

**SETTLEMENT AGREEMENT AND RELEASE**

**I. PREAMBLE**

This Settlement Agreement and Release (the “Agreement”) is entered into by and among the individuals and entities defined below as “Plaintiffs” and the individuals and entities defined below as “Defendants” (collectively, the “Parties”).

This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the claims at issue in this Litigation (as that term is defined below), upon and subject to the terms and conditions of this Agreement.

**II. DEFINITIONS**

For purposes of this Agreement, including the Preamble above, the following terms have the following meanings:

1. “AFT” means the American Federation of Teachers AFL-CIO.
2. “Agreement” means this Settlement Agreement and Release.
3. “Borrower” means any individual who has an outstanding loan under the William D. Ford Federal Direct Loan Program established under Title IV, Part D of the Higher Education Act of 1965, as amended (20 U.S.C. § 1087a *et seq.*), to pay for college or career school.
4. “Court” means the United States District Court for the District of Columbia where the Litigation is pending.
5. “COVID Forbearance” refers to the automatic payment suspension on certain federal student loans originally provided by the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020), and extended by action of the Department of Education and in effect from March 13, 2020 to January 31, 2022.
6. “Day” or “Days” refers to calendar days, unless otherwise specified.
7. “Defendants” means Miguel Cardona, in his official capacity as Secretary of Education, and the Department.
8. “Department” means the United States Department of Education.
9. “Direct Loans” means loans made pursuant to the William D. Ford Federal Direct Loan Program, codified under 20 U.S.C. § 1087a-j.
10. “Execution” means the signing of this Agreement by all signatories hereto.

11. “Individual Plaintiffs” means Cynthia Miller, Anastasiya Savenkova, Deborah Baker, Janelle Menzel, Kelly Finlaw, Michael Giambona, Andre Lorincz, and Peter Huk.
12. “Litigation” means the civil action captioned *Weingarten v. Cardona*, 19-cv-02056-DLF, pending in the United States District Court for the District of Columbia.
13. “Negotiated Rulemaking Process on PSLF” refers to the negotiated rulemaking process concerning PSLF as announced by the Department on August 10, 2021, 86 Fed. Reg. 43,609 (Aug. 10, 2021).
14. “Parties” means, collectively, the Plaintiffs and the Defendants, and “Party” means any one of them.
15. “Person” or “Persons” means an individual or legal entity, including, without limitation, natural persons, firms, corporations, limited liability companies, joint ventures, joint stock companies, unincorporated organizations, agencies, bodies, associations, partnerships, limited liability partnerships, trusts, and their predecessors, successors, administrators, executors, heirs, and/or assigns.
16. “Plaintiffs” means the Individual Plaintiffs, AFT, and Randi Weingarten in her official capacity as President of AFT.
17. “PSLF” means the Public Service Loan Forgiveness Program established under Section 455(m) of the Higher Education Act of 1965, as amended and codified at 20 U.S.C. § 1087e(m)).
18. “Qualifying Employment” means employment with a “public service organization” as defined in 34 C.F.R. § 685.219(a) (“public service organization”) as in effect at the time this Agreement is executed.
19. “Qualifying Payment” means a payment made in accordance with the requirements of 34 C.F.R. § 685.219(c)(iv) as in effect at the time this Agreement is executed.
20. “TEPSLF” means the Temporary Expanded Public Service Loan Forgiveness Program originally created by Congress in 2018 as part of the Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, 132 Stat. 424, Div. H, tit. III, § 315 (2018).

### III. RECITALS

WHEREAS, on July 11, 2019, AFT, Randi Weingarten, Deborah Baker, Cynthia Miller, Janelle Menzel, Gloria Nolan, Kelly Finlaw, Crystal Adams, Michael Giambona, and Connie Wakefield brought an action in the United States District Court for the District of Columbia, alleging (among other things) that the Department violated the United States Constitution and the Administrative Procedure Act in its administration of PSLF and TEPSLF (Dkt. 1); and

WHEREAS, after dismissal of parts of the original complaint, on December 14, 2020, Plaintiffs filed an Amended Complaint in the United States District Court for the District of Columbia, alleging (among other things) that the Department violated the United States Constitution and the Administrative Procedure Act in its administration of PSLF and TEPSLF (Dkt. 41); and

WHEREAS, the Parties and their counsel have agreed to resolve and settle this matter according to the terms of this Agreement; and

WHEREAS, the Parties believe that this Agreement is fair, reasonable, and adequate in its resolution of the claims being released by the Plaintiffs; and

NOW, THEREFORE, without (i) any admission or concession on the part of Plaintiffs of the lack of merit of the Litigation whatsoever or (ii) any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by Defendants, the Parties agree that, in reliance upon and subject to the representations, mutual promises, covenants, releases, and obligations set forth in this Agreement, and for good and valuable consideration, the Litigation will be settled, compromised, and dismissed with prejudice upon the terms and conditions set forth below.

#### **IV. DEFENDANTS' CONSIDERATION**

In consideration for the promises undertaken by Plaintiffs as set forth in this Agreement, Defendants agree as follows:

##### **A. Borrower Outreach and Application Review**

1. Within 90 days of the Execution of this Agreement, the Department will notify by email groups of Borrowers who may be eligible for PSLF or TEPSLF to inform them that they may qualify for loan forgiveness under PSLF or TEPSLF if they submit additional documentation. The notification will inform the Borrower how to submit proof of Qualifying Employment to the Department. The Department will also publicly announce this effort on its relevant websites and social media accounts.
  - 1.1 The categories of Borrowers to receive this notice will include Borrowers who:
    - a. Have at least one open Direct Loan;
    - b. Have a PSLF application that was rejected because of lack of Qualifying Payments; and
    - c. Have been in repayment on a Direct Loan for at least nine years; or
    - d. Borrowers who were previously denied TEPSLF for failure to meet requirements related to the amount of their final payments but now meet those requirements due to the COVID Forbearance.
2. Within 90 days of the Execution of this Agreement, the Department will begin reviewing applications for PSLF and TEPSLF that were denied prior to November 1, 2020 for PSLF and TEPSLF eligibility. The Department's review will be limited to those who have 10 years of repayment on a Direct Loan as of

the Execution of this Agreement. The Department's review will start with those who have been in repayment on Direct Loans the longest and work toward those who have been in repayment for the least amount of time. The Department provides no guarantees regarding the length of time dedicated to its review.

3. After conducting the review described in Section IV(A)(2), and upon reaching a final decision on that review, the Department will provide notice by email to each Borrower of the status of his or her application. If the application is denied by the Department, the notice will inform the Borrower of:
  - 3.1 A brief statement of the reason for the denial;
  - 3.2 The number of payments the Borrower has remaining to achieve PSLF or TEPSLF relief;
  - 3.3 Whom the Borrower should contact to determine how the Borrower might achieve the 120-month requirement;
  - 3.4 The process by which the Borrower may obtain reconsideration as discussed in Section IV(B); and
  - 3.5 How borrowers may obtain information from their online account about whether each particular payment made on their account met the conditions to be Qualifying Payments.
4. The notice of denial of an application for loan forgiveness pursuant to the review described in Section IV(A)(2)-(3) will constitute a final decision under the Administrative Procedure Act.
5. The notices described in Section IV(A)(1) and (3) may be supplanted by relevant regulations resulting from the Negotiated Rulemaking Process on PSLF. Such an event would not constitute an amendment of, or breach of, or otherwise be cause to void this Agreement or any part thereof.

**B. Reconsideration Process**

1. As soon as practicable but no later than April 30, 2022, the Department will establish an interim reconsideration process that will be available to any Borrower whose application for PSLF or TEPSLF has been or is denied.
2. Any Borrower who wants to have his or her status with respect to achieving PSLF/TEPSLF relief (including the calculation and identification of Qualifying Payments or months of Qualifying Employment) reviewed by the Department will receive reconsideration through the interim reconsideration process upon request.
3. The interim reconsideration process will be directly managed by an appropriate Department official.

4. The terms of the interim reconsideration process described in this Section will be public and clearly communicated to Borrowers no later than January 31, 2022.
5. Borrowers will be permitted to provide any evidence they wish to provide in support of their reconsideration request.
6. If the reconsideration does not result in approval of the Borrower's application for PSLF or TEPSLF relief, the Borrower will receive notice by email of the reasons for denial, as described above in Section IV(A)(3).
7. The interim reconsideration process described in this Section may be supplanted by relevant regulations resulting from the Negotiated Rulemaking Process on PSLF. Such an event would not constitute an amendment of, or breach of, or otherwise be cause to void this Agreement or any part thereof.

**C. Individual Plaintiffs**

1. The Department will discharge the remaining balance of the Individual Plaintiffs' loans at issue in the Amended Complaint by January 31, 2022.
2. The discharge of the Individual Plaintiffs' remaining balances in Section IV.C.1 will not include a refund of any overpayments made on the loans at issue in the Amended Complaint. The Individual Plaintiffs agree not to seek refunds of any overpayments made on the loans at issue in the Amended Complaint from the Department.
3. The discharge will be done in a manner that will not result in income for the Individual Plaintiffs for Federal tax purposes. *See* American Rescue Plan Act of 2021, P.L. 117-2, § 9675.
4. If the Department fails to discharge the Individual Plaintiffs' loans at issue in the Amended Complaint by January 31, 2022, the Individual Plaintiffs may enforce the terms of Section IV.C.1 only as set forth in Section VIII.B below.

**V. FEES & COSTS**

The Parties will bear their own fees and costs. In exchange for the commitments set forth above, Plaintiffs agree to dismiss the Litigation with prejudice after Execution of this Agreement, as provided in Section VIII.A below.

**VI. WAIVER AND RELEASE**

Upon the execution of this Agreement, Plaintiffs, and their heirs, administrators, representatives, attorneys, successors, and assigns, and each of them hereby forever waive, release, and forever discharge Defendants, and their successors, the United States of America, and any department, agency, or establishment of the United States, and any officers, employees, and agents, successors, or assigns of such department, agency, or establishment, from, and are forever barred and precluded from

prosecuting, any and all claims, causes of action, motions, and requests for any injunctive, declaratory, and/or monetary relief, including but not limited to damages, tax payments, debt relief, costs, attorney's fees, expenses, and/or interest, whether presently known or unknown, contingent or liquidated, alleged in this Litigation against Defendants through and including the Execution of this Agreement, including but not limited to the right to appeal any and all claims Plaintiffs asserted in this Litigation. This Agreement is not intended to release any claim based on an act or omission or other conduct occurring after the Execution of this Agreement. The Parties do not intend to waive or narrow any res judicata defense Defendants could assert against a future claim brought by any Plaintiff.

**VII. NO ADMISSION OF LIABILITY**

This Agreement, whether it becomes final or not, does not constitute, nor will it be construed to constitute, an admission of any wrongdoing or liability by Defendants, an admission by Defendants of the truth of any allegation or the validity of any claim asserted in this Litigation, a concession or admission by Defendants of any fault or omission of any act or failure to act, or an admission by Defendants that the consideration provided to Plaintiffs under this Agreement represents relief that could be recovered by Plaintiffs in this Litigation.

**VIII. DISMISSAL AND ENFORCEMENT**

**A. Dismissal**

Within two (2) days of the Execution of this Agreement, Plaintiffs will dismiss the Litigation against Defendants with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), by filing the Stipulation of Dismissal attached hereto as Exhibit A.

**B. Enforcement**

Plaintiffs may not offer, proffer, or refer to any of the terms of this Agreement as evidence in any civil, criminal, or administrative proceedings, except as set forth below:

1. The Parties jointly seek only limited retention of jurisdiction of the Court following dismissal of the Action with respect to enforcement of this Agreement. The Court shall retain jurisdiction only to enforce the terms set forth in Section IV.C.1, and only in the manner explicitly provided in this Section VIII.B. The Court shall retain jurisdiction only to order the relief explicitly specified in Section IV.C.1 and only where Defendants have not provided that relief pursuant to the procedures specified in this Section. The Court shall lack jurisdiction to imply any claims, or authority to issue any other relief, under this Agreement.
2. The exclusive procedure for any Individual Plaintiff to move to enforce the terms set forth in Section IV.C.1 are as follows:
  - a. Prior to moving to enforce the terms set forth in Section IV.C.1, the Individual Plaintiffs' counsel shall submit written notice to Defendants' counsel. Such notice shall be submitted by electronic mail and shall specify the obligation with which Defendants have allegedly not complied; describe the facts and circumstances supporting the claim; and state that one or more Individual

Plaintiff(s) intends to seek an order from the Court, as set forth in this Section VIII.B. Those Individual Plaintiff(s) identified in the written notice shall not inform the Court of their allegation(s) at that time.

- b. Within 2 business days of receipt of the written notice from the Individual Plaintiffs' counsel, Defendants' counsel will acknowledge receipt of the notice.
- c. Defendants shall have a period of 10 days after receipt of such written notice to inform the Individual Plaintiffs' counsel in writing of their determination as to whether Defendants have complied with the obligation(s) set forth in Section IV.C.1, including relevant information that informed Defendants' determination.
  1. If Defendants do not agree that they failed to comply with their obligations under Section IV.C.1, the Individual Plaintiffs' counsel and Defendants' counsel will meet and confer within 5 business days of Defendants' response to the Individual Plaintiffs' written notice. If the Individual Plaintiffs' counsel and Defendants' counsel cannot resolve the disagreement within 21 days from their meet and confer, the Individual Plaintiff(s) identified in the written notice may file a motion for enforcement of Section IV.C.1 with the Court.
  2. If Defendants agree that they failed to comply with their obligations under Section IV.C.1, Defendants will disclose in writing any action they propose to take to comply with their obligations under Section IV.C.1 to the Individual Plaintiffs' counsel. The Individual Plaintiffs' counsel and Defendants' counsel will meet and confer regarding Defendants' proposal within 5 business days of Defendants' transmission of Defendants' proposal to Individual Plaintiffs' counsel.
    - i. If the Individual Plaintiffs' counsel and Defendants' counsel agree in writing that the actions are sufficient to comply with Defendants' obligations under Section IV.C.1, Defendants will have 21 days following the agreement to take such action.
    - ii. If the Individual Plaintiffs' counsel and Defendants' counsel cannot reach consensus on the appropriate action Defendants should undertake to comply with their obligations under Section IV.C.1 within 21 days from their meet and confer, the Individual Plaintiff(s) identified in the written notice may file a motion for enforcement of Section IV.C.1 with the Court.

3. Absent the prior, written agreement of the Individual Plaintiffs' counsel and Defendants' counsel, any application to the Court for an order compelling the relief specified in Section IV.C.1 must be brought on or before January 31, 2024.
4. If Defendants are unable to perform any of the obligations set forth in Section IV.C.1 by January 31, 2022, due to extraordinary circumstances beyond Defendants' control, Defendants' counsel will notify the Individual Plaintiffs' counsel within 14 days of Defendants' determination that they will not be able to perform their obligations. That notification will describe the facts providing the basis for believing that extraordinary circumstances beyond Defendants' control prevent Defendants from timely performing their obligations and present the Individual Plaintiffs' counsel with a proposal for meeting Defendants' obligations under Section IV.C.1 as soon as practicable. Within 14 days of that notice, the Individual Plaintiffs' counsel and Defendants' counsel will meet and confer as to whether the circumstances are beyond the Defendants' control and to what extent they affect Defendants' ability to perform their obligations set forth in Section IV.C.1 in a timely manner. If the Individual Plaintiffs and Defendants cannot agree within 21 days of their meet and confer as to whether extraordinary circumstances exist or whether Defendants can meet their obligations under Section IV.C.1 in a timely manner, the Individual Plaintiffs may file a motion for enforcement of Section IV.C.1 with the Court.
5. The Parties stipulate and agree that the Court shall have no jurisdiction over any claims, causes of actions, motions, suits, allegations, or other requests for relief in this Litigation that are not expressly stated in this Section VIII.B.
6. The Parties stipulate and agree that the Court shall have no jurisdiction to supervise, monitor, or issue orders in this Litigation, except to the extent that the Individual Plaintiffs invoke the Court's jurisdiction pursuant to the procedures set forth in this Section VIII.B.

## IX. ADDITIONAL PROVISIONS

- A. The following provisions apply to this Agreement:
  1. Successors and Assigns. This Agreement and all of its terms and provisions will inure to the benefit of and bind the Parties and each of their predecessors, successors, assigns, heirs, executors, administrators, and transferees.
  2. Drafting. The Parties agree that no single Party will be deemed to have drafted this Agreement, or any portion thereof, for purpose of the invocation of the doctrine of contra proferentem. This Agreement is a collaborative effort of the Parties and their attorneys that was negotiated on an arm's-length basis between parties of equal bargaining power. Accordingly, this Agreement will be neutral, and no ambiguity will be construed in favor of or against any of the Parties.

3. Entire Agreement. This Agreement contains the entire Agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, if any, with respect hereto, whether oral or written.
4. Amendment. This Agreement may not be amended, altered, modified, or otherwise changed except in a writing executed by all of the Parties or their successors in interest expressly stating that it is an amendment to this Agreement. The Parties will not make any claims, and hereafter waive any right they now have or may hereafter have based upon any oral alteration, oral amendment, oral modification, or other changes of this Agreement not in writing.
5. Headings. The headings of the Sections of this Agreement are included for convenience only and will not be deemed to constitute part of this Agreement or to affect its construction.
6. Interpretation. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, include the others wherever the context so indicates.
7. Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
8. Facsimile and Electronic Signatures. Facsimiles and pdf versions of signatures on this Agreement will be deemed to be original signatures and will be acceptable to the Parties to this Agreement for all purposes. In addition, transmission by electronic mail of a PDF document created from the originally signed document will be acceptable to the Parties to this Agreement for all purposes.
9. Representation by Counsel. The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective rights and obligations with respect to this Agreement. The Parties have read and understand fully the above and foregoing Agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.
10. Impossibility of Performance. In the event that any Party cannot perform under this Agreement due to force majeure, an act of State, or it becomes unlawful or impossible to perform despite the Party's best efforts, the Parties are obligated to negotiate in good faith and use their best efforts to develop a substitute manner of performance. A Party is obligated to notify all other Parties as soon as practicable upon receiving notice of a reasonable likelihood of the impossibility of its performance as described in this clause.
11. Waiver. The waiver by one Party of any breach of this Agreement by any other Party will not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.
12. Representations and Warranties. Each counsel or other Person executing this Agreement or any related settlement documents on behalf of any Party hereto hereby warrants and represents to the other Parties hereto that such counsel or other Person has

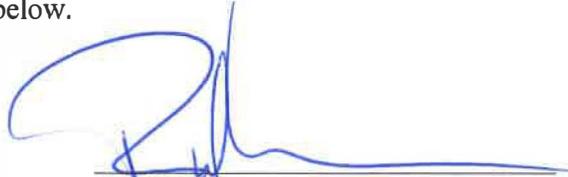
the authority to execute and deliver this Agreement and related settlement documents, as applicable.

13. Survival. The Parties agree that the terms set forth in this Agreement will survive the signing of this Agreement.
14. Consistency with Federal Law: Nothing in this Agreement imposes upon Defendants any duty, obligation, or requirement, the performance of which would be inconsistent with federal statutes, rules, or regulations in effect at the time of such performance.
15. Governing Law. All terms and conditions of this Agreement will be governed by and interpreted according to law of the United States.
16. Tax Implications. Compliance with all applicable federal, state, and local tax requirements is the sole responsibility of Plaintiffs and Plaintiffs' counsel.

*[Signatures follow on next page.]*

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement and/or have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below.

Dated: October 12, 2021

  
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Randi Weingarten

**American Federation of Teachers AFL-CIO**

Dated: October 12, 2021

By:   
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Dated: October \_\_, 2021

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Cynthia Miller

Dated: October \_\_, 2021

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Anastasiya Savenkova

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Dated: October \_\_, 2021

By: \_\_\_\_\_

Dated: October 12, 2021

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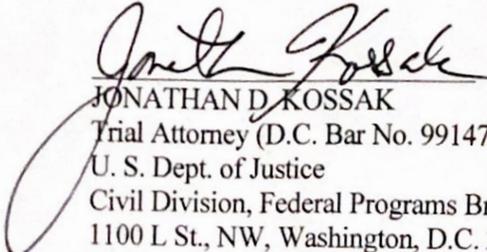
EXECUTION COPY

Dated: October 12 2021

By:

BRIAN M. BOYNTON  
Acting Assistant Attorney General

MARCIA BERMAN  
Assistant Branch Director, Federal Programs



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# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**RANDI WEINGARTEN**, *in her official capacity as  
President of the American Federation of Teachers, AFL-  
CIO,*

**AMERICAN FEDERATION OF TEACHERS, AFL-  
CIO,**

**CYNTHIA MILLER,**

**ANASTASIYA SAVENKOVA,**

**DEBORAH BAKER,**

**JANELLE MENZEL**

**KELLY FINLAW,**

**MICHAEL GIAMBONA,**

**ANDRE LORINCZ, and**

**PETER HUK**

Plaintiffs,

v.

**MIGUEL A. CARDONA**, *in his official capacity as the  
Secretary of the United States Department of Education,*  
and

**UNITED STATES DEPARTMENT OF  
EDUCATION**

Defendants.

Civil Action No. 1:19-cv-02056 (DLF)

**STIPULATION OF DISMISSAL**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the parties to this action hereby stipulate to dismiss this action with prejudice pursuant to the parties' settlement agreement executed in connection with this matter, over which the parties request that the Court retain jurisdiction for the limited

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and exclusive purpose, if necessary, of enforcing the terms of the settlement agreement related to relief for the individual plaintiffs, Cynthia Miller, Anastasiya Savenkova, Deborah Baker, Janelle Menzel, Kelly Finlaw, Michael Giambona, Andre Lorincz, and Peter Huk. A proposed order is attached as Attachment I hereto.

Dated: October \_\_, 2021

Respectfully submitted,

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# Attachment I

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**RANDI WEINGARTEN**, *in her official capacity  
as President of the American Federation of  
Teachers, AFL-CIO,*

Civil Action No. 1:19-cv-02056 (DLF)

**AMERICAN FEDERATION OF TEACHERS,  
AFL-CIO,**

**CYNTHIA MILLER,**

**ANASTASIYA SAVENKOVA,**

**DEBORAH BAKER,**

**JANELLE MENZEL**

**KELLY FINLAW,**

**MICHAEL GIAMBONA,**

**ANDRE LORINCZ, and**

**PETER HUK**

Plaintiffs,

v.

**MIGUEL A. CARDONA**, *in his official capacity  
as the Secretary of the United States Department of  
Education, and*

**UNITED STATES DEPARTMENT OF  
EDUCATION**

Defendants.

**[PROPOSED] ORDER**

**EXECUTION COPY**

Upon consideration of the parties' Stipulation of Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), and for the reasons articulated therein, it is, this \_\_\_ day of \_\_\_\_\_, 2021,

**ORDERED** that this case is dismissed with prejudice. It is further **ORDERED** that the Court will retain jurisdiction over this matter, pursuant to *Kokkonen v. Guardian Life Ins.*, 511 U.S. 375 (1994), for the limited and exclusive purpose, if necessary, of enforcing the terms of the parties' settlement agreement related to relief for the individual plaintiffs, Cynthia Miller, Anastasiya Savenkova, Deborah Baker, Janelle Menzel, Kelly Finlaw, Michael Giambona, Andre Lorincz, and Peter Huk.

\_\_\_\_\_  
DABNEY L. FRIEDRICH  
UNITED STATES DISTRICT JUDGE