2022 Districts"), which will include Districts 2, 5, 6, 7, and 19 by creating at least one (1) SAP in each of those districts.
- c. By the opening day of the spring sports season of 2024, the DOE will be operating at least thirty-one (31) SAPs in a total of nineteen (19) districts, with priority for districts where students' Average Access to PSAL sports teams is fewer than 18 teams per student.
 - i. The DOE will increase the number of SAPs in the 2022 Districts and the teams available to those SAPs.
 - ii. In addition to increasing the number of SAPs in the 2022 Districts, the DOE will create additional SAPs in Districts 4, 17, 24, and 29, with a minimum of at least one (1) SAP in each of those districts.
- d. By the opening day of the spring sports season of 2024 the DOE will create at least one (1) SAP in District 8 and one (1) SAP in District 13 for schools within such districts where students at such schools have access to fewer than 12 teams.

e. The DOE will include the school of Plaintiffs Devaun Longley and R.O. in a SAP by spring 2022, even though the district in which they were enrolled (District 7) is not listed as a 2021 District in Paragraph 25.a.iii. The DOE will provide increased Access to sports to the school of Plaintiff Moises Jimenez in spring 2022 through an SAP, even though the district in which Plaintiff Moises Jimenez was enrolled (District 10) is not listed as a targeted district in Paragraph 25.

26. In deciding which schools will be included in the SAPs, the DOE will consider: (i) then-current degree of Access to PSAL teams, (ii) geographic feasibility of participation in a SAP, including co-location, for schools within the district, (iii) the level of student and school interest, and (iv) feedback from principals and other high school administrators.

27. Each school forming part of a SAP shall develop a meaningful mechanism for informing students of the sports opportunities and the relevant dates and locations for team tryouts through either electronic or hard copy communication.

28. Each high school within a SAP will be designated by the DOE as the “host” of at least one PSAL sports team. The host high school will be responsible for hiring coaches, obtaining practice or game space, and overseeing the administration of the PSAL sports team(s) that it hosts, with input and assistance from other participating high schools within the respective SAP, as well as the respective Athletic Director Coordinator, as defined *supra* in Paragraph 2 and *infra* in Paragraph 37.

29. Each SAP will have as a minimum number of PSAL sports teams the total collective number of teams across participating schools before the SAP was created.

- a. By way of illustration, consider that three schools A, B and C become a SAP: school A previously had 4 teams, school B previously had 2 teams, and school C previously had 1 team. In this instance, the SAP will be guaranteed a minimum of 7 teams.

30. The teams playing under one SAP will be treated the same (*i.e.*, given the same opportunities for games and competition) as teams at schools not participating in a SAP.

31. The DOE will also offer the Individual Access Program to provide increased Access to sports teams to students citywide whose access to PSAL sports teams is fewer than six (6) teams and who either cannot participate in a SAP due to geographic limitations or other restrictions or who seek to participate in a specific sport to which they do not have access through their school or a SAP, prioritizing students with the least access to PSAL sports teams, as well as students who attend schools in Districts 27 and 28.

32. The DOE will provide meaningful notice to high school students of the opportunities available through the Individual Access Program, including information about how to learn more about or take advantage of the Individual Access Program and the specific criteria considered when evaluating student requests to participate. When the Individual Access Program is available, this notice will be provided through at least the same means outlined *supra* in Paragraph 27, at least thirty (30) days prior to the start of the relevant sports season during each year of this Agreement's term, except for the fall season of the 2021-2022 school year. The specific criteria used to determine which students are eligible for participation in the Individual Access Program may be subject to change in future years, and any such changes are subject to the Reporting Requirements defined below in Section III.

B. Creation of Additional New Teams

33. The DOE will also add a minimum of five (5) teams in each of the 2021-2022, 2022-2023, and 2023-2024 school years to individual DOE high schools, targeting those high schools citywide with the fewest PSAL sports teams that, for geographic or other reasons, cannot participate in a SAP. The sports to be granted will be determined based on student interest; availability of fields, gymnasiums, or swimming pools; legal requirements contained in Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*; funding; and input from principals and other school administrators.

- a. During the 2023-2024 school year, priority shall be given to schools in Districts 27 and 28 where students' access to PSAL sports teams at their school or campus or through a SAP is fewer than 12 teams per student.
- b. In considering "availability of fields, gymnasiums, or swimming pools," the PSAL will work with schools and sports programs to identify appropriate athletic spaces that may be available to them without regard as to whether that sports program has had access to said spaces in the past.

34. The total number of new teams between the SAPs created (as outlined in Paragraph 25) and the addition of teams pursuant to Paragraph 33 shall not be less than a total of 200 new teams by the spring of the 2023-2024 school year.

C. Staffing

35. PSAL will be primarily responsible for oversight of the implementation of the SAPs and implementation of the terms of this stipulation.

36. In the event that a SAP struggles to fill rosters, or meets with any other obstacles, PSAL will determine an appropriate solution. In the event that a particular SAP is dissolved, its

member schools will be assigned to participate in other SAPs in the same district where/when possible.

37. The DOE will hire six (6) full-time, Athletic Director Coordinators and one (1) Scheduler.

- a. The Athletic Director Coordinators will be responsible for supporting the implementation of the terms of this Stipulation, including the implementation of the SAPs.
- b. The Athletic Director Coordinators will work with the athletic directors at each school within a SAP to facilitate communication and to establish systems that encourage meaningful participation.
- c. The Athletic Director Coordinators will assist athletic directors in SAPs to identify and apply for access to publicly available park or recreational space as needed.
- d. The Scheduler will be responsible for scheduling the games and filing permits for facility and field space for the scheduled competitions.

D. Public Feedback

38. Within 45 days from the date this Agreement is fully executed, DOE will create an electronic form (via Google or other means) to accept “real time” comments and feedback regarding access to and effectiveness of SAPs and Individual Access Programs from students and parents at schools that are participating in either program. Parents will have access through their child’s account.

- a. PSAL will direct schools to provide information about how to access such form to students who are eligible to participate in SAPs or offered the Individual

Access Program as set forth in Paragraph 31; such students may use the form for the duration of that sports season.

- b. The form will be designed to elicit targeted feedback on overarching issues related to access to and participation in SAP and Individual Access Programs, including but not limited to transportation, try-outs, scheduling, and eligibility, and may employ the use of drop-down menus, limitations on characters in fillable text boxes, multiple choice, or other formats to ensure targeted feedback and commentary.
- c. Defendants shall take the feedback and commentary under advisement, but nothing herein requires Defendants to take affirmative action or commits Defendants to a specific course of action in response to the feedback and commentary received through such form.
- d. Students will also continue to use the resources at their local school and through their SAPs or other PSAL programs—including communication with school administrators, Athletic Directors, and coaches—to address specific concerns related to transportation, tryouts, and other day-to-day questions or student-specific issues regarding SAP or Individual Access participation.

39. Defendants will provide a copy of all feedback received through such form to Class Counsel within 30 days of the conclusion of the 2021-2022 school year, and twice a year during the following two school years.

SECTION III: REPORTING

40. During the Effective Period, DOE agrees to share qualitative and quantitative data regarding the SAP Program with Class Counsel and to meet and confer to discuss such data on an annual basis.

41. The Parties agree that Defendants will provide to the Class through Class Counsel the following metrics for each school year by the conclusion of each school year during the Effective Period:

a. Quantitative Measures:

- i. A list of the new teams that were granted in that school year pursuant to this Stipulation, and a list of the schools that will have access to each of them.
- ii. A list of the districts currently operating SAPs and Individual Access Programs.
- iii. A list of high schools participating in a PSAL program with the following data: the district to which the school belongs; the number of teams to which students have Access; the number of students enrolled in each school; the number of Black and Latinx students enrolled in each school; the number of students participating in PSAL programming in each school; and the number of Black and Latinx students participating in PSAL programming in each school.
 1. Defendants will provide a list of all sports available through each PSAL program.

2. Defendants will provide a “crosswalk” identifying to what PSAL program—including SAPs—each school belongs.
 - iv. A list of schools that will be part of new SAPs to be created in the coming year.
 - v. A list of all schools by district.
 - vi. A list of schools with students participating in the Individual Access Program, and the number of students participating in an Individual Access Program at each school.
- b. Qualitative Measures:
- i. Defendants shall conduct, and provide the Class through Class Counsel with a summary of the results of, an end of year survey of students who attend the schools selected to participate in the SAPs, including tabulation represented through a chart, table or other detailed representation of qualitative data. The survey administered shall inquire about student satisfaction regarding the PSAL offerings and access.
 - ii. Defendants shall conduct, and provide the Class through Class Counsel with a summary of the results of, an end of year survey of Athletic Directors, Principals, and other relevant staff at schools that participate at SAPs. The survey shall solicit staff feedback on the successes and difficulties regarding the SAPs.

42. Within 45 days of the conclusion of the 2023-2024 school year, the DOE will provide the Class through Class Counsel with a final report documenting the results of the DOE’s efforts to increase meaningful access to PSAL sports teams citywide for Class Members during

the Effective Period. Class Counsel will be responsible for making the information to be reported in Paragraph 41 available to the Class through appropriate means, including a website.

43. Any data, records, or information reported to Class Counsel will be reported consistent with federal, state, and local law relating to the privacy of student information, including the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and New York State Education Law § 2-d. If any reported category of information contains between one and five students, or contains an amount that would allow another category that contains between one and five students to be deduced, the number shall be replaced with a symbol. A category that contains zero shall be reported as zero, unless such reporting would violate any applicable provision of federal, state or local law relating to the privacy of student information.

SECTION IV: FUNDING

44. The Parties recognize that the creation of SAPs contemplated in Section II of this Stipulation will require funding.

45. In the event that the DOE is unable to substantially fulfill its commitments described in this Stipulation due to lack of funding, the Parties agree to meet and confer to determine whether modification of the Stipulation may be appropriate. If the Parties are unable to reach agreement on modification within 30 days of such meeting, this Stipulation shall be canceled and deemed null and void, and Plaintiffs may seek appropriate relief from the Court. The notice of failure, as provided *infra* at Paragraph 59, does not apply in the instance that Defendants are unable to perform due to lack of funding.

SECTION V: NOTICE TO THE CLASS

46. The Class Notice agreed upon by the Parties is attached as **Exhibit B**. It informs Class Members of the relief they will receive under the Stipulation if approved, their rights to

object, and information about where Class Members can find further information about the proposed Settlement including a full copy of this Stipulation.

47. Following Preliminary Court Approval, and no later than 14 days thereafter, Class Counsel shall, in conjunction and collaboration with the DOE's counsel, utilizing social media and traditional media, publish and distribute information regarding the proposed Settlement and this Stipulation. Class Counsel shall also post the Class Notice on their website(s).

48. Following Preliminary Court Approval, and no later than 14 days thereafter, DOE and PSAL shall prominently post the Class Notice on their website(s) at www.schools.nyc.gov and www.psal.org, as well as have a printed copy of the Class Notice displayed at a public location (*i.e.*, a main office, lobby, or centrally located bulletin board) at all DOE high schools where in person instruction and/or Summer PSAL activities are occurring, for the duration of the Effective Period.

49. The Fairness Hearing shall be conducted no more than 60 days after Preliminary Court Approval is granted.

SECTION VI: OBJECTIONS

50. Any Class Member who wishes to object to the Stipulation or proposed Settlement must serve on Class Counsel a written statement of objection no later than 20 days before the Fairness Hearing (or as the Court may otherwise direct). The statement of the objection must set forth the specific reason(s), if any, for each objection, including any legal support the Class Member wishes to bring to the Court's attention, and any evidence the Class Member wishes to introduce in support of the objection. The written statement of objection must also set forth the Class Member's name, address, telephone number, and a statement of whether the Class Member or his or her lawyer will ask to appear at the Fairness Hearing. In accordance with the requirements

of the Court, Class Members may appear at the Fairness Hearing either on their own or through an attorney. If a Class Member hires an attorney to represent him or her, the attorney must (1) file a notice of appearance no later than 10 days before the Fairness Hearing (or as the Court may otherwise direct) and (2) serve a copy of that notice of appearance on Class Counsel.

51. No later than 10 days before the Fairness Hearing, Class Counsel will file with the Court all such objections in a single submission.

52. Any Class Member who fails to fully comply with the provisions of the preceding paragraphs will be deemed hereby to have waived and forfeited any and all rights he or she may have to appear separately and/or object, and will be bound by all the terms of this Stipulation and by all proceedings, orders and judgments in this matter.

SECTION VII: RELEASE AND WITHDRAWAL OF CLAIMS AND APPEALS

53. As of the Effective Date, any and all claims raised or that could have been raised based upon the facts alleged in the Complaint are dismissed.

54. As of the Effective Date, the remedies enforceable in this action are limited to the provisions of this Stipulation.

55. As of the Effective Date, Plaintiffs, individually and on behalf of each Class Member, and on behalf of the respective heirs, executors, administrators, personal representatives, successors, and assigns of each of themselves and each Class Member, hereby jointly and severally release and forever discharge Defendants, their past and present officials, employees, departments, agencies, representatives, directors, commissioners and agents, their successors and assigns, and their respective heirs, executors, administrators, personal representatives, and transferees (collectively the "Releasees") and each of them, of and from any and all claims, whether known or unknown, foreseen or unforeseen, matured or un-matured, accrued or not accrued, direct or

indirect, from the beginning of time through the Effective Date that the Plaintiffs and the Class Members and each of them ever had against the Releasees with respect to any claims raised or that could have been raised based upon the facts alleged in the Complaint.

SECTION VIII: PRELIMINARY APPROVAL

56. Within 30 days after execution by all Parties, Plaintiffs shall submit this Stipulation and all Exhibits to it to the Court, and will move for entry of the Preliminary Approval Order substantially in the form attached as **Exhibit C**.

SECTION IX: FAIRNESS HEARING AND ORDER APPROVING SETTLEMENT AND FINAL JUDGMENT

57. At or after the Fairness Hearing and upon the Court's approval of the Stipulation, the Parties will seek and obtain from the Court the Order Approving Settlement and Final Judgment, which will:

- a. state that the Court has personal jurisdiction over all Class Members and subject matter jurisdiction (i) over the claims asserted in the Amended Complaint and (ii) over all the terms of this Stipulation (including the Release) and all Exhibits to this Stipulation;
- b. find that the Class Notice and notice methodology implemented under this Stipulation constituted appropriate notice to the class pursuant to C.P.L.R. 904;
- c. approve this Stipulation and the proposed settlement as fair, reasonable and adequate, and consistent and in the best interests of, each of the Parties and the Class Members;
- d. direct the Parties and their counsel to implement and consummate this Stipulation according to its terms and provisions;

- e. find that Class Counsel in this action and the Class representatives adequately represented the Class for purposes of entering into and implementing this Settlement;
- f. dismiss the action (including all individual claims and Class claims presented in it) on the merits and with prejudice;
- g. incorporate and set forth in full the release in Section VII of this Stipulation, and make the release effective as of the date of the Final Judgment; and
- h. state that, without affecting the finality of the Order Approving Settlement and Final Judgment for purposes of appeal, the Court will retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of this Stipulation and the Order Approving Settlement and Final Judgment, and for any other necessary purpose; and
- i. incorporate any other provisions as the Court deems necessary and just.

SECTION X: JURISDICTION AND ENFORCEMENT

58. The jurisdiction of this Court shall terminate thirty (30) days after Defendants provide to Class Counsel the final report regarding the 2023-2024 school year and Final Judgment is entered, or until such time as may be extended by the Parties or the Court by modification of this Stipulation.

59. During the time prior to the termination of the Court's jurisdiction, if Class Counsel believes the DOE has substantially failed to comply with any of the terms of this Stipulation, Class Counsel shall notify Defendants' counsel in writing of the nature and specifics of the alleged failure to comply at least 30 days before any motion is made for enforcement of this Stipulation. Unless otherwise resolved, the Parties' counsel shall meet within the 30-day period following

notice to Defendants' counsel in an attempt to arrive at a resolution of the claims. If no resolution is reached within thirty (30) days from the date of notice, Plaintiffs may move this Court for an Order to enforce the terms of this Stipulation. This provision does not apply to any issues that arise as a result of funding, as set forth *supra* in Paragraph 45.

SECTION XI: GENERAL PROVISIONS

60. Defendants agree that Plaintiffs are entitled to counsel fees and costs as though they are prevailing parties. Class Counsel will not seek more than \$1.7 Million Dollars in Fees. Defendants reserve all rights to assess, analyze and object to the amount of Attorneys' Fees upon Defendants' receipt of all information that they deem relevant to the final determination of the Attorneys' Fees, including billing records that they believe are necessary to assess the reasonableness of Class Counsel's attorneys' fees.

- a. The parties agree to attempt to negotiate the amount of such counsel fees and costs. If they are unable to agree on an amount within sixty (60) days after Plaintiffs' counsel provides to Defendants copies of their timesheets and any other necessary information to evaluate the reasonableness of the fees claimed, Plaintiffs may submit an application for counsel fees and costs to the Court, and Defendants reserve the right to respond to such an application in a manner that is consistent with this Paragraph.

61. If the Court disapproves the Stipulation or any material part thereof, or if the Stipulation is modified or reversed in any material respect by an order or decision that is final and unappealable, then this Stipulation shall be canceled and deemed null and void, and the parties shall revert to their respective positions in the action as of the date prior to their signing this Stipulation.

62. Notwithstanding the provisions of this Stipulation, Defendants reserve the right to implement, change, or otherwise alter or amend the procedures and requirements of this Stipulation if required by intervening changes in federal statute or regulation or state statute or regulation which are inconsistent with the terms of this Stipulation. Defendants shall provide Plaintiffs' counsel with written notification of a required change at least sixty (60) days prior to the commencement of implementation, unless Defendants are required to commence implementation of such a required change in less than sixty (60) days. If Defendants are required to commence implementation of a required change in less than sixty (60) days, counsel for Defendants shall provide such notice no later than seven (7) working days after learning thereof.

63. If, at any time, Plaintiffs or Defendants desire to modify the Stipulation for any reason, the party that seeks such modification shall notify the other party, in writing, of the proposed modification and the reasons therefor. If the Parties reach agreement on the requested modification, it shall be reduced to writing, signed, and filed with the Court for approval. If the Parties are not able to reach an agreement on the proposed modification, any party may seek resolution from the Court.

64. If Defendants are unable to meet a deadline or other requirement set forth in this Stipulation due to the COVID-19 (or similar) pandemic, flood, fire, earthquake or similar Act of God (a "Force Majeure Event"), Defendants' failure shall be disregarded for the purposes of determining whether Defendants are in compliance with the terms of this Stipulation. Should Defendants invoke this Paragraph, Defendants' counsel shall notify Plaintiffs' counsel in writing as soon as practicable (but not later than fourteen (14) days after Defendants knew such Force Majeure Event would cause Defendants to fail to satisfy a term of this Stipulation), providing a

description of the event and notice of the length of the delay (“Force Majeure Notice”). Defendants will adopt all reasonable measures to avoid or minimize any such delay.

65. Nothing contained herein shall be deemed to be an admission by the Defendants or any officer or employee thereof, of any of Plaintiffs’ or Class Members’ allegations or of Plaintiffs’ or Class Members’ standing to pursue any relief, nor an admission by the Defendants that they have in any manner or way violated Plaintiffs’ or a Class Member’s rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules, or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations, or bylaws of any department, agency, or subdivision of the State of New York or the City of New York.

66. This Stipulation constitutes the Parties’ entire agreement with respect to the matters set forth in this Stipulation, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant action shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

67. This Stipulation shall not be admissible in any other litigation or settlement negotiation, except for enforcement of the provisions contained herein as set forth in Section II-IV and X of this Stipulation.

68. Nothing contained in this Stipulation shall be deemed to constitute a policy or practice of the Defendants, including the DOE and the PSAL.

69. All parties to this Stipulation have participated in its drafting; consequently, any ambiguity shall not be construed for or against any party.

70. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it shall be governed by the laws of the State of New York without regard to conflicts of law.

71. This Stipulation is final and binding upon the Parties, their successors, and their assigns.

72. The Parties hereto covenant and agree that in the event that any provision of this Stipulation should be held by a court of competent jurisdiction to be void, voidable, illegal or unenforceable in any respect, the remaining portions thereof and provisions hereof shall nevertheless remain in full force and effect as if such void, voidable, illegal or unenforceable provision had never been contained in this Stipulation.

73. Any waiver of any term, condition, right, power, or privilege hereunder must be in writing and signed by the party being charged with the waiver. No delay on the part of any party hereto in exercising any right, power, or privilege hereunder shall operate as a waiver of any other right, power, or privilege hereunder, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

74. Each party agrees to timely and promptly perform any further acts and execute and deliver any further documents which may be reasonably necessary to carry out the provisions of this Agreement.

75. Any notice, report, or communication required by or made pursuant to the terms of this Stipulation, other than notices sent to individual Class Members, shall be sent by electronic mail and, upon request, by first class mail, postage prepaid, to all of the people below:

To Plaintiffs:

Hayley Gorenberg
Caroline Soussloff
hgorenberg@nylpi.org
csoussloff@nylpi.org
New York Lawyers for the Public Interest, Inc.
151 West 30th Street
11th Floor
New York, New York 10001

Aron Fischer
afischer@pbwt.com
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, New York 10036

Katherine Rosenfeld
Krosenfeld@ecbalaw.com
EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL
LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020

To Defendants:


Mark G. Toews
mtoews@law.nyc.gov
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, New York 10007

76. Any party may change the above designated addressee or address by written notice to the other parties.

77. This Stipulation may be executed in one or more counterparts, including by signature transmitted by .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

****Signature block appears on the following page.****


NEW YORK LAWYERS FOR THE PUBLIC
INTEREST, INC.
151 West 30th Street
11th Floor
New York, New York 10001
Attorneys for Plaintiffs

By: 
Hayley Gorenberg, Esq.

GEORGIA M. PESTANA
Corporation Counsel of the
City of New York
100 Church Street
New York, New York 10007
Attorney for Defendants

By: 
Mark G. Toews
Assistant Corporation Counsel

PATTERSON BELKNAP WEBB & TYLER
LLP
1133 Avenue of the Americas
New York, New York 10036
Attorneys for Plaintiffs

By: 
Aron Fischer, Esq.

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020
Attorneys for Plaintiffs

By: 
Katherine Rosenfeld, Esq.

SO ORDERED,

this _____ day of _____ 2021.

Honorable Lyle E. Frank
Justice of the Supreme Court

EXHIBIT A TO THE SETTLEMENT
AGREEMENT

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

Moises Jimenez, Devaun Longley, R.O. by his guardian
Doris Afumaa, A.A. by his guardian Francisco Ballester,
individually and on behalf of all others similarly situated,
and INTEGRATENYC Inc.,

Index No. 155825/2018

Plaintiffs

STIPULATION AND ORDER

-against-

THE NEW YORK CITY DEPARTMENT OF
EDUCATION, THE PUBLIC SCHOOLS ATHLETIC
LEAGUE, and PUBLIC SCHOOLS ATHLETIC
LEAGUE EXECUTIVE DIRECTOR DONALD J.
DOUGLAS

Defendants

IT IS HEREBY STIPULATED, by and between the parties hereto, by their duly
authorized counsel, that:

1. This action is certified as a class action pursuant to Article 9 of the Civil Practice Law and Rules.
2. The plaintiff class is defined as all present and future Black and Latinx New York City high school students who attend a DOE high school and who are or who become eligible for participation in high school sports (the "Class").
3. The Class is so numerous that joinder of all members is impracticable.
4. Common questions of law and fact exist in this action with respect to the Class as fully set forth in the Amended Complaint, including, *inter alia*, (1) whether Defendants have engaged in Discriminatory Practices as alleged in the Amended Complaint (2) whether

the Discriminatory Practices violate the rights of Plaintiffs and the Class under the New York City Human Rights Law; (3) whether the Defendants' Discriminatory Practices have a disparate impact on Plaintiffs and the Class in violation of the New York City Human Rights Law; (4) whether there are policies and practices with less disparate impact available to Defendants for allocating high school sports teams; and (5) what relief is required to remedy the violations of law by Defendants alleged in the Amended Complaint. All such common questions are certified as class issues. Nothing in this provision, or any other provision herein, constitutes a waiver of any defense at law or equity to the merits of the claims alleged in the Amended Complaint.

5. The claims of Plaintiffs Moises Jimenez, Devaun Longley, R.O. by his guardian Doris Afumaa, and A.A. by his guardian Francisco Ballester are typical of the claims of the Class, and they will fairly and adequately protect the interests of the Class; they are appointed Class Representatives.

6. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

7. New York Lawyers for the Public Interest, Emery Celli Brinckerhoff & Abady LLP, and Patterson Belknap Webb & Tyler LLP will fairly and adequately represent the interests of the Class and are appointed as class counsel for the Class.

8. This Stipulation and Order shall be binding upon the parties hereto, including their successors, agents, servants, supervisors, and employees, and all Defendants.

9. This Stipulation and Order may be executed in counterparts, including by signatures delivered by facsimile or scanned signatures.

Dated: September 2, 2020

NEW YORK LAWYERS FOR THE PUBLIC
INTEREST, INC.

By: Melissa Iachan

Melissa Iachan
151 West 30th Street
11th Floor
New York, NY 10001
212-244-4664

PATTERSON BELKNAP WEBB & TYLER
LLP

Aron Fischer
Maren J. Messing
Jeffrey Hughes
1133 Avenue of the Americas
New York, NY 10036
212-336-2000

EMERY CELLI BRINCKERHOFF &
ABADY LLP

Katherine Rosenfeld
600 Fifth Avenue, 10th Floor
New York, NY 10020
212-763-5000

Attorneys for Plaintiffs

SO ORDERED:

J.S.C.

JAMES E. JOHNSON
*Corporation Counsel of the
City of New York*
100 Church Street
New York, New York 10007

By: Mark G. Toews

Mark G. Toews
Rosemary C. Yogiaveetil
Assistant Corporation Counsel

Attorneys for Defendants

So Ordered

- 9/10/20

HON. LYLE E. FRANK, J.S.C.

EXHIBIT B TO THE SETTLEMENT
AGREEMENT

If you are a **Black or Latinx high school student who attends or will attend a NYC Department of Education high school from 2021 through 2024**

(or are a parent or guardian of a Black or Latinx high school student who attends or will attend a NYC Department of Education high school from 2021 through 2024)

Please read this notice of settlement with the NYC Department of Education and the Public Schools Athletic League because your rights may be affected.

This proposed Settlement of a class action lawsuit affects the rights of Black and Latinx students who attend or will be attending NYC Department of Education high schools and who play or will be able to play high school sports in the Public Schools Athletic League from 2021 through 2024.

If this Settlement is approved, the NYC Department of Education and the Public Schools Athletic League have agreed to make changes to sports teams in NYC public high schools, described in detail below.

Please read the attached notice for complete information about this proposed Settlement.

Supreme Court of the State of New York, County of New York
Moises Jimenez et al. v. New York City Department of Education et al.

If you are a Black or Latinx student who attends or will attend a NYC Department of Education high school and play or will be able to play high school sports through the Public Schools Athletic League from 2021 through 2024, you are part of this class action lawsuit.

Your legal rights may be affected by this case whether or not you act. Read this notice carefully.

The proposed settlement (the “Settlement”) resolves a class action lawsuit claiming that the NYC Department of Education (“DOE”) and the Public Schools Athletic League (“PSAL”) treated Black and Latinx high school students unfairly and unequally by making fewer PSAL sports teams available to them than to students of other races and ethnicities. The DOE has denied any wrongdoing concerning these allegations.

To resolve the lawsuit, the DOE and PSAL have agreed to take certain actions to create more opportunities for Black and Latinx high school students to play PSAL sports. The rights of class members under the Settlement are described below.

Your legal rights and options in this settlement:

- 1. Object** → You may write to the Court if you don’t agree with the Settlement.
 - 2. Go to the fairness hearing** → You may ask to speak in Court concerning the fairness of the Settlement.
- **If you do nothing**, and a judge approves this Settlement, as a Class Member, you will be bound by the terms of the Settlement.
 - These rights and options are explained in this Notice. **There are deadlines to exercise these rights and options.**

If you have any questions or to get a copy of the full Settlement Agreement, call New York Lawyers for the Public Interest at 212-244-4664, email fairplay@nylpi.org, or go to www.nylpi.org/get-help/.

Frequently Asked Questions

1. What is this lawsuit about?

This lawsuit, *Moises Jimenez et al. v. New York City Department of Education et al.* Index No. 155825/2018, was filed by a group of Black and Latinx students who attend NYC Department of Education high schools. They wanted greater opportunities to play after-school sports and believed that the PSAL needed to change its policies and practices to make this happen. The PSAL, which is part of the NYC Department of Education, decides how to grant sports teams to high schools for competing against other high schools.

The students began the lawsuit by filing the Complaint on June 21, 2018. This document stated that the DOE and the PSAL (together, the “Defendants”) violated the New York City Human Rights Law because they treated Black and Latinx high school students unfairly and unequally by making fewer sports teams available to them than to students of other races and ethnicities. Defendants have denied that they have done anything wrong.

2. What is a lawsuit?

A “lawsuit” allows a person (or group of people), who believes they have been harmed, to state an official claim against another person (or organization), claiming that they caused the harm. The lawsuit is filed in court, and a judge oversees it. The judge or a jury may be asked to determine who is correct or, as happened here, the parties may agree to “settle” the matter because they have agreed about what should happen.

3. What is a class action?

A “class action” is a lawsuit started by a few individuals (called the “Class Representatives”) who represent a larger group (called the “Class”). The Class shares important similarities with the Class Representatives and as a result they face similar problems.

In this lawsuit, the Class Representatives are a group of individual Black and Latinx NYC public high school students—Moises Jimenez, Devaun Longley, and some of their peers—and the Class includes **ALL** Black and Latinx students who attend or will soon be attending NYC Department of Education high schools and play or will be able to play high school sports through PSAL from 2021 through 2024.

4. Who is a member of the Class in this action?

All students who identify as belonging to a Black, African-American, Hispanic, or Latinx racial or ethnic group who attend (or will attend) a NYC Department of Education high school through Spring 2024 and play (or will be able to play) high school sports through the PSAL.

This means that if this description applies to you between the period covered by the Settlement, 2021-2024, you stand to benefit from the terms of this Settlement.

5. Why is there a Settlement?

Rather than spend time arguing with each other in front of the judge and a jury, the Class Representatives and the Defendants here have negotiated with each other outside of the courtroom. This way, they avoid the costs and risks of a trial, and the Class will receive benefits sooner. This is a common way to resolve lawsuits. The judge has not decided in favor of either side. Instead, both sides have agreed to a Settlement Agreement that they believe is fair, reasonable and adequate.

Most importantly, the Class Representatives and their lawyers think this Settlement is in the best interest of the entire Class.

6. Is the Settlement final?

Almost, but not yet. A New York Supreme Court judge still has to approve the Settlement for it to become final. First, there will be a Settlement Fairness Hearing **scheduled for [date] at [time]**. After this hearing, the judge will decide whether to approve the Settlement and make it final and “binding,” meaning the DOE, PSAL, and the Class have to do what it says.

If the judge approves the Settlement and it becomes final, the DOE and PSAL have to expand access to high school sports by the processes outlined in the Settlement, and the judge—and the lawyers for the Class—will keep an eye on their progress. For the duration of this process, Class Members may not sue the DOE or PSAL over the same issues covered by the lawsuit.

7. Do I have a lawyer in this case?

If you are a Class Member, then yes. Lawyers from New York Lawyers for the Public Interest, Inc., Patterson Belknap Webb & Tyler LLP, and Emery Celli Brinckerhoff Abady Ward & Maazel LLP represent you for the purposes of this Settlement. You can contact them by phone at 212-244-4664 or by email at fairplay@nylpi.org.

You will not be charged for being represented by these lawyers in the lawsuit or Settlement. Instead, these lawyers get paid for their work on this case by the Defendants as part of the Settlement.

If you want to be represented by your own lawyer, you may hire one at your own expense.

8. What actions have the DOE and PSAL committed to take during the term of the Settlement?

If the Settlement is approved, the DOE and PSAL will have to take certain actions during the period of the Settlement, which begins on the date of approval and ends in 2024.

Specifically, the DOE and PSAL will have to:

- Expand the Shared Access Programs, or “SAPs,” (described in further detail below) to specified school districts that have the lowest citywide average access to PSAL sports teams, and
- Add a minimum of five teams in each of the 2021-2022, 2022-2023, and 2023-2024 school years to specified individual DOE high schools. They will target those high schools with the fewest PSAL sports teams that, for geographic or other reasons, cannot participate in a SAP.

Expansion of the SAPs + Additional new teams will guarantee a minimum of 200 new PSAL teams total by Spring semester 2024.

In addition, the DOE and PSAL will have to:

- Hire six full-time Athletic Director Coordinators and one Scheduler to oversee these new sports programs; and
- Create a system that students and parents can use to provide “real time” comments on how the new sports programs are going.

Expansion of Shared Access Programs (called SAPs):

The main way that the DOE will increase access to PSAL sports teams for the Class is by creating and expanding Shared Access Programs (“SAPs”). According to this model, high schools that are located near one another will be grouped to share PSAL sports teams so that they will have more sports teams together than each school had alone.

This means that if you go to a small high school, you may end up playing on a team with students from nearby high schools. This system will give you more opportunities and

options for playing different sports and increase the number of options of teams you can try out for.

If your school is selected to be part of a SAP, you will be able to take a Student Sports Survey to tell the PSAL which sports you want to play. The Student Sports Survey will help the PSAL decide which new sports teams to create for your SAP.

The Settlement goes into a lot of detail about how the SAPs will be designed and rolled out. Below is a “cheat sheet” showing which districts have been proposed to get new SAPs through the Settlement, and by when, though these districts are subject to change.

Districts 1, 9, 12, 23, and 32	These districts already participate in a SAP pilot program. By the spring 2022 season, the PSAL will increase the total number of SAPs in these districts to 10.
Districts 14, 15, 16	These districts will have at least one SAP by the spring 2022 season, and at least five by the spring 2023 season.
Districts 2, 5, 6, 7, and 19	These districts will have at least one SAP by the spring 2023 season, and additional SAPs by the spring 2024 season.
Districts 4, 17, 24, and 29	These districts will have at least one SAP by the spring 2024 season.
Districts 8 and 13	Schools within these districts where students have access to fewer than 12 sports teams will have at least one SAP by the spring 2024 season.
Bronx Early College Academy	This school will have access through a SAP to at least eight teams by spring 2022.
Urban Assembly Bronx Academy of Letters	This school will be included in a SAP by spring 2022.
In-Tech Academy High School	This school will be included in a SAP by spring 2022.

9. How do I know the DOE and PSAL will follow through on their commitments? What if they don't?

If the judge approves the Settlement, the DOE and PSAL will have to follow the Settlement's requirements. The lawyers who are representing the Class Representatives and the Class will be checking to make sure that the DOE and PSAL follow the Settlement requirements during the Settlement period. The DOE and PSAL will be required to report certain data to the lawyers for this purpose. If the lawyers determine that the DOE and PSAL are not following through on their commitments to the Class, the lawyers will have the ability to take legal action for the Class.

If you are concerned that the DOE and PSAL are not following the Settlement's requirements, call New York Lawyers for the Public Interest at 212-244-4664, or email FairPlay@nylpi.org.

10. What if I don't like the Settlement?

If you are a Class Member, you can tell the judge that you disagree with the Settlement or some part of it by formally "objecting" (disagreeing) to the Settlement.

To object, you must send a letter saying that you object to the Settlement in *Moises Jimenez et al. v. New York City Department of Education et al.* to New York Lawyers for the Public Interest. In your letter, you should give specific reasons why you think the judge should not approve the Settlement and share any evidence you have supporting your objection. Be sure to also include your name, address, telephone number, your signature, and whether or not you (or a lawyer representing you) will ask to speak at the Settlement Fairness Hearing. Mail the objection letter to the following address postmarked no later than [date]:

New York Lawyers for the Public Interest
Attn: Sports Equity
151 West 30th Street, 11th floor
New York, NY 10001

New York City Law Department
Attn: Mark G. Toews
100 Church Street
New York, NY 10007

The lawyers for the Class will then give your letter to the judge before the Settlement Fairness Hearing.

You also have the option to attend the Settlement Fairness Hearing. The hearing is scheduled for [date] at [time] at [place].

EXHIBIT C TO THE SETTLEMENT
AGREEMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Moises Jiminez, Devaun Longley, R.O. by his
guardian Doris Afumaa, individually and on behalf
of all others similarly situated, and
INTEGRATENYC INC.,

Plaintiffs,

v.

THE NEW YORK CITY DEPARTMENT OF
EDUCATION and THE PUBLIC SCHOOLS
ATHLETIC LEAGUE,

Defendants.

Civil Action No. 155825/2018

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR
NOTICE TO THE SETTLEMENT
CLASS**

An application has been made pursuant to CPLR 908 for an order preliminarily approving the settlement of this action as between Moises Jimenez, Devaun Longley, R.O. by his guardian Doris Afumaa (collectively “Class Plaintiffs”), and IntegrateNYC Inc. (collectively, the “Plaintiffs”) and the New York City Department of Education and the Public Schools Athletic League (collectively, the “Defendants”) pursuant to the Settlement Agreement dated November 16, 2021 and its Exhibits attached as Exhibit 1 hereto, which sets forth the terms and conditions for a proposed settlement of the action and the disposition of all claims against the Defendants pleaded in the Amended Complaint.

The Court has read and considered the Settlement Agreement and its Exhibits, as well as all papers filed in connection with the application for its approval, and has heard the oral argument of counsel. Based thereon, and good cause appearing therefor,

IT IS HEREBY ORDERED as follows:

1. This Preliminary Approval Order incorporates by reference the definitions in the Settlement Agreement, and all terms used herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court has subject matter and personal jurisdiction over Plaintiffs, all members of the Class defined below, and Defendants.

3. The Court preliminarily approves the Settlement Agreement, including its payment and release provisions, as within the range of possible final approval and warranting the provisional certification of the Class defined below, subject to further consideration at the Final Approval Hearing described below.

4. The Court determines that the Class Notice in the form of Exhibit B to the Settlement Agreement and the Notice Plan as described in the Settlement Agreement are fair, adequate, and sufficient, constituting the best practicable notice under the circumstances, and are reasonably calculated to reach all or a substantial percentage of the members of the Class and apprise them of this action, the terms and conditions of the Settlement Agreement, and their rights under the Settlement Agreement. The Court directs that notice in the form prescribed be given to the members of the Class in accordance with the Notice Plan.

5. The Final Approval Hearing on the Settlement Agreement shall be held on _____, 2021 at Room 308 of the Supreme Court of the State of New York, New York County, at 80 Centre Street, New York, NY 10013. At that Final Approval Hearing, the Court will consider the fairness of the Settlement Agreement, determine whether the Settlement Agreement was made in good faith and should be finally approved as fair, reasonable and adequate, and determine whether a Judgment and Order Granting Final Approval should be entered.

6. Any member of the Class may object to this Settlement Agreement (be an “Objector”). Such an Objector must send a written statement of objections to Class Counsel, postmarked not later than _____, 2021 (20 days prior to the date set for the Final Approval Hearing). That statement must (i) state the name, address, and telephone number of the Objector, (ii) state whether the Objector or his or her lawyer will ask to appear at the Fairness Hearing, (iii) describe all objections of the Objector and the specific reasons therefor (including legal support that the Objector wishes to bring to the Court’s attention), and (iv) attach any affidavits or other evidence relied upon in support of the objection. No later than 10 days before the Fairness Hearing, Class Counsel will file with the Court and serve upon counsel for Defendants all such objections in a single submission. In addition, any Objector or counsel for an Objector that desires to appear at the Final Approval Hearing must file with the Court and mail to Class Counsel and counsel for the Defendants, by first class mail and postmarked no later than 20 days before the date set for the Final Approval Hearing, a separate notice of intention to appear and any affidavits or other papers in support of the objection(s). Counsel for the parties shall be permitted to file and serve any response no later than 10 days before the date set for the Final Approval Hearing. No reply papers will be received.

7. All other motions and papers filed in support of final approval of the Settlement Agreement shall be filed no later than seven (7) calendar days prior to the Final Approval Hearing. The Court may continue the Final Approval Hearing without further notice to the Class.

8. The Court retains jurisdiction to consider all further applications arising out of or relating to the Settlement Agreement. The Court may approve the Settlement Agreement with such modifications as may be agreed to by Class Plaintiffs, on behalf of themselves and the Class, and the Defendants, if appropriate, without further notice to the Class.

9. Pending determination of whether the Settlement Agreement should be finally approved, (i) all discovery is stayed, and (ii) all other proceedings in the Action as between Plaintiffs and Defendants, except those related to effectuating or complying with the Settlement Agreement, also are stayed.

IT IS SO ORDERED.

DATED: _____

J.S.C.