

SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND FRANK TJOELKER

I. INTRODUCTION

1. This Settlement Agreement is made and entered into by and between the United States of America, through the U.S. Department of Justice ("United States"), and Frank Tjoelker (collectively, "the Parties"), through their authorized representatives.

II. RECITALS

2. This Settlement Agreement arises out of a Complaint filed by the United States on October 3, 2017, captioned United States v. Frank Tjoelker (W.D. Mich.) (the "Civil Action"), to enforce Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), 42 U.S.C. §§ 3601-3631. In that Civil Action, the United States alleged that Frank Tjoelker, engaged in a pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, and denied to a group of persons rights granted by the Fair Housing Act that raise an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

3. In the Civil Action, the United States alleges that, at least from 2001 through July 2016, the Defendant engaged in discrimination on the basis of sex in the rental of dwellings that he owned and/or managed in or around Grand Rapids, Michigan. Specifically, the United States alleges that Frank Tjoelker subjected female tenants and prospective tenants to discrimination on the basis of sex, including severe, pervasive, and unwelcome sexual harassment and retaliation. The alleged conduct included, but was not limited to:

- a. Making unwelcome sexual comments and unwelcome sexual advances to female tenants and prospective tenants;

- b. Groping or otherwise touching female tenants and prospective tenants on their breasts and bodies without their consent;
- c. Offering to grant tangible housing benefits—such as reducing the rent, overlooking or excusing late or unpaid rent, and forestalling or terminating eviction proceedings—in exchange for sexual favors; and
- d. Taking adverse housing actions, or threatening to take such actions, against female tenants or prospective tenants who have objected to and/or would not continue to grant sexual favors.

4. The United States alleges that female tenants, prospective tenants, and persons associated with them have been injured by the Defendant's discriminatory conduct. Such persons are aggrieved persons as defined in 42 U.S.C. § 3602(i) and have suffered damages.

5. The United States alleges that the Defendant's conduct was intentional, willful, and/or taken in reckless disregard for the rights of others.

6. In December 2016, Defendant pled no contest to two counts of criminal sexual conduct in the fourth degree; charges which were related to Defendant's conduct against female tenants and prospective tenants, some of whom are aggrieved persons in this lawsuit. Defendant was sentenced to 180 days in jail and two years of probation. On May 2, 2017, he was released from jail. By the actions and statements described above, the United States alleges that the Defendant: (1) discriminated in the terms, conditions, or privileges of the rental of dwellings, or in the provision of services or facilities in connection therewith, because of sex, in violation of 42 U.S.C. § 3604(b); (2) made statements with respect to the rental of dwellings that indicate a preference, a limitation, or discrimination based on sex, in violation 42 U.S.C. § 3604(c); and (3) coerced, intimidated, threatened, or interfered with persons in the exercise or enjoyment of, or on

account of their having exercised or enjoyed, rights granted or protected by Section 804 of the Fair Housing Act, in violation of 42 U.S.C. § 3617.

7. The United States further alleges that the conduct of the Defendant constitutes a pattern or practice of resistance to the full enjoyment of the rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, or a denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, which denial raises an issue of general public importance.

8. Defendant, for his part, disputes the allegations made against him.

III. STATEMENT OF CONSIDERATION

9. The Parties agree that the claims against the Defendant should be resolved without further proceedings or a trial. Therefore, the United States and the Defendant agree to the entry of this Settlement Agreement (the "Agreement"). This Agreement constitutes full resolution of the claims in the United States' Complaint in this case against the Defendant.

10. In consideration of, and consistent with, the terms of this Agreement, the Parties will move jointly for dismissal of the Civil Action, consistent with the terms set forth in paragraph 42. The Parties agree and acknowledge that this consideration is adequate and sufficient.

THEREFORE, the Parties, through their authorized representatives, hereby stipulate and agree as follows:

IV. GENERAL NONDISCRIMINATION PROVISIONS

11. The Defendant, his officers, employees, agents, successors and assigns, and all other persons or entities in active concert or participation with Defendant, shall not:

- a. Discriminate against any person in the terms, conditions or privileges of renting a dwelling unit, or in the provision of services or facilities in connection therewith, because of sex;
- b. Make, print, publish, or cause to be made any notice, statement or advertisement with respect to the rental of a dwelling unit that states any preference, limitation, or discrimination based on sex; or
- c. Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided and encouraged any other person in the exercise or enjoyment of, any right granted by the Fair Housing Act.

V. PROVISIONS REGARDING THE FUTURE PARTICIPATION OF THE DEFENDANT IN RENTAL HOUSING

A. Property Management Responsibilities at Subject Properties

12. The Defendant shall be permanently prohibited from directly or indirectly performing any Property Management Responsibilities¹ at any of the Subject Properties² or at any other residential rental property.

¹ As used in this Agreement, "Property Management Responsibilities" include showing or renting housing units; processing rental applications; supervising or performing repairs or maintenance; setting rents and security deposits; determining tenant eligibility for subsidies or waivers of fees and rent; determining whom to rent to, whom to evict, and/or whose lease to renew or not renew; inspecting dwelling units; collecting rent and fees; entering rental units; overseeing any aspects of the rental process; or engaging in any other property-related activities that involve, or may involve, personal contact with tenants or prospective tenants.

² A complete and current list of the Subject Properties, provided by the Defendant, is incorporated by reference herein and attached to this Agreement as Appendix A.

13. Should Defendant continue to own the Subject Properties, within no more than fifteen (15) days of the effective date of this Agreement, Defendant shall retain an Independent Manager, approved in writing by the United States, to perform all Property Management Responsibilities at the Subject Properties. An "Independent Manager" is an individual that is experienced in managing residential rental properties and who has no current or past employment, financial, contractual, personal, or familial relationship with the Defendant.

14. If, after retaining an Independent Manager, Defendant wishes to change the Independent Manager for any reason, he shall submit the name of the prospective manager, in writing, to the United States for approval at least five (5) days prior to retaining the company.

15. Defendant shall not enter any of the Subject Properties except upon prior notification of the United States for an inspection with the Independent Manager. The Independent Manager must accompany Defendant to any such inspection and remain physically present on the premises at all times that Defendant is on the premises of the property.

16. For as long as the Defendant owns, leases, or controls any residential rental properties, he shall do the following through the Independent Manager:

- a. Implement, subject to the United States' approval, a written policy against sexual harassment, including a formal complaint procedure. A copy of this policy and procedure shall be provided to counsel for the United States within thirty (30) days after the effective date of this Agreement for currently owned, leased, or controlled properties, and within thirty (30) days of the purchase, lease, or assumption of control of any other properties. This policy and procedure shall be implemented within fifteen (15) days after the United States indicates that the policy and procedure are satisfactory to the United

States, and at that time the Independent Manager shall notify all new and current tenants of the policy and procedure.

- b. Ensure that all of its employees who will be performing any duties in relation to the current or future properties are familiar with the requirements of the Fair Housing Act, particularly as they pertain to sex discrimination and sexual harassment.
- c. Post an "Equal Housing Opportunity" sign in any rental office through which the current or future properties are rented, which indicates that all apartments are available for rent on a nondiscriminatory basis. An 11-inch-by-14-inch poster that comports with 24 C.F.R. Part 110 will satisfy this requirement. Such poster shall be placed in a prominent, well-lit location in which it is easily readable. The Defendant may use HUD Form 928, copies of which are available free of charge by calling HUD directly at 800-669-9777 or online at <https://portal.hud.gov/hudportal/documents/huddoc?id=928.1.pdf>.
- d. Require that all advertising conducted for any of the current or future properties in newspapers, telephone directories, radio, television or other media, and all billboards, signs (including at the entrance to the property), pamphlets, brochures, and other promotional literature, include either a fair housing logo, the words "equal housing opportunity provider," and/or the following sentence: "We are an equal opportunity housing provider. We do not discriminate on the basis of race, color, national origin, religion, sex, familial status, or disability." The words or logo should be legible and prominently placed.

- e. Send to the United States within thirty (30) days after the effective date of this Agreement and annually thereafter for the duration of this Agreement, a list of all tenants at the current or future properties and addresses.
- f. Maintain all rental records kept in relation to rental of current and future properties, and allow the United States to inspect and copy all such records upon reasonable notice.
- g. Provide any information reasonably related to compliance with this Agreement that is requested by the United States.

B. Acquisition or Transfer of Interest in Subject Properties

17. If, at any time while this Agreement remains in effect, Defendant acquires a direct or indirect management, ownership, financial, or control interest in any other residential rental property, such property shall be considered a Subject Property and shall become subject to the applicable provisions of this Agreement. Within thirty (30) days of acquiring such an interest, Defendant shall notify counsel for the United States of the nature of his interest in the dwelling or property; the address of the property; the number of individual dwelling units at the property; and any other information required under the Agreement. Defendant shall further provide a copy of the documents memorializing the transfer in interest.

18. If, prior to the effective date or at any time while this Agreement remains in effect, a Subject Property has been or is sold or transferred to a bona fide, independent, third-party purchaser in an arms-length transaction,³ such property shall cease to be a Subject

³ For purposes of this Agreement, "arms-length transaction" is defined as a transaction that has been arrived at in the marketplace between independent, non-affiliated persons, unrelated by blood or marriage, with opposing economic interests regarding that transaction. A transaction involving a corporate entity in which the Defendant, or any person related to the Defendant by blood or marriage, is an officer, agent, employee, or partner, or has any ownership, financial, or

Property. For purposes of this paragraph, a "bona fide, independent, third-party purchaser" is one in which neither Defendant nor a corporation or entity of which he is an officer, partner, employee, or agent, has any current or past financial, contractual, personal, or familial relationship.

19. If at any time while this Agreement remains in effect, the Defendant maintains that its obligations under this Agreement has terminated or changed because it has sold or transferred one of the Subject Properties to a bona-fide third party purchaser in an arms-length transaction, the Defendant shall inform the United States within thirty (30) days of such transaction and provide the date of the sale or transfer, copies of the sale or transfer documents, and the name(s) and contact information for the subsequent purchaser.

20. If any transfer of interest in all or a portion of one of the Subject Properties is not an arms-length transaction, the Defendant shall remain jointly and severally liable, along with the purchaser or other transferee, for any violations of this Agreement for its duration.

VI. CONTACT WITH AGGRIEVED PERSONS

21. The Defendant shall be prohibited from purposefully or knowingly initiating contact or communications, either directly or indirectly, with any person identified as an aggrieved person by the United States in this litigation. "Contact or communications" includes, but is not limited to, physical contact, verbal contact, telephone calls, e-mails, faxes, written communications, text or instant messages, contacts through social media, or other communication with the protected person(s) through third parties.

control interest, shall not be considered an arms-length transaction.

22. In the event the Defendant inadvertently or unintentionally initiates any contact with any aggrieved person, he shall immediately discontinue the contact or communication and shall take all reasonable steps to avoid any further contact or communication.

VII. COMPLIANCE TESTING

23. The United States may take steps to monitor the Defendant's compliance with this Agreement including, but not limited to, conducting fair housing tests at any location(s) owned, operated, or managed by the Defendant.

VIII. MONETARY DAMAGES FOR AGGRIEVED PERSONS

24. Within thirty (30) days after the effective date of this Agreement, the Defendant shall deposit in an interest-bearing escrow account the total sum of ONE HUNDRED AND FORTY THOUSAND DOLLARS (\$140,000) for the purpose of compensating the aggrieved persons identified in Appendix B, as well as any additional persons whom the United States determines may have been harmed by the Defendant's discriminatory rental practices (hereinafter "aggrieved persons"). This money shall be referred to as "the Settlement Fund." These funds shall be deposited within thirty (30) days of execution of the Agreement. In addition, within fifteen (15) days of the establishment of the Settlement Fund, the Defendant shall submit proof to the United States that the account has been established and the funds deposited.

25. Any interest accruing to the Settlement Fund shall become a part of the Settlement Fund and be utilized as set forth herein.

26. The Defendant shall be solely responsible for any taxes assessed or owed on any interest earned on money deposited pursuant to paragraph 24, above.

27. Beginning within thirty (30) days of the entry of this Agreement, the Defendant shall publish a Notice to Potential Victims of Housing Discrimination ("Notice"), in the form of the Notice at Appendix C, informing readers of the availability of monetary damages. Each Notice shall invite such persons to contact counsel for the United States within one hundred and twenty (120) days from the effective date of this Agreement. The Notice shall be published as follows:

- a. On at least three (3) occasions in the 'A' Section (or News Section) of the Grand Rapids Press, including at least one (1) occasion on Sunday, in a space measuring at least one-eighth (1/8) of a page; and
- b. On at least three (3) occasions in the 'A' Section (or News Section) of The Advance, in each version of The Advance distributed in the neighborhoods where the Subject Properties are located, in a space measuring at least one-eighth (1/8) of a page.

28. The Defendant shall complete the publication of all notices within ninety (90) days from the effective date of this Agreement. The Defendant shall provide a copy of the newspapers containing each such Notice to counsel for the United States within fifteen (15) days after publication of the Notice.

29. The Defendant shall produce any rental/tenancy records, or any other records in his possession, custody, or control, that the United States believes to be useful in identifying persons who may be entitled to relief under this Agreement. Upon reasonable notice, the Defendant shall provide such rental/tenancy records or shall permit representatives of the United States to make copies of such rental/tenancy records.

30. Nothing in this Agreement shall preclude the United States from making its own efforts to locate and provide notice to potential aggrieved persons.

31. The United States shall investigate the claims of any newly identified allegedly aggrieved persons and, within a 180 days of the effective date of this Agreement, shall inform Defendant as to its determination as to which persons are aggrieved and an appropriate amount of damages that should be paid to each such aggrieved person. The Defendant agrees that the determinations of the United States shall be final, and Defendant hereby waives the right to contest the United States' determination in this or any other proceedings. Because the Defendant has already denied that he has violated the Fair Housing Act as alleged by the United States, he agrees as part of the settlement described herein that he will not seek to interfere with or oppose the United States' determinations regarding the aggrieved persons and the appropriate amount of damages paid to each aggrieved person.

32. To the extent the United States determines that less than the balance of the settlement fund (including accrued interest) should be distributed to aggrieved persons identified pursuant to this part, any amounts remaining shall be distributed prorata to the previously identified aggrieved persons specified in Appendix B.

33. In its letter informing the Defendant of its determination, the United States shall inform the Defendant of the amounts (plus accrued interest) that should be paid pursuant to its determination. The Defendant shall, within ten (10) days of the receipt of the United States' determination, deliver to counsel for the United States, by overnight delivery in accordance with footnote 3, a separate check payable to each aggrieved person in the amounts recommended.

34. In no event shall the aggregate of all such checks exceed the sum of the Settlement Fund plus accrued interest.

35. When counsel for the United States has received a check from the Defendant payable to an aggrieved person and a signed release in the form of Appendix D from the aggrieved person, counsel for the United States shall deliver the check to the aggrieved person and the original, signed release to counsel for the Defendant. No aggrieved person shall be paid until she has executed and delivered to counsel for the United States the release at Appendix D.

IX. CIVIL PENALTY

36. Within TEN (10) days after the entry of this Agreement, the Defendant shall make a payment of TEN THOUSAND DOLLARS (\$10,000) to the United States as a civil penalty pursuant to 42 U.S.C. § 3614(d)(1)(C); 28 C.F.R. 85(b). This payment shall be in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.

X. IMPLEMENTATION, ENFORCEMENT, AND DISMISSAL OF UNDERLYING ACTION

37. The United States may review compliance with this Agreement at any time. The Defendant agrees to cooperate with the United States in any review of compliance with this Agreement. Upon reasonable notice, the Defendant shall permit counsel for the United States to inspect and copy all non-privileged records pertinent to this Agreement.

38. Should the Defendant fail to timely make any required settlement payment described herein or materially breach any other provision of this Agreement, the Parties agree that upon any such claim of breach as made by the United States, the United States may move to restore the present Action to the active docket of this Court for purposes of resolution of any such claim of breach, or may file a separate action in the United States District Court for the Western District of Michigan to remedy the breach. In the event of such a claim of breach as made by the United States, the Defendant consents to and agrees not to contest the Government's motion to restore the present Action to the Court's active docket, and consents to and agrees not

to contest the exercise of jurisdiction, including personal jurisdiction over the Defendant, by this Court.

39. Before taking the steps outlined in paragraph 38, the United States shall first provide Defendant notice of any breach in writing and shall afford them 30 days from the date of mailing to cure the default. Notice shall be sent both to Defendant and to Defendant's attorneys at David & Wierenga PC, Attn: James R. Wierenga, 99 Monroe Ave. NW, Suite 1210, Grand Rapids, MI 49503.

40. In the event the United States reinstates the Civil Action as contemplated by paragraph 38, above, or any other civil action is commenced to remedy breach of this Settlement Agreement, the United States may seek the following: 1) an order mandating specific performance of any term or provision in this Settlement Agreement, without regard to whether monetary relief would be adequate; 2) an award of reasonable attorneys' fees and costs incurred in bringing an action to remedy breach of this Settlement Agreement; and 3) any additional relief that may be authorized by law or equity. If the Action is reinstated or any other such civil action is filed, the Defendant expressly agrees not to count the time during which this Settlement Agreement is in place, or use the terms or existence of this Settlement Agreement, to plead, argue or otherwise raise any defenses under theories of claim preclusion, issue preclusion, statute of limitations, estoppel, laches, or similar defenses.

41. Failure by the United States to enforce any provision of this Agreement shall not operate as a waiver of the United States' right or ability to enforce any other provision of this Agreement.

42. After the monetary payments required by paragraph 24 have been made, the Parties shall jointly move the Court for dismissal with prejudice of the underlying civil action, subject to its reinstatement as set forth in paragraph 38, above.

XI. TERMINATION OF LITIGATION HOLD

43. The Parties agree that, as of the effective date of this Agreement, litigation is not “reasonably foreseeable” concerning the matters described in the United States’ Complaint. To the extent that any of the parties previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described in Complaint, they are no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any of the Parties of any other obligations imposed by this Agreement.

XII. DURATION, EXECUTION AND OTHER TERMS

44. The effective date of this Agreement is the date of the last signature below. The Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

45. Except with respect to those obligations set forth in paragraph 12 the provisions of this Agreement shall remain in effect for five (5) years after the effective date.

46. Except as stated in paragraph 40 above, each Party shall bear its own legal or other costs incurred in connection with this matter, including the preparation, negotiation, and performance of this Agreement.

47. This Agreement, including Appendices A-D, constitutes the complete agreement between the parties relating to the claims made in the Complaint. No prior or contemporaneous

communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.

48. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion. The Parties agree that each Party and its representatives have acted consistent with the duty of good faith and fair dealing.

49. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

50. The provisions of this Agreement shall apply to the Defendant and his officers, employees, agents, successors and assigns, and all other persons or entities in active concert or participation with him.

51. This Agreement is governed by and shall be interpreted under the laws of the United States. For purposes of construing or interpreting this Agreement, it shall be deemed to have been drafted by all Parties and shall not be construed or interpreted against any Party for that reason in any subsequent dispute.

52. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another party, the performance of one party's duties or obligations under this Agreement shall not be discharged or excused by the actual or alleged breach of the duties and obligations by another party.

53. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

54. The Parties agree that they will defend this Agreement against any challenge by any third party. In the event that this Agreement or any of its terms are challenged by a third party in a court other than the United States District Court for the Western District of Michigan, the Parties agree that they will seek removal and/or transfer to the United States District Court for the Western District of Michigan.

55. This Agreement may be modified only with the written consent of the Parties. Any modification must be in writing and signed by the Parties through their authorized representatives.

56. This Agreement is a public document. The parties agree and consent to the United States' disclosure to the public of this Agreement and information about this Agreement.

Dated: 10/3/2017

For Plaintiff United States of America:

ANDREW B. BIRGE
Acting United States Attorney

JOHN M. GORE
Acting Assistant Attorney General
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SAMEENA SHINA MAJEED
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For Defendant:

Dated: 10/3/2017



FRANK TJOELKER

Appendix A

1. 111-117 Peony SW, Grand Rapids, MI 49548
2. 1300 Davis Ave NW, Grand Rapids, MI 49504
3. 137 34th St SE, Wyoming, MI 49548
4. 348 Mayfield Ave NE, Grand Rapids, MI 49503
5. 368 Burt St SE, Wyoming, MI 49548
6. 48 Jonquil St SW, Grand Rapids, MI 49548
7. 533 Crosby NW, Grand Rapids, MI 49504
8. 1727 Smith St, Muskegon, MI 49442
9. 1907 Smith St, Muskegon, MI 49442
10. 3381 8th St, Muskegon Heights, MI 49444

Appendix B

1. Shionna Ezell - \$12,000
2. Ashley McIntyre - \$12,000
3. Yolanda Williams - \$12,000
4. Priscilla Williamson - \$12,000
5. Shakioa Hatchett - \$12,000
6. Tisha Lee - \$12,000
7. Kelli Poulson - \$12,000
8. Eloise Clayton - \$12,000
9. Emely Rivera - \$12,000
10. Emily Blankenship - \$12,000

Appendix C

NOTICE TO POTENTIAL VICTIMS OF SEXUAL HARASSMENT
OF FRANK TJOELKER

On October __, 2017, the parties to the United States v. Frank Tjoelker __-cv-000__ (W.D. Mich.), in the United States District Court for the Western District of Michigan, entered into a Settlement Agreement resolving a housing discrimination lawsuit brought by the United States against Frank Tjoelker. The lawsuit alleged that Frank Tjoelker engaged in a pattern or practice of housing discrimination by sexually harassing women at residential rental properties in or around Grand Rapids, Michigan, in violation of the Fair Housing Act.

Under the Settlement Agreement, a Settlement Fund has been established to compensate persons whose rights may have been violated by the Defendant listed above. You may qualify to recover from this Settlement Fund if you were a tenant or prospective tenant at a property owned or managed by Frank Tjoelker and experienced sexual harassment or other forms of sex discrimination by him.

If you believe you have been sexually harassed or otherwise discriminated against because of sex in connection with an apartment owned or operated by Frank Tjoelker, please contact the United States Department of Justice at:

1-800-896-7743, mailbox 4.

You may also write to:

***United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Ave. N.W. -G St
Washington, DC 20530
Attn: DJ# 175-38-80***

You must call or write on or before [no more than 120 days after the effective date of the Settlement Agreement] and your message or letter must include your name, address, and, if possible, at least TWO telephone numbers where you may be reached.

Appendix D

FULL AND FINAL RELEASE OF CLAIMS

In consideration for the parties' agreement to the terms of the Settlement Agreement entered into in the case of United States v. Frank Tjoelker -cv-000_ (W.D. Mich.), in the United States District Court for the Western District of Michigan, and in consideration for the payment of \$_____, I, _____,

do hereby fully release and forever discharge Defendant named in this lawsuit, as well as his insurers, attorneys, agents, employees, former employees, heirs, and executors from any and all fair housing claims set forth, or which could have been set forth, in the Complaint in this lawsuit that I may have had against Frank Tjoelker for any of his actions or statements related to those claims through the date of the entry of the Settlement Agreement.

Executed this _____ day of _____, 201__.

Signature

Print Name

Home Address

Home Address Continued