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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MAGGIE SMITH, *et al.*,

Plaintiffs,

v.

**GOVERNMENT OF THE
DISTRICT OF COLUMBIA,**

Defendant.

Civil Action No. 15-737 (RCL)

**PLAINTIFFS' UNOPPOSED MOTION AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

INTRODUCTION

Plaintiffs move for preliminary approval of the proposed class action settlement set forth in the Settlement Agreement and for this Court to authorize them to send notice to the class defined in the Settlement Agreement, because Plaintiffs and Defendant the District of Columbia (“the District”) demonstrate that the Court will “likely be able to” grant final approval to the settlement. Fed. R. Civ. P. 23(e)(1);¹ see also William Rubenstein, 4 Newberg on Class Actions, § 13:15 (5th ed.) (Standard for granting preliminary approval—Substantive requirements). That is, “the terms of the Settlement Agreement are within the range of what would constitute a fair, reasonable, and adequate settlement in the best interests of the Class as a whole.” Bynum v. Gov’t of the D.C., 384

¹ In 2018, Congress adopted changes to Fed. R. Civ. P. 23(e) which essentially codified prior case law regarding the standard for evaluating whether to grant preliminary approval in a proposed class action settlement and to send notice of it to the class. See generally 4 Newberg on Class Actions § 13:13 (5th ed.). Plaintiffs discuss the effect of the amendments on pre-existing caselaw below in the section on the discussion of the standard.

F. Supp. 2d 342, 343 (D.D.C. 2005). The full Settlement Agreement, proposed Order of Preliminary Approval, proposed Claim and Release Forms and the proposed Class Notice are attached.

ARGUMENT

Maggie Smith, Gerard Cassagnol, Frederick Rouse, Delontay Davis, Kimberly Buffaloe, and Carl Atkinson (individually, a “Plaintiff” and collectively “Plaintiffs”), individually and as representatives of the classes they represent, and Defendant the District of Columbia, reached an agreement to settle this case as memorialized in the attached Settlement Agreement.² By agreement of the Parties, upon finalization of the Settlement and entry of final approval, this matter will be dismissed with prejudice and this Court shall retain jurisdiction for the sole purpose of enforcing the Settlement. Plaintiffs also move to eliminate the Non-Resident Class because it is a sub-class of the Second Amendment Class and to revise the Second Amendment Class Definition to conform to the terms of the Settlement Agreement.

The proposed settlement represents a fair and reasonable compromise of Plaintiffs’ claims and the District’s defenses. Undersigned counsel strongly believe that the proposed settlement is fair, reasonable, and in the best interest of the class.

I. Procedural History of the Case

Plaintiff Maggie Smith filed this case as a single plaintiff complaint for money damages on May 15, 2015. Complaint [1], Smith v. Government of the District of Columbia, 15-737 (D.D.C.) (RCL). Ms. Smith later twice amended the complaint by adding several plaintiffs and several claims and adding class action allegations. The operative complaint is the Third Amended

² The defined terms used in this motion have the same meanings assigned in the Settlement Agreement.

Complaint. [114].

On May 16, 2019, this Court decided the District's motion to dismiss the Second Amended Complaint and the following claims survived: Claim One, Second Amendment claim for damages for arrest, detention, and/or prosecution of any person (resident or non-resident) pursuant to the District's unconstitutional gun control regime; Claim Three, Fifth Amendment claim for damages for arrest, detention, and/or prosecution of any non-resident pursuant to the District's unconstitutional gun control regime; Claim Six, retention of handguns and ammunition seized as evidence after the case was over in violation of the Fourth Amendment. Memorandum Opinion [59], Order [60] reported at Smith v. District of Columbia, 387 F. Supp. 3d 8 (D.D.C. 2019).³

The Parties engaged in a lengthy period of discovery which began when the Court issued a Scheduling Order [80] on December 26, 2019 and continued until 2021, during which the Parties exchanged written discovery, took numerous depositions, and Plaintiffs requested and received data exports from the MPD arrest booking database, the Superior Court's docketing database, and the District of Columbia Department of Corrections' inmate accounting system database, JACCS. During this time, Plaintiffs filed the Third Amended Complaint [114], adding Plaintiffs who were residents of the District of Columbia. Plaintiffs also filed a motion [ECF No. 96] to compel certain criminal history information about potential class members which the Court denied without prejudice. *See* Mem. Op. & Order [143].

The Parties filed cross motions for summary judgment in 2021 and on September 29, 2021, this Court granted in part and denied in part Plaintiffs' Motion for Partial Summary Judgment, and granted in part and denied in part Defendant's Motion for Summary Judgment. See Order [142].

³ Claim Ten, for failure to notify owners of secret proceedings, was dismissed later. See Order [158].

Plaintiffs' Second Amendment claim (Claim One) and Plaintiffs' Fifth Amendment claim (Claim Three) survived summary judgment, but the Court entered judgment for the District on Claim Six (retention of guns and ammunition seized as evidence after the underlying case was over).

On October 8, 2021, the Court referred this case for mediation. *See* Order [147]. The Parties engaged in a lengthy mediation process with the District of Columbia Circuit Mediation Program. On June 9, 2023, the District filed a notice indicating Mayoral approval of the settlement. *See* Notice [167].

II. Incentive Payments for Class Representatives

The Parties ask the Court to award incentive payments of \$50,000 to each Class representative for the Settlement Class to compensate class representatives for their service to the classes and for the risks they took in stepping forward to represent the classes. This sum includes their damages awards as well as their incentive awards. The basis for incentive payments is the services Class representatives provide to the class, such as monitoring class counsel, responding to interrogatories and document production requests, being deposed by opposing counsel, keeping informed of the progress of the litigation, and serving as a client for purposes of approving any proposed settlement with the defendant. 5 Newberg on Class Actions § 17:3 (Rationale for incentive awards); *see also* Wells v. Allstate Ins. Co., 557 F. Supp. 2d 1, 8-9 (D.D.C. 2008) (“In deciding whether to grant incentive awards and the amounts of such awards, courts consider factors such as the actions the plaintiff[s] [have] taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff[s] expended in pursuing the litigation.”) (internal quotations omitted); Hoyte v. Gov’t of the D.C., 13-567 (CRC) (incentive payments of \$10,000 to each Class representative for the Vehicle Forfeiture Class and \$3,500 to each Class representative of the Forfeiture Notice Class). Each of the Class

representatives provided these services and the class has benefitted from those actions, and each Class representative has participated in over eight years of litigation and settlement negotiations. They also provided invaluable information to Class Counsel about the District's method of enforcing its gun control regime and other issues throughout the litigation. These awards are reasonable considering the size of the settlement fund.

There was no *ex ante* agreement between putative class counsel and putative class representatives containing any assurances with regard to incentive awards, and each Class representative understands that whether to award incentive payments is within the discretion of the Court. See, e.g., 5 Newberg on Class Actions § 17:17 (Judicial review—Disfavored practices—Ex ante incentive award agreements); Rodriguez v. West Publishing Corp., 563 F.3d 948, 959–60 (9th Cir. 2009) (finding that a requirement in the retainer agreement between some class representatives and their counsel that counsel seek incentive awards created a conflict of interest). The amounts of the proposed incentive payments are within the range awarded by Courts in this District in similar cases. See, e.g., Kifafi v. Hilton Hotels Ret. Plan, 999 F. Supp. 2d 88, 105 (D.D.C. 2013) (awarding named plaintiff \$50,000 as an incentive award); Advocate Health Care v. Mylan Labs. Inc. (In re Lorazepam & Clorazepate Antitrust Litig.), 2003 U.S. Dist. LEXIS 12344, *34 (D.D.C. 2003) (awarding \$20,000 to each plaintiff in an antitrust case); Cobell v. Jewell, 802 F.3d 12, 18 (D.C. Cir. 2015) (noting District Court had granted four of the Class Representatives a total of \$2.5 million in incentive awards); Wells, 557 F. Supp. 2d at 9 (awarding \$10,000 to each of two class representative).

III. Proposed Changes to the Settlement Class Definitions

The Parties propose revisions to the class definitions set forth in the Third Amended Complaint by eliminating the Non-Resident Class, because it is a sub-class of the Second Amendment class, and revising the Second Amendment Class Definition to conform to the terms of the Settlement Agreement, that is, specifying the categories of persons who are excluded from the class because they are disqualified by convictions of certain offenses. The Parties also rename the Second Amendment Class the Settlement Class for ease of administration. The proposed revisions do not depart from the rationale of the Court’s prior rulings on summary judgment or any of the elements of Rule 23(a) or (b).

This is a settlement class and the Parties, with Court approval, can always amend the class definitions to fit the terms of the settlement, especially in the wake of a liability determination. Fonder v. Sheriff of Kankakee Cty., 823 F.3d 1144, 1147 (7th Cir. 2016). “The class definition must yield to the facts, rather than the other way ‘round.” Id.; see also In re White, 64 F.4th 302, 315 (D.C. Cir. 2022).

A. Class Definition

The class definition contained in the Third Amended Complaint and the proposed revised class definition are both set forth below.

Third Amended Complaint, ¶ 307	Proposed Settlement definition
(i) in the period beginning three years before the date of filing of the original complaint in this case and going forward up to October 10, 2014; (ii) was arrested and/or arrested and detained (including subjected to conditions of release) in the District of Columbia for violation of any of the District's gun control regime; (iii) for conduct involving any of, or any combination of, carrying or possessing a	1. Settlement Class Member means each person who: (i) in the period from May 15, 2012 (three years before the date of filing of the original complaint in this case) until October 10, 2014; (ii) was arrested or prosecuted, or whose prosecution started before the Class Period and continued during and after the Class Period; (iii) in the District of Columbia; (iv) for a violation of any of the District’s gun

<p>pistol or unlicensed firearm or ammunition outside their home or place of business.</p>	<p>control laws; (v) outside their home or place of business; except that the following groups of people are excluded from the class:</p> <ol style="list-style-type: none"> 1) persons who were convicted of a felony before their arrests or prosecutions; 2) persons who were convicted of a domestic violence misdemeanor within the five-year period before their arrests or prosecutions; 3) persons who were subject to a judicial order compelling them to relinquish any firearms in their possession or barring them from possessing any firearms at the time of their arrests or prosecutions; and 4) persons who were convicted of at least one felony or violent misdemeanor charge arising out of the arrest.
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The Parties' proposed revised Class definition: (1) merges the Second Amendment Arrest Class and the Nonresident Class Arrest Class from the Third Amended Complaint, because discovery showed that the proposed revision would encompass both categories, thereby allowing for more efficient administration of the class, (2) retains the designated Class Period and offenses covered by the original Second Amendment Arrest Class, and (3) omits persons who, at the time of their arrest or prosecution, would have been ineligible for a firearms permit due to certain disqualifying criminal histories.

IV. The Settlement Terms

The full Settlement Agreement is filed with this motion. The key terms are:

1. Settlement Amount

The District has agreed to pay Five Million One Hundred Thousand Dollars and Zero Cents (\$5,100,000.00) (“the Settlement Amount”), which is divided as follows:

- a. \$2,504,190.11 to be paid to the Settlement Class members (“SCM Fund”);
- b. \$300,000.00 for payment to the class representatives to pay their claims and for their special assistance in the case. Of that amount, each Settlement Class representative will receive \$50,000 as a combined damages and incentive award;
- c. \$100,000.00 for sending notice to Class Members and the other costs of administering the class settlement;
- d. \$1,900,000.00 to Class Counsel for attorney’s fees;
- e. \$295,809.89 for Litigation Expenses for costs incurred by Plaintiffs’ counsel.⁴
- f. In addition, the District will not oppose Plaintiffs’ motion for an Order declaring the arrest of each Class Member null and void and a legal nullity substantially in the form of the attached order.

2. Notice

- a. Class Administrator JND Legal Administration, which handled the administration of claims for the Cobell v. Norton “Indian Trust Fund” class action, and Hoyte v. Government of the District of Columbia, will send notice, which shall include:
 - b. Sending notice to all Class Members;
 - c. Pre-mailing address updates using U.S. Postal Service databases for address verification and mail forwarding for all Class Members;
 - d. Post-mailing follow-up using a skip-tracing service for all mailed Notices returned undelivered and re-mailing to alternative addresses discovered by the skip-tracing service;

⁴ The Litigation Expenses originally totaled \$438,714.83, of which \$428,714.83 was earmarked for payment to Tritura Information Governance LLC (“Tritura”) for discovery and data analysis services performed on behalf of the Class Members, and \$10,000.00 was earmarked for miscellaneous expenses including depositions and other related items advanced by Class Counsel. An amount of \$142,904.94 will be waived by Tritura and donated to increase the SCM Fund and the Class Representative Award, and has been incorporated in the figures above.

- e. Mailing reminder postcards for large claims;
- f. Maintaining an informational website; and
- g. Sending notice to state officials of class residents pursuant to 28 U.S.C. § 1715(b).

3. Claims Process

- a. Class Administrator JND Legal Administration will administer the claims process, which shall include:
- b. A 120-day claims period;
- c. That each SCM who is a member of the Class and submits a valid, timely Claim and Release Form will receive one point for one or more arrests covered by the Class Definition and one point for one or more prosecutions covered by the Class Definition;
- d. That each point is valued at \$1,200.00, and that each SCM will receive an award equivalent to the value of the sum of their points, subject to adjustment as described below;
- e. That, if the total cash value of the total number of points of valid, timely claims exceeds the value of the SCM Fund, each SCM will receive the *pro rata* value of their points;
- f. That SCMs can choose among the following payment methods: (1) check sent by mail (valid for ten months) or (2) electronic payments (“e-payments”) sent online using an e-payment provider; and
- g. That, if any amount in the SCM Fund remains after all reasonable efforts to distribute funds to Class Members have been exhausted, the residual amount will be distributed in the following order of priority: (1) to the Class Administrator, for an amount invoiced by the Class Administrator for Administrative Expenses, as described in Paragraphs 39.d and 40.d of the Settlement Agreement and/or approved by this Court in the Final Approval Order, (2) to Tritura, for an amount

up to the total Tritura SCM Fund Donation as described in Paragraph 39.b.i of the Settlement Agreement, (3) to the District of Columbia General Fund.

V. The Court Should Approve The Class Settlement

The proposed settlement satisfies the criteria of Fed. R. Civ. P. 23(e) which sets forth the standard for granting preliminary approval of a class action settlement.

A. Standard for Preliminary Approval

In 2018, Congress adopted changes to Fed. R. Civ. P. 23(e) which essentially codified prior case law. See generally, 4 Newberg on Class Actions § 13:13 (Standard for granting preliminary approval—Generally). Under the Rule, as amended, the Court preliminarily reviews a class action settlement to determine whether to grant preliminary approval of a proposed class action settlement and to send notice of it to the class if the movant demonstrates that the Court will “likely be able to” grant final approval to the settlement. Fed. R. Civ. P. 23(e).

Under case law pre-dating the 2018 amendments to the Rule, the Court reviewed a proposed settlement to determine whether it was “within the range such that final settlement approval may be appropriate.” Bynum, 384 F.Supp.2d at 343. Plaintiffs and the District rely on case law predating the 2018 changes to Rule 23(e) in this motion because the Court continues to do so. See, e.g., Abraha v. Colonial Parking, Inc., No. 16-680 (CKK), 2020 U.S. Dist. LEXIS 136538, at *20 (D.D.C. July 31, 2020) (citing to Rule 23(e) and evaluating whether a proposed settlement is fair, reasonable, and adequate according to the usual five-factor test used in this Circuit before the 2018 amendments).

Although “[t]here is no single test in this Circuit for determining whether a proposed class action settlement should be approved under Rule 23(e),” the following factors are relevant:

(a) whether the settlement is the result of arm's length negotiations; (b) the terms of the settlement in relation to the strength of plaintiffs' case; (c) the status of the litigation at the time of settlement; (d) the reaction of the class; and, (e) the opinion of experienced counsel.

Wells, 557 F. Supp. 2d at 4-5; see also Hardy v. District of Columbia, 49 F. Supp. 3d 48, 49-50 (D.D.C. 2014) (final approval order).

In evaluating the reasonableness of a settlement under Fed. R. Civ. P. 23(e), "the issue is whether the settlement is adequate and reasonable, not whether one could conceive of a better settlement." Jackson v. Wells Fargo Bank, N.A., 136 F. Supp. 3d 687, 709 (W.D. Pa. 2015) (quoting In re Prudential Ins., 962 F.Supp. 450, 534-35 (D.N.J. 1997)). Moreover, although the Court should undertake careful scrutiny of the settlement terms, the discretion to reject a settlement is "restrained by the 'principle of preference' that encourages settlements." Trombley v. Nat'l City Bank, 826 F. Supp. 2d 179, 191 (D.D.C. 2011) (quoting and citing cases).

Applying these presumptions, each factor weighs in favor of approving the proposed Settlement Agreement.

B. This Settlement Is the Result of Arm's Length Negotiations.

A "presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's length negotiations between experienced, capable counsel after meaningful discovery." Livengood Feeds, Inc. v. Merck KGaA (In re Vitamins Antitrust Litig.), 305 F. Supp. 2d 100, 104 (D.D.C. 2004) (quoting Manual for Complex Litigation (Third), § 30.42 at 238 (1995)).

This settlement is the result of arm's length negotiations conducted by counsel with experience in civil rights class actions. Class counsel William Claiborne is experienced in litigating class actions, including actions pertaining to complex civil rights cases against the District, other governmental entities and private corporations. Attorney Joseph A. Scrofano is a criminal defense

lawyer with a specialty in Second Amendment issues. Defense counsel likewise has litigated numerous complex civil rights class actions on behalf of the District.

Moreover, the Parties vigorously litigated the case for many years and entered into negotiations only after the Court issued its summary judgment opinion. During the litigation, the District filed a motion to dismiss in response to each version of the complaint except for the final version, the operative complaint.

The Parties conducted a full panoply of discovery over a two-year discovery period and plaintiffs filed several contested discovery motions including a motion to compel production of conviction history information and other similar information about potential class members to identify any potential class members with disqualifying conviction or status history. Plaintiffs retained a data analysis company and associated discovery counsel to assist in planning discovery and analyzing and “joining” extensive amounts of electronically stored information, including data exports from the MPD’s booking database, the Superior Court’s docketing database, and the Department of Corrections’ JACCS database.

The Parties filed cross motions for summary judgment, and only agreed to enter settlement negotiations after the Court issued a summary judgment opinion and referred the Parties to mediation in the District of Columbia Circuit Mediation Program. Counsel for the Parties drew on their extensive experience litigating class actions involving the District in drafting the details of the settlement such as the class definition, notice, and the distribution plan. Here, “[t]he settlement agreement is the result of years of litigation, but neither party has yet to face the time and expense of trial (or the inevitable appeal) ... the settlement has ‘not come too early to be suspicious nor too late to be a waste of resources.’” Wells, 557 F. Supp. 2d at 5 (quoting In re Vitamins Antitrust Litig., 305 F. Supp. 2d at 105).

In contrast, “trial would have been costly, and the case would have undoubtedly continued through the appeals process after a trial.” *Id.* (internal quotation omitted). Plaintiffs would have been forced to file a contested renewed motion to certify the class. Moreover, plaintiffs would likely have appealed any adverse ruling on that motion, and any resolution of the appeal would have consumed a year.

Each party has concluded, after arm’s length negotiation, that settlement at this juncture is in their interests, and this settlement should be afforded the presumption of fairness, adequacy, and reasonableness on that criterion. See *In re Vitamins Antitrust Litig.*, 305 F. Supp. 2d at 104.

C. The Terms of the Settlement Reflect the Strength of the Parties’ Positions and the Risks of Continued Litigation.

“The most important factor in the Court’s evaluation of a proposed class action settlement is how the relief secured by the settlement compares to the class members’ likely recovery had the case gone to trial.” *Blackman v. District of Columbia*, 454 F. Supp. 2d 1, 9-10 (D.D.C. 2006). Under the amended Rule, the standard is now formulated as whether the relief provided for the class is adequate, taking into account the costs, risks, and delay of trial and appeal. Fed. R. Civ. P. 23(e)(2)(C); see also 4 *Newberg on Class Actions* § 13:13 (Standard for granting preliminary approval—Generally).

Here, the settlement should be approved because the amount of the settlement is fair and recognizes the substantial risks and costs to each party of proceeding with the litigation, and the amount of time further litigation would consume. The Parties have extensively analyzed the strengths and weaknesses of their respective positions and the amount of the Settlement Fund reflects their analysis.

The District has agreed to pay \$5,100,000.00 to resolve this case, of which \$2,804,190.11 is available for payment to Class Members including both the Class Representatives and the absent

class members. Settlement Agreement ¶ 40. Of that amount, \$2,504,190.11 is allocated for absent Class Members (not including Class Representatives) and \$300,000.00 is allocated for Class Representatives for their incentive payments and the value of their individual claims. *Id.* This amount is extremely fair given the risks Plaintiffs face from certification of the class on the issues of liability and damages. Plaintiffs do not believe that the risks of further litigation would result in significantly higher recoveries for either class after discounting the recoveries for the amount of time involved. Even damages hearings tried to the Court would have taken a great deal of time.

The amount of money available for payment to Class Members includes \$142,904.94 allocated for litigation expenses earmarked to Tritura Information Governance LLC (“Tritura”) for discovery and data analysis services performed on behalf of the Class Members, which is being donated to the SCM Fund for distribution to Class Members. Settlement Agreement ¶ 41.⁵

The goal of the Distribution Plans is to get as much of the available damages remedy to Class Members as possible and in as simple and expedient a manner as possible, ensuring just compensation while avoiding windfalls to claimants. *See* 4 Newberg on Class Actions § 12:15 (Methods for determining individual awards).

The District asserts that it has strong defenses, which in the absence of a settlement might have foreclosed the possibility of any class-wide recovery. *In re LivingSocial Mktg. & Sales Practice Litig.*, 298 F.R.D. 1, 12 (D.D.C. 2013). For example, in the absence of a settlement the District has indicated that it would oppose any renewed motion to certify the class, on the grounds that certain evidence produced in discovery tended to show that the individual circumstances of

⁵ As a base amount, the Settlement Agreement allocates \$2,361,285.17 (the Base SCM Fund) for payments to the Settlement Class members. *Id.* ¶ 39(e). An additional \$142,904.94 of the litigation expenses earmarked for Tritura are added to this amount, bringing the total amount available to absent Class Members to \$2,504,190.11 (the SCM Fund). *Id.* ¶ 40(e).

class members' arrests and prosecutions predominate in their claims to relief. In particular, this case sought damages for arrests and prosecutions under District laws, such as Carrying a Pistol without a License, which were not themselves held to be unconstitutional. As such, in the District's view, class members would have to substantiate claims that, despite their valid arrests for constitutional charges, they were nonetheless injured by the District's then-unconstitutional licensing regime itself.

Courts recognize that the comparison of settlements in similar cases can be relevant when evaluating the fairness, adequacy, and reasonableness of a proposed settlement. See, e.g., Trombley v. Nat'l City Bank, 759 F. Supp. 2d 20, 24-25 (D.D.C. 2011). One measure of the fairness of the settlement here is that this case is the only case Class Counsel knows of where plaintiffs prevailed at summary judgment or trial in a Second Amendment case for money damages. Plaintiffs have not found any other cases where plaintiffs prevailed at summary judgment on a Second Amendment claim under Section 1983 despite the extensive Second Amendment litigation in the last 15 years since *Heller v. District of Columbia*, 554 U.S. 570 (2008).

The absence of "similar cases" cuts in favor of viewing the settlement as reasonable because Class Counsel in this case were able to do what other plaintiffs' counsel have been unable to do or even to attempt.

Each eligible class member who submits a valid claim form is entitled to receive up to \$1,200 if arrested and up to an additional \$1,200 if prosecuted. Settlement Agreement ¶ 57. Although there are no other settlements or verdicts for Second Amendment cases of which Plaintiffs are aware this seems a fair amount for a jurisdiction such as the District where many residents and potential jurors have an antipathy towards guns. Although a court need not include in its approval order a specific finding of fact as to the potential recovery at trial for each of the

plaintiffs' causes of action, it is one method of measuring the fairness of a settlement. Marshall v. NFL, 787 F.3d 502, 517 (8th Cir. 2015) (citing Lane v. Facebook, Inc., 696 F.3d 811, 823 (9th Cir. 2012)).

Plaintiffs' team analyzed and modelled possible claiming rates and the team estimates that it would take a claiming rate of at least 20% to exhaust the \$2,504,190.11 settlement pool set aside for the Settlement Class members at these rates. In the event that the total amount of claims exceeds the size of the fund for Settlement Class Members, the payments to members of the Settlement Class will be adjusted on a pro-rated basis among valid claimants. A claiming rate of at least 20% is quite high for these cases. The claim rate in Hardy was 14.1%. Hardy, 49 F. Supp. at 50. The claims rate in Bynum v. Gov't of the D.C. and Barnes v. Gov't of the D.C. was about 10% each.

At the end of the day, the settlement makes available—now—a total of \$2,804,190.11 for distribution, of which \$2,504,190.11 will be available for distribution to absent Class Members and \$300,000.00 for distribution to Class representatives. As stated above, Plaintiffs' counsel are not aware of other cases which have resulted in recovery of damages for absent Class Members for violations of the Second Amendment.

The benefits to the Class Members are real and immediate upon final approval of the settlement, and involve the payment of cash. It is money that will surely be welcomed by claimants in this time of economic distress.

As to injunctive relief, the Settlement Agreement provides that the District will not oppose a motion by Class Counsel for an Order declaring the arrest of each Class Member null and void and a legal nullity substantially in the form of the attached order. Such relief will be of great value to class members especially class members who lost jobs or security clearances. Mr. Scrofano's firm regularly charges between \$2,500 and \$5,000 for an expungement. Additionally, the District's

unconstitutional firearms licensing regime, which had been in effect at the time of Class Members' arrests or prosecutions, has already been amended.

The Settlement Agreement provides that amounts not distributed to the Class representatives and eligible absent Class Members or returned to Tritura should revert to the District. Settlement Agreement ¶ 56. Although some courts closely scrutinize settlements with reversions or claims made settlements, a settlement with a reversionary clause is not *per se* collusive, Partl v. Volkswagen, AG (In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig), 895 F.3d 597, 611-12 (9th Cir. 2018). In fact, Courts recognize that, "[a] reversion provision might encourage a more generous settlement offer." Mirfasihi v. Fleet Mortg. Corp., 356 F.3d 781, 785 (7th Cir. 2004). Such is the case here.

Courts in this Circuit and other Circuits regularly approve settlements with reversions or claims made settlements. 4 Newberg on Class Actions § 13:7 (Terms of art in class action settlement agreements—"Claims-made" settlement). For example, Wells was a claims-made settlement, Settlement Agreement [234-1], ¶ 6(A) (at pages 8-9 of the agreement, at pages 9-10 on ECF), as was Barnes v. Government of the District of Columbia, 06-315 (RCL) (Settlement Agreement ¶ 36), and Stephens v. Farmers Rest. Group, 2019 U.S. Dist. LEXIS 103031, at *22-23 (D.D.C. 2019) (noting that "any unclaimed funds set aside for the Rule 23 classes will revert to Defendants"), and Hardy v. District of Columbia provided for a reversion of unclaimed funds to the defendant. Hardy, 1:09-cv-01062-(RLW/CRC) (Settlement Agreement [67-1] ¶ 55, providing for a reversion of unclaimed funds to the District).

The money is available for the claiming and claimants have only to file a claim—by mail or online—and eligible claimants will promptly receive their money by check or by electronic transfer using an e-payment provider such as Venmo or Pay Pal. Settlement Agreement ¶ 65. The

D.C. Council recognized in the Committee Report to the “Civil Asset Forfeiture Amendment Act of 2014” that about 11% of households in the District have no bank accounts. Pls.’ Ex. 224 [220], Comm. on the Judiciary & Public Safety, Council of D.C., Report on Bill 20-48, “Civil Asset Forfeiture Amendment Act of 2014,” at 20-21 (Nov. 12, 2014) (“Committee Report”).⁶ Allowing claimants to elect to receive their awards by electronic payment rather than by check will save the “unbanked” the typical 20% or 30% check cashing fee that Class Counsel have seen clients in previous cases pay.

The claims process in this case is not burdensome and it is provided as much for the protection of the Settlement Fund as for any other reason. The claiming period, 120 days, is long enough to ensure class members have an adequate opportunity to submit claims. Settlement Agreement ¶ 8. Class members may have large claims. Moreover, the addresses in the MPD database are old and many of the addresses the MPD has on file for Settlement Class Members are incorrect, so mailing checks without a claims process is not feasible. Hardy, 49 F. Supp. 3d at 51 (referring to the “transient nature of the class members”).

D. The Litigation Has Already Progressed Through Discovery and Summary Judgment.

In evaluating the terms of a proposed Settlement, the Court should “consider whether counsel had sufficient information, through adequate discovery, to reasonably assess the risks of litigation *vis-à-vis* the probability of success and range of recovery.” Advocate Health Care v. Mylan Labs. Inc. (In re Lorazepam & Clorazepate Antitrust Litig.), Nos. MDL 1290 (TFH), 00MS276(TFH), Civ. 99-0790 (TFH) 2003 U.S. Dist. LEXIS 12344, at *14-15 (D.D.C. June 16,

⁶ The Committee Report is available online at https://lims.dccouncil.us/downloads/LIMS/29204/Committee_Report/B20-0048-CommitteeReport1.pdf (last accessed Aug. 31, 2020).

2003) (emphasis added).

Here, given that this settlement was reached after more than eight years of vigorously contested litigation, extensive discovery, and cross motions for summary judgment, this factor too plainly counsels in favor of approval. As in Wells, “[t]he settlement agreement is the result of years of litigation, but neither party has yet to face the time and expense of trial (or the inevitable appeal). Accordingly, the settlement has not come too early to be suspicious nor too late to be a waste of resources.” 557 F. Supp. 2d at 5 (internal quotation omitted).

E. Class Representatives Have Approved the Settlement.

The Class Representatives have unanimously approved the settlement. The reaction of the absent Class Members can be reported to the Court after notice has been sent.

F. Experienced Counsel Approve of the Settlement.

Although courts do not defer blindly to the views of counsel with regard to the adequacy of a settlement, courts do recognize a presumption of reasonableness where, as here, the proposed settlement was the result of arms’ length negotiations and is thus presumptively fair, adequate and reasonable. Wells, 557 F. Supp. 2d at 5. Attorney Claiborne has litigated numerous complex federal civil rights cases against government defendants in several jurisdictions including several cases against the District of Columbia. In addition, Attorney Claiborne has consulted on numerous class actions in this and other jurisdictions. Attorney Scrofano has developed a specialty in Second Amendment issues. Both counsel believe the proposed settlement is fair, adequate, and reasonable under Fed. R. Civ. P. 23(e).

Class Counsel have based their approval of settlement on the risks of certification, decertification, trial, and appeal. Moreover, even if Plaintiffs were to win at trial and on appeal, the protracted litigation would result in considerable delay to Plaintiffs’ recovery. A lower,

guaranteed sum today over the possibility of getting a larger amount (with risk of getting nothing) in the future is a rational balance, especially in today's troubled economic environment. This settlement is based upon a reasonably-anticipated claims rate of 20% which is very high in this type of case and very unlikely to be exceeded. Further, the notice contains sufficient notice provisions and the Settlement Agreement provides a simple claims process.

This settlement provides for a claims process as fraud protection because the class has large claims. This is not to make the claims process unduly difficult, but to protect Class Members from fraud by non-Class Members since the Settlement Fund could get exhausted by claims, requiring a pro-rata adjustment on payments. See Manual for Complex Litigation § 21.66 (4th ed. 2020) (noting that the larger potential claims are, the more protections from fraud should be considered).

G. The Attorney's Fees Request is Reasonable.

Class counsel seek a fee in this case of \$1,900,000, which is about 37 % of the "Settlement Amount" of \$3,950,000, and only about 80% of the fee calculated according to the lodestar rate using the Terris, Pravlik & Millian Laffey matrix. The percentage itself, 37%, although toward the high end of the range of percentages awarded by courts, is nonetheless within the range of reasonable percentages awarded by Courts in this District. See, e.g., Wells v. Allstate Ins. Co., 557 F. Supp. 2d 1, 7 (D.D.C. 2008); In re Ampicillin Antitrust Litigation, 526 F. Supp. 494, 498-499 (D.D.C. 1981) (awarding 45%, or about \$3.3 million; noting that while the bulk of fee awards in antitrust cases are less than twenty-five percent, several courts have awarded more than forty percent of the settlement fund); Advocate Health Care, 2003 U.S. Dist. LEXIS 12344, at *25 (fee awards in common fund cases may range from 15% to 45%); Hoyte v. Gov't of the D.C., 13-567 (CRC) (awarding class counsel William Claiborne 45% of a class fund of \$3.95 million which amounted to a "negative" multiplier of .6). Similarly, in this case, Class Counsel Claiborne's hours

determined using the lodestar method would amount to a multiplier of less than 1.

Class Counsel plan to file a separate Motion for Approval of Attorney's Fees before the final approval hearing but after notice has been sent and the reaction of the classes has become known.

Using the "percentage of the fund" method to calculate their fees, Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1265 (D.C. Cir. 1993), Class Counsel seeks a fee in this case of \$1,900,000, which is 37% of the Settlement Amount of \$5,100,000, the total amount the District is paying to settle the case. The requested fee will be paid out of the Settlement Amount. This fee award is reasonable using all of the yardsticks courts use to evaluate attorney's fees awards in class action cases using the "percentage of the fund" method: the percentage itself, 37%, although toward the high end of the range of percentages awarded by courts, is nonetheless within the range of reasonable percentages awarded in this District;⁷ Plaintiffs score high on all of the factors courts consider in evaluating the reasonableness of the percentage in attorney's fees awards;⁸ and a cross-

⁷ See, e.g., Wells v. Allstate Ins. Co., 557 F. Supp. 2d 1, 7 (D.D.C. 2008); In re Ampicillin Antitrust Litigation, 526 F. Supp. 494, 498-499 (D.D.C. 1981) (awarding 45%, or about \$3.3 million; noting that while the bulk of fee awards in antitrust cases are less than twenty-five percent, several courts have awarded more than forty percent of the settlement fund); Advocate Health Care, 2003 U.S. Dist. LEXIS 12344, at *25 (fee awards in common fund cases may range from 15% to 45%).

⁸ These factors include: (1) the percentage still leaves more than \$2,500,000 of the fund available for distribution to Class representatives and the other Class Members; (2) Class Counsel are experienced litigators with Class Counsel William Claiborne specializing in complex federal litigation who prosecuted the case for over **eight years** over the vigorous defense of the District's Office of the Attorney General; (3) Class Counsel William Claiborne undertook this case on a purely contingent basis so the risk of nonpayment through either summary judgment or loss at trial was significant; and finally, (4) the lawsuit and the settlement serve the public interest not only by conserving the resources that would be consumed by further litigation, but also by providing reasonable compensation to the Class Members for their arrests and prosecutions. Wells, 557 F. Supp. 2d at 7-8 (applying factors).

check of the “percentage of the fund” fee against the “lodestar” fee shows that the “percentage of the fund” fee is a significant reduction of approximately 20% of the actual “lodestar” fee expended by Class Counsel on behalf of the Classes. Using last year’s Laffey matrix as calculated by Terris, Pravlik & Millian for the period 6/1/2022 to 5/31/2023, Class Counsel William Claiborne’s hourly rate for the period ending 5/31/2023 was \$997 per hour. Class Counsel William Claiborne alone has billed 2,149 hours as of the end of the mediation, and estimates that he will have to spend an additional 200 to 250 hours papering and administering the settlement. That yields a total lodestar fee of \$2,293,100. The fee of \$1,900,000 is only 80% of the lodestar fee of \$2,293,100.

Thus, this case is an outlier in that most “percentage of the fund” fee awards represent the “lodestar” fee multiplied by an enhancement factor (a multiplier) and courts check to ensure that the percentage award does not represent too much of a multiplier applied to the “lodestar fee.” Ceccone v. Equifax Info. Servs. LLC, 2016 U.S. Dist. LEXIS 127942, at *34-35 (D.D.C. 2016); Advocate Health Care, 2003 U.S. Dist. LEXIS 12344, at *32. Courts routinely approve settlements where the portion of the settlement fund for attorney’s fees results in an award that is 2-4 times higher than the lodestar amount under the lodestar cross-check. Advocate Health Care, 2003 U.S. Dist. LEXIS 12344, at *32 (noting that a fee award that is 1.15 or 1.36 times *greater* than the lodestar “falls near the low end of normal multipliers” and “multiples ranging up to four are frequently awarded in common fund cases when the lodestar method is applied”) (internal quotation omitted).

In contrast, there is no “multiplier” in this case because counsel is seeking an award of only 80% of the fees expended on behalf of the class. Thus, rather than applying a multiplier to increase the fee paid to Class Counsel, the “percentage of the fund” fee is a **significant 20% reduction** to the “lodestar fee.”

Attorney Joseph Scrofano billed about 155 hours on the case at a lodestar rate of \$829 per hour (using last year's Laffey matrix as calculated by Terris, Pravlik & Millian for the period 6/1/2022 to 5/31/2023) for a total of \$128,495.

IV. The Court Should Certify The Settlement Class

The Settlement Class satisfies each of the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3).⁹

Federal Rule of Civil Procedure 23(a) provides that a class may be certified when “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). The proposed Settlement Class satisfies each of these requirements.

The proposed class has over 3,000 members, there is a common question and the Named Plaintiffs' claims are typical because the class members were all injured by the same unconstitutional policy, and the representative parties will fairly and adequately protect the interests of the class as they have demonstrated during the pendency of the case.

As stated above, the District will not oppose Plaintiffs' motion for an Order declaring the arrest of each Class Member null and void and a legal nullity substantially in the form of the attached order. Plaintiffs do not believe that it is necessary to certify the Settlement Class under Rule 23(b)(2) for this relief. Fed. R. Civ. P. 23(b)(2) (allowing for certification if “(2) the party

⁹ This Court granted Plaintiffs' motion to extend the 90 day period prescribed by LCvR 23.1(b) for filing their motion for class action treatment. *See* Order [18] (Sept. 1, 2015). Plaintiffs then moved for certification [ECF No. 26], but this Court denied the motion without prejudice. *See* Order [38] (Sept. 30, 2016).

opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole”).

Plaintiffs are moving to certify the Settlement Class under Rule 23(b)(3), which allows for certification if “the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The requirements of predominance and superiority are both satisfied here. Under Plaintiffs’ theory the moving force of their injury is the District’s policy and so questions of law predominates over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy because most class members would not be able to bring individual claims.

The District does not object to this Court certifying a settlement class with the following definition:

Settlement Class Member means each person who:

(i) in the period from May 15, 2012 (three years before the date of filing of the original complaint in this case) until October 10, 2014; (ii) was arrested or prosecuted, or whose prosecution started before the Class Period and continued during and after the Class Period; (iii) in the District of Columbia; (iv) for a violation of any of the District’s gun control laws; (v) outside their home or place of business; except that the following groups of people are excluded from the class:

1) persons who were convicted of a felony before their arrests or prosecutions;

- 2) persons who were convicted of a domestic violence misdemeanor within the five-year period before their arrests or prosecutions;
- 3) persons who were subject to a judicial order compelling them to relinquish any firearms in their possession or barring them from possessing any firearms at the time of their arrests or prosecutions; and
- 4) persons who were convicted of at least one felony or violent misdemeanor charge arising out of the arrest.

V. The Court Should Approve the Proposed Form and Manner of Notice to the Class.

“The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23I(1). Under that rule and the mandates of due process, class members must be given “the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Hubbard v. Donahoe, 958 F. Supp. 2d 116, 122 (D.D.C. 2013) (quoting Fed. R. Civ. P. Rule 23(c)(2)(B)). However, “[n]either Rule 23 nor the requirements of due process require actual notice to each and every possible class member.” In re Prudential Ins. Co. of Am. Sales Practices Litig., 177 F.R.D. 216, 233 (D.N.J. 1997); see also Pigford v. Veneman, 208 F.R.D. 21, 23 (D.D.C. 2002).

The Parties request that the Court direct the use of JND Legal Administration as class administrators, as contemplated by the Settlement Agreement. Settlement Agreement ¶ 7. This Court appointed JND Legal Administration as the class administrators in the \$3.4 billion Indian Trust Fund Settlement case (Cobell v. Salazar). Judges Cooper and Jackson of this Court appointed JND as the class administrator in Hoyte v. Gov’t of the D.C., 13-567 (CRC) and Alexander v. Gov’t of the D.C., 17-1885 (ABJ), respectively.

A. The Proposed Notice Is Reasonable and Tailored to the Needs of Class Members.

Class Counsel have carefully considered various options for providing reasonable notice of the proposed settlement to Class Members. Class Counsel believe that the proposed notice clearly and concisely informs potential Class Members of the nature and scope of the Agreement and of their rights to object and be heard. The proposed notice provides a clear explanation of (i) the lawsuit, its history, and current procedural posture, (ii) how to determine if one is a member of the classes, (iii) the reasons for settlement, (iv) the key provisions of the Settlement Agreement, (v) the procedure for making objections and being heard at a final fairness hearing, and the procedure for “opting out” of the settlement.

Accordingly, the Court should approve the form of notice attached as Exhibit C to the Settlement Agreement.

B. The Manner of Notice Is the Best Practicable Notice Under the Circumstances.

The Court should also approve the notice plan set forth in the Settlement Agreement. In formulating the notice plan, the Parties have given considerable thought to the difficulties involved in reaching many Class Members, and have developed a multi-faceted, comprehensive notice plan in order to reach as many Class Members as possible. The “transient nature of the class members” the Court referenced in Hardy presents the same challenges in this case. See Hardy, 49 F. Supp. 3d at 51. Plaintiffs plan to send notice to about 4,700 potential Settlement Class Members and to follow up returned notices with remailings when updated addresses can be obtained in an attempt to reach as many Settlement Class Members as practicable.

In addition to providing individual notice to Class Members (and/or their legal representatives) where practicable, the notice plan calls for posting of the notice on various websites. Plaintiffs also plan to enlist the help of the Public Defender Service for the District of Columbia and the “CJA” Bar (court-appointed attorneys representing indigents in criminal cases

pursuant to the Criminal Justice Act, D.C. Code § 11-2601, et seq.), many of whom have previously represented class members, in delivering class notice. Class Counsel will have a copy of the notice provided to PDS for distribution and a copy posted on the Superior Court Trial Lawyers Association, the electronic mailing list for CJA lawyers. Class Counsel also plan to email a copy of the notice to the Superior Court Trial Lawyers Association of the District of Columbia. The Court should therefore approve the notice plan set forth in the Settlement Agreement as providing the best notice practicable under the circumstances of this case.

CONCLUSION

For the foregoing reasons, the Court should grant the Motion for Preliminary Approval, approve the manner and form of notice to be furnished to the class, and schedule a Fairness Hearing under Fed. R. Civ. P. 23(e)(1)(C) for the purpose of determining whether the settlement is fair, reasonable, and adequate.

Dated: August 25, 2023

Respectfully submitted,

/s/ William Claiborne
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Counsel for Named Plaintiffs and the Class

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MAGGIE SMITH, *et al.*,

Plaintiffs,

v.

**GOVERNMENT OF THE DISTRICT
OF COLUMBIA,**

Defendant.

Civil Action No. 15-737 (RCL)

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (Settlement Agreement) is entered into by and among Plaintiffs Maggie Smith, Gerard Cassagnol, Frederick Rouse, Delontay Davis, Kimberly Buffaloe, and Carl Atkinson (collectively, Plaintiffs), individually and on behalf of the two classes defined below, and defendant the District of Columbia (the District), a municipal corporation. Plaintiffs and Defendant may be referred to, collectively, as “the Parties.”

I. RECITALS

WHEREAS, Plaintiffs in the Complaint asserted that they represented a class of persons who were arrested, detained, and/or prosecuted pursuant to the District’s unconstitutional gun registration and licensing laws (“Second Amendment Arrest Class” and “Nonresident Arrest Class”), and whose handguns and ammunition were seized and held (“Fourth Amendment Handguns and Ammunition Retention Class”), as well as certain other claims; and

WHEREAS, Plaintiffs further alleged various other violations of the U.S. Constitution, under 42 U.S.C. § 1983; and

WHEREAS, the Parties agree the Court should deem as adequate Class Counsel pursuant to Fed. R. Civ. P. 23(a)(4): William Claiborne and Joseph Scrofano [148]; and

WHEREAS, the District denies all liability to the defined classes and does not concede any infirmity in the defenses that it asserted or intended to assert in these proceedings; and

WHEREAS, the Parties have engaged in substantial discovery and motions practice on both procedural and dispositive issues; and

WHEREAS, on September 29, 2021, the Court issued an Order [142] granting Plaintiffs' Motion for Partial Summary Judgment [121] as to Counts I ("Second Amendment Arrest Claim" and III ("Nonresident Arrest Claim") and denying Plaintiff's Motion for Partial Summary Judgment as to Count VI ("Retention of Handguns and Ammunition Claim"), and granting in part and denying in part Defendant's Motion for Summary Judgment [134] (denying as to Counts I and III and granting as to Count VI); and

WHEREAS, the Parties engaged in a lengthy mediation process using the District of Columbia Circuit Mediation Program; and

WHEREAS, it is the Parties' mutual desire now to enter into a full and binding settlement and release of all claims that have been or could have been brought by the Plaintiffs on behalf of the Class Members (as defined below) against the District in the above-captioned matter (the Lawsuit), and to dismiss the Lawsuit with prejudice; and

WHEREAS, the Parties believe that the terms of this Settlement Agreement are fair, reasonable and adequate; that this Settlement Agreement provides substantial benefits to the Class Members; and that the settlement of the action on the terms set forth in this Settlement Agreement is in the best interests of the Class Members, and will avoid additional lengthy and costly litigation; and

WHEREAS, the Parties have agreed that, to avoid long and costly litigation, this dispute should be settled pursuant to the terms of this Settlement Agreement, subject to the approval of the Court.

NOW, THEREFORE, in consideration of the mutual agreements contained in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties have agreed to compromise and settle all remaining claims and disputes related to this Lawsuit, subject to the terms and conditions below:

II. CLASS DEFINITIONS

1. **Settlement Class Member** means each person who:

i) in the period from May 15, 2012 (three years before the date of filing of the original complaint in this case) until October 10, 2014; (ii) was arrested or prosecuted, or whose prosecution started before the Class Period and continued during and after the Class Period; (iii) in the District of Columbia; (iv) for a violation of any of the District's gun control laws; (v) outside their home or place of business; except that the following groups of people are excluded from the class:

- 1) persons who were convicted of a felony before their arrests or prosecutions;
- 2) persons who were convicted of a domestic violence misdemeanor within the five-year period before their arrests or prosecutions;
- 3) persons who were subject to a judicial order compelling them to relinquish any firearms in their possession or barring them from possessing any firearms at the time of their arrests or prosecutions; and
- 4) persons who were convicted of at least one felony or violent misdemeanor charge arising out of the arrest.

III. DEFINITIONS

2. **Administrator or Class Administrator** means a class administrator retained to prepare, distribute and publish the Class Notice (as defined below) and to administer the claims process, according to the procedures set forth in the Settlement Agreement and in the Class Administration Agreement.

3. **Attorney's Fees** means that portion of the Settlement Amount (as defined below) awarded as attorney's fees to Class Counsel as prescribed below.

4. **Bar Date** is the date by which any Settlement Class Member or SCM (as defined below) must file any objections to this Settlement Agreement or to the request for attorney's fees; or any request to be excluded from the Class (Opt-Out, as defined below). The Bar Date shall be calculated as the close of business on the 45th day after the last day of mailing the Class Notice (the time frame for which mailing is up to two consecutive business days from beginning to end, as addressed in Paragraph 60).

5. **Class Administration Agreement** means the agreement to be reached between Class Counsel and the Class Administrator setting forth the Class Administrator's obligations.

6. **Class Administrator** means JND Legal Administration (JND).

7. **Claim and Release Form** means the Claim and Release Form required to make a claim for payment under this Settlement Agreement. The Claim and Release Form for each SCM will be materially similar to the copy of the proposed Claim and Release Form attached as Exhibit A.

8. **Claims Filing Date** is the date by which any SCM who wishes to receive payment pursuant to the Settlement Agreement must file their Claim and Release Form. The Claims Filing Date shall be calculated as the close of business on the 120th day after the last day of mailing the

Class Notice (the time frame for which mailing is up to two consecutive business days from beginning to end, as addressed in Paragraph 60).

9. **Class Counsel** means William Claiborne and Joseph Scrofano.
10. **Class Member** means any member of the Class as defined in Paragraph 1.
11. **Class Notice** means the notice to the Class regarding settlement, to be sent to Class Members in a form substantially similar to that attached as Exhibit B, and such other summary notice to be published in accordance with the terms of this Settlement Agreement.
12. **Class Period** is May 15, 2012 to October 10, 2014.
13. **Class Representatives** means the persons appointed by the Court pursuant to Fed. R. Civ. P. 23(a)(4) in the Preliminary Approval Order and in the Final Approval Order (both defined below) as class representatives.
14. **Class Representative Award** means the sum payable out of the Settlement Amount to the Class Representatives including any incentive awards as prescribed below.
15. **Class** collectively means the Class members.
16. **Distribution Plan** means the plan for distributing the SCM Fund set forth below in Paragraph 56 of this Settlement Agreement and in the proposed Preliminary Approval Order, subject to approval by the Court in the Final Approval Order.
17. **District** means the District of Columbia, together with past, present and future officials, employees, representatives, attorneys, and/or agents of the District.
18. **Effective Date** means the date upon which the Court enters an order approving the Settlement Agreement. If no objections to the Settlement Agreement have been filed, the Effective Date will be the date that the Court signs the Final Approval Order. If one or more objections are filed, the Effective Date will occur on the expiration of the time to appeal the Court's Final

Approval Order, provided no such appeal is, in fact, filed. If one or more objections are filed, and a Notice of Appeal of the Court's Final Approval Order is filed, the Effective Date will be upon exhaustion of all appeals and petitions for writs of *certiorari*, the final resolution of which upholds the Settlement Agreement.

19. **Final Approval** means the Court's issuance of a final order approving this Settlement Agreement pursuant to Rule 23(e) in a form to be agreed to by counsel for the Parties, consistent with the provisions of the Settlement Agreement, providing final approval (the Final Approval Order).

20. **Final Order** means the Final Approval that was not appealed, or was finally upheld on appeal.

21. **Class Representatives** are Maggie Smith, Gerard Cassagnol, Frederick Rouse, Delontay Davis, Kimberly Buffaloe, and Carl Atkinson.

22. **Litigation Expenses** means the sum payable out of the Settlement Amount to the Class Counsel as described below for the costs of funding the litigation advanced by Class Counsel.

23. An **Opt-Out** is any Class Member who files a timely request for exclusion pursuant to the terms of this Settlement Agreement, as specified in Paragraph 4.

24. **Preliminary Approval** means the Court's determination that the Settlement is within the range of fairness, reasonableness, and adequacy, and therefore notice should be sent to the Class and a hearing should be held with respect to fairness and Final Approval.

25. **Preliminary Approval Order** means an order substantially in the form of the attached Exhibit C and described below that memorializes the Court's Preliminary Approval.

26. **Released Claims** means claims that have been released under this Settlement Agreement, in the Final Approval Order, and in the Final Order.

27. **SCM Fund** means the amount available to be distributed to the SCMs.

28. **Settled Claims** means the claims of the SCMs released by the Final Order.

29. **Settlement Agreement Database** (which shall include information from the District of Columbia Metropolitan Police Department (MPD) arrest database, from certain MPD documents, the District of Columbia Superior Court docketing database, and other District sources as needed) is the information provided in electronic form by the District to the Class Administrator and Class Counsel no later than twenty one (21) days after the entry of the Preliminary Approval Order. It shall include, to the extent available, the name, address at time of booking, date of birth, Social Security number, telephone number, closest relationship contact information, and any other computerized data relevant to determining Class Membership or notifying, or verifying the identity of, Class Members. The Settlement Agreement Database is the exclusive list of Class Members, and it includes at a minimum the information for each person on the data export prepared by Plaintiffs and used by the Parties in mediation.

30. **Settlement Amount** means the lump sum payment to be paid by the District, totaling \$5,100,000.00, which will be available to be paid and/or distributed and allocated as described in this Agreement.

31. **Settlement Class Definition.** The definitions of the Class agreed upon in this Settlement Agreement or as approved by the Court in the Final Approval Order.

32. **Settlement Class Member** or **SCM** means any member of the Class as defined above in Paragraph 1 (including representatives, successors, and assigns), who does not file a valid and timely request for exclusion as provided for in Paragraph 4 of this Settlement Agreement.

33. **Verified Claims** means claims verified by the Class Administrator using the methods set forth in the Class Administration Agreement.

IV. CONDITIONAL SETTLEMENT AND DISCLAIMER OF LIABILITY

34. **Conditional Settlement.** Except where otherwise indicated, this Settlement Agreement is expressly conditioned upon the Preliminary Approval, Final Approval, and Final Order of the terms of this Settlement Agreement. The Class Period set forth above is an essential condition of this Settlement Agreement. The Parties enter into this Agreement solely for the purposes of this settlement and implementation of the settlement. In the event that any of Preliminary Approval, Final Approval, and Final Order of the terms of this Settlement Agreement is not obtained or the Settlement Agreement is deemed null and void for any reason, the Parties will revert to the positions they occupied prior to the execution of the Agreement, and nothing here shall be deemed to waive any of the Parties' claims, arguments, objections, or defenses.

35. **Disclaimer of Liability.** This Settlement Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in, this Settlement Agreement or its exhibits, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as, any admission of the validity of any claim or any fact alleged by any Plaintiff or Class Member in either this action or in any other pending or future action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the District or admission by the District of any claim or allegation made in this Lawsuit or in any other action. The District denies all allegations of wrongdoing and denies any liability to Plaintiffs or to any Class Member. The Parties have agreed that, in order to avoid long and costly litigation, this dispute should be settled pursuant to the terms of this Settlement Agreement, subject to the approval of the Court.

V. SETTLEMENT AMOUNT

36. Subject to Court approval and pursuant to the terms and conditions of this Settlement Agreement, and except as otherwise provided expressly conditioned on the Final Approval by the Court of the Settlement Class Definition, and in full and final disposition,

settlement, discharge, release and satisfaction of the Settled Claims, the following fund shall be created by the District.

37. **Settlement Amount.** The Settlement Amount is the total sum of \$5,100,000.00. The District of Columbia shall deposit the Settlement Amount, except for the Attorney's Fees and Litigation Expenses specified below, into an escrow account to be administered by the Class Administrator in accordance with the timing and schedule set forth in this Settlement Agreement. The deposit of funds into the escrow account is distinct from the actual disbursement of funds from the escrow account to recipients. The Settlement Amount, except for the Attorney's Fees, shall be paid by the District to the Class Administer by wire transfer within forty-five (45) days of the Final Order (except for the advance payment for notice to the Class Administrator, as indicated in Paragraph 41) and shall be allocated as described below. Within forty-five (45) days of the Final Order, the District shall pay by wire transfer to Class Counsel William Claiborne's trust account the Attorney's Fees and Litigation Expenses specified below.

38. **Extent of Defendant's Monetary Obligations.** The District's monetary obligations under this Settlement Agreement are limited to the Settlement Amount. The District shall not be called upon or required to contribute additional monies under any circumstance.

39. **Settlement Amount Allocation.** The Parties agree that the Settlement Amount will be allocated as follows, subject to Court approval, and the District will not in any way contest such allocation and awards by the Court:

- a. \$300,000.00 for the **Class Representative Award** for payments to the Class Representatives of \$50,000 each in settlement of their claims and as an incentive payment in consideration of their services as Class Representatives.
- b. \$438,714.83 for **Base Litigation Expenses**.

- i.) \$428,714.83 of the **Litigation Expenses** (the **Tritura Payment**) is payable to Tritura Information Governance LLC (Tritura) for discovery and data analysis services performed on behalf of the Class Members. \$142,904.94 of the **Tritura Payment** shall be waived and donated to the SCM Fund for distribution to SCMs (**Tritura SCM Fund Donation**). However, if any of the SCM Fund remains after all payments and distributions have been made to the SCMs according to the Distribution Plan, the remainder, up to the amount of the **Tritura SCM Fund Donation**, will revert to Tritura and shall be paid by the Class Administrator to Tritura prior to any reversion of funds to the District pursuant to Paragraph 56 of this Settlement Agreement;
- ii.) up to \$10,000.00 of the **Base Litigation Expenses** are payable to Class Counsel for miscellaneous expenses for depositions and other items advanced by Class Counsel.
- c. \$1,900,000.00 for **Attorney's Fees**.
- d. \$100,000.00 for **Administrative Expenses**. Any amounts billed by the Class Administrator in excess of this amount for Administrative Expenses and approved by the Court shall be paid out of the SCM Fund. \$25,000.00 of the Administrative Expenses shall be paid to Class Counsel William Claiborne's trust account for payment to the Class Administrator for providing Class Notice and Claim and Release Forms to all Class Members, as addressed in Paragraph 41.
- e. \$2,361,285.17, the **Base SCM Fund**, for payment of **Verified Claims** to SCMs.

40. Therefore, the Parties agree that after accounting for the **Tritura SCM Fund Donation**, the **Settlement Amount** will be allocated as follows, subject to Court approval, and the District will not in any way contest such allocation and awards by the Court:

- a. \$300,000.00 for the **Class Representative Award** for payments to the **Class Representatives**.
- b. \$295,809.89 for **Litigation Expenses**. This amount is the difference after subtracting the **Tritura SCM Fund Donation** (\$142,904.94) from the **Base Litigation Expenses** of \$438,714.83.
- c. \$1,900,000.00 for **Attorney's Fees**.
- d. \$100,000.00 for **Administrative Expenses**.
- e. \$2,504,190.11, the **SCM Fund**, for payment of **Verified Claims** to SCMs. This amount is the sum of the **Base SCM Fund** of \$2,361,285.17 and the **Tritura SCM Fund Donation** of \$142,904.94. The SCM Fund may exceed \$2,504,190.11 if additional funds from the Settlement Amount are available after payment of the Class Representative Award, Litigation Expenses, Attorney's Fees, and Administrative Expenses; however, under no circumstances shall the total Settlement Amount exceed \$5,100,000.00. All funds from the Settlement Amount not distributed to SCMs or allocated to the Class Representative Award, Class Counsel, Class Administrator, or Tritura will revert to the District of Columbia.

41. **Payment of Administrative Expenses for providing Class Notice and Claim and Release Forms to all Class Members.** Within thirty (30) days after Preliminary Approval, the District shall wire \$25,000.00 to Class Counsel William Claiborne's trust account for payment to the Class Administrator for providing Class Notice and Claim and Release Forms to all Class

Members. This sum, to the extent used and accounted for (including refunds to Class Counsel for any advances made toward Administrative Expenses), will be non-refundable and not conditioned upon Final Approval.

VI. TERMS AND EFFECT OF SETTLEMENT AGREEMENT

42. This Settlement Agreement is a contract binding upon the Parties. The Court shall retain jurisdiction over this matter and the Parties for the purpose of enforcing the terms of this Settlement Agreement. Plaintiffs' acceptance of this Settlement Agreement is reflected by Class Counsel's signature and is binding on the Classes, subject to final approval by the Court.

43. The Parties enter into this Settlement Agreement solely for the purposes of settlement and implementation of the settlement. In the event that Final Approval of this Settlement Agreement is not obtained or the Settlement Agreement is deemed null and void for any reason, the Parties will revert to the positions they occupied prior to the execution of the Settlement Agreement, and nothing here shall be deemed to waive any of the Parties' claims, arguments, objections, or defenses.

44. The Parties agree that all objections and requests to be heard will be submitted to the Court and counsel for the Parties in writing at least ten (10) days before the scheduled Fairness Hearing (as defined below).

45. Upon agreement to the terms in this Settlement Agreement, the Parties will notify the Court. Plaintiffs will move the Court to enter the Preliminary Approval Order preliminarily approving the settlement and setting a Fairness Hearing. Prior to the Fairness Hearing, and as part of the Final Approval Order, the Parties will jointly move the Court to dismiss the case with prejudice on the precondition that the settlement is finally approved, and to enter a proposed order (defined below) dismissing the case with prejudice. The proposed Final Approval Order will also provide that the Court shall retain jurisdiction to enforce the Settlement Agreement.

46. The Parties agree that this settlement requires each SCM to submit a valid, timely, and completed Claim and Release Form, under penalty of perjury, to receive payment under this Settlement Agreement. An SCM who complies with the requirements set forth in this Settlement Agreement will be paid specified sums determined by the settlement distribution process set forth in this Settlement Agreement, which payment shall be in full satisfaction of all claims of that SCM.

47. The Settlement Agreement, once finally approved and effective, resolves in full all claims, agreements, actions, cases, causes of action, compromises, controversies, costs, damages, debts, demands, disputes, expenses, judgments, liabilities, payments, promises, claims for attorney's fees, and suits of any nature whatsoever, whether or not known, against the District or its current and former agents, servants, officers, officials, and/or employees, in their individual and official capacities, by all of the SCMs, including the named Plaintiffs, their agents, heirs, and assigns, involving violations of law or constitutional rights, including, without limitation, their Second Amendment and Fifth Amendment rights, or any other federal or District law, regulation, duty, or obligation, or any other legal theory, action or cause of action, which are based upon or could be based upon or arise from the facts alleged in the Lawsuit, *i.e.*, claiming damages for an arrest and/or prosecution for violating the District's gun laws during the Class Period. When the Settlement Agreement is final, as of the Effective Date, all SCMs, including the Plaintiffs, waive all rights to any and all claims relating to arrests and/or prosecutions for violating the District's gun laws in effect during the Class Period by the District that occurred during the Class Period under any theory or cause of action whatsoever under District law and federal law. This waiver and release shall include a full release and waiver of unknown rights based on claims (including any individual claims) relating to arrests, prosecutions, and detentions or contemporaneous seizure of their firearms that occurred during the Class Period. The Final Approval Order shall contain

such a release and provide that it is binding on Class Members, even if they never received actual notice of the Lawsuit or this Settlement Agreement.

48. It is the Parties' intent that, after the Effective Date, this Settlement Agreement bars any and all named Plaintiffs and SCMs, and their privies, from bringing a subsequent suit or enforcement action in this Court or another, alleging the same or similar claims for relief as contained in the Complaint or in any amended complaints in this Lawsuit, with respect to arrests and/or prosecutions for violating the District's gun laws by the District that occurred or may have occurred during the Class Period, based upon events occurring prior to the end of the Class Period. Notwithstanding the foregoing, and for the avoidance of doubt, the preceding sentence shall not bar or limit any action to enforce the terms of this Settlement Agreement.

49. The Parties waive and assume the risk of any and all claims that exist as of the date this Settlement Agreement is signed, which that Party does not know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, with respect to either facts or law, and which, if known, would materially affect his/her/its decision to enter into this Settlement Agreement.

50. This Settlement Agreement, together with its exhibits, contains all the terms and conditions agreed upon by the Parties regarding the subject matter of the Lawsuit, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Settlement Agreement shall be deemed to exist, or to bind the Parties, or to vary the terms and conditions contained here, except as expressly provided.

51. The Parties agree that failure to comply with the provisions of this Settlement Agreement shall not be a basis for entry of contempt or sanctions against the District.

52. This Settlement Agreement is subject to and conditioned on a fairness hearing conducted by the Court (the Fairness Hearing); the Final Approval of this Settlement Agreement; and the issuance of the final order of dismissal (Final Order) by the Court, providing the specified relief as set forth below, which relief shall be pursuant to the terms and conditions of this Settlement Agreement and the Parties' performance of their continuing rights and obligations. The Final Order shall be deemed final only on the Effective Date. Such Final Order shall:

- a. Dismiss with prejudice all claims in the action as to the District, including all claims for monetary damages, declaratory relief and injunctive relief, each side to bear their own costs and fees except as otherwise provided for in this Settlement Agreement;
- b. Order that all SCMs are enjoined from asserting against the District any and all claims that any SCM has, had or may have in the future arising out of the facts alleged in the Lawsuit;
- c. Release the District from the claims that any SCM has, had or may have against the District arising out of the facts alleged in the Lawsuit;
- d. Determine that this Settlement Agreement is entered into in good faith, is reasonable, fair and adequate, and in the best interest of the Class;
- e. Reserve the Court's jurisdiction over the Parties to this Settlement Agreement. Disagreements between the Parties on any disputes or unresolved aspects of the Final Order shall be subject to mediation before the District of Columbia Circuit Mediation Program;
- f. If mediation is not successful, the matter shall be brought to the Court for resolution. In no event will any Party be liable in contempt for any alleged or demonstrated violation of the Final Order, nor will any Party be entitled to any attorney's fees for any additional proceedings (in addition to those set forth here) for any reason; and
- g. Declare the arrest of each Class Member null and void and a legal nullity substantially in the form of the attached order.

53. The Parties will take all necessary and appropriate steps to obtain preliminary and final approvals of the Settlement Agreement, and dismissal of the action with prejudice. All Parties shall bear their own fees and costs unless otherwise set forth in this Settlement Agreement. If the

Court grants final approval of this Settlement Agreement, and if there is an appeal from such decision, the District will not oppose Plaintiffs' efforts to defend the Settlement Agreement.

54. The undersigned representatives of the Parties certify that they are fully authorized to enter into and to execute the terms and conditions of this Settlement Agreement and to make such Settlement Agreement fully and legally binding upon and enforceable against every party on whose behalf they have executed this Settlement Agreement.

55. The dates by which certain actions are to be taken will be established in the Preliminary Approval Order.

VII. RESOLUTION AND PAYMENT OF CLAIMS TO CLASS MEMBERS

56. The SCM Fund shall be distributed to Settlement Class Members who submit timely, valid Claim and Release Forms. Class Counsel has developed a Distribution Plan set out in this Paragraph 56 to address all of the SCMs' claims, and the Distribution Plan shall be submitted to the Court for approval in the Motion for Preliminary Approval attached hereto as Exhibit D. The claims procedure shall include a verification process to ensure that claimants are members of the Class. The Class Administrator and Class Counsel will effectuate the distribution of awards according to the terms of the Distribution Plan approved in the Final Approval Order. Class Counsel shall use their best efforts to ensure that distribution of the SCM Fund will occur in such a way so that no residual amount of the SCM Fund will remain following final distribution, subject to the provisions in Paragraphs 39 and 40. However, if some residual happens to remain after reasonable efforts to distribute funds to Class Members who have filed claims have been exhausted, the residual amount will be distributed as specified below. Consistent with the allocation of funds set forth in Paragraphs 39 and 40, any funds from the Settlement Amount not distributed to SCMs will be paid as follows in the following order of priority: (1) any amounts invoiced by the Class Administrator for Administrative Expenses approved by the Court in the

Final Approval Order; (2) any part of the Tritura SCM Fund Donation remaining after payment of all Verified Claims will be paid to Tritura; and (3) any remaining amounts will revert to the General Fund of the District.

The payments to Settlement Class Members who submit timely, valid Claim and Release Forms shall be determined and paid according to the following Distribution Plan based on a point system:

Each SCM who is a member of the Class will receive one point for one or more arrests covered by the Class Definition and one point for one or more prosecutions covered by the Class Definition.

Each point is valued at \$1,200.00. Each SCM will receive an award equivalent to the value of the sum of their points.

However, if the total cash value of the total number of points exceeds the value of the SCM Fund, each SCM will receive the pro rata value of their points.

VIII. NOTICE AND ADMINISTRATION OF SETTLEMENT

57. The duties of the Class Administrator, including the duties specified in this Section, shall be set forth in greater detail in the Class Administration Agreement. The Class Administration Agreement must be finalized no later than fourteen (14) days after the Parties execute this Settlement Agreement. Once the Class Administration Agreement is finalized, this clause is no longer conditional.

58. The Class Administrator shall be responsible for providing Class Notice and Claim and Release Forms to all Class Members. This shall include mailing a Class Notice and a Claim and Release Form by regular mail to all Class Members' last known addresses. The list of potential Class Members to-be-noticed shall be provided to the Class Administrator by Plaintiffs based on the Settlement Agreement Database. The Class Administrator shall also use normal and customary

means to search for a Class Member's last known address, including the use of a postal database, when mail is returned, or whenever else it is appropriate to reasonably notify such Class Member. Also, in the event a Notice to a Class Member's last known address is returned, the Class Administrator will determine if that Class Member is incarcerated in District, state, or federal prison. If a Class Member is incarcerated in a District, state, or federal prison, a Notice will be sent to the Class Member at the facility in which he/she is incarcerated.

59. The Class Notice shall describe the Lawsuit, provide the class definitions, provide a Claim and Release Form, provide instructions on how to verify or submit a claim on the Class Website, and other usual and customary information. The Claim and Release Form will be materially similar to the proposed Claim and Release Form attached to this Settlement Agreement as Exhibit A. The Class Notice will be materially similar to the proposed Class Notice attached to this Settlement Agreement as Exhibit B. The Claims Administrator is authorized to make non-substantive formatting changes to the Notice and Claim Form that do not substantially change the content therein. Each Class Notice mailed to a Class Member will contain a detachable Claim and Release Form for that Class Member stating the amount such Class Member is entitled to receive under this Settlement Agreement.

60. The Class Administrator shall complete the mailing of Class Notices within two (2) consecutive business days. The second day of such mailing is the first day of the period for calculating the Bar Date and the Claims Filing Date as provided in Paragraphs 4 and 8, respectively.

61. The Class Administrator shall be responsible for publishing a summary Class Notice. The Class Administrator shall post the relevant settlement documents (specifically, the Settlement Agreement, the Preliminary Approval Order, the Claim and Release Form, the Class Notice, the Motion for Attorney's Fees, the Final Approval Order and, if separate, the Final Order

Regarding Attorney's Fees and Costs) (the Settlement Documents) on the internet on a website established for this case (Class Website). Information about how to access the Class Website will be contained in the Class Notice. The Settlement Documents shall remain on the Class Website for at least one year from the date notice and claims are sent out. The Class Website shall be periodically updated to address the timing of such mailings.

62. The Class Administrator shall pay SCMs after verifying the SCMs' identity, eligibility for payment, and the amount due to the SCMs.

63. The Class Administrator shall enable verification of identity on the Class Website.

64. The Class Administrator shall establish a function on the Class Website enabling SCMs to: (a) verify their identity on the Class Website; (b) view their Claim and Release Forms; (c) execute the release; (d) submit their Claims; and (e) choose a payment method.

65. The Class Administrator shall allow SCMs to choose between the following two payment methods after verifying their identities, submitting their Claims and executing their releases: (1) check or (2) electronic payments (e-payments), which are sent online using an e-payment provider such as Venmo or PayPal which do not require the recipient to have a bank account.

66. The Administrator shall periodically provide to Class Counsel copies of Claim and Release Forms received or reports thereof in summary form.

67. A Claim and Release Form shall be deemed timely submitted when postmarked on or before the Claims Filing Date. The Class Administrator shall enable claims filings, address corrections, and claims verification on the Class Website.

68. If a Class Member timely submits a Claim and Release Form that is deficient in some respect, the Class Administrator shall provide written notice to the Class Member by first

class mail or email provided by the SCM of such deficiency, which notice shall inform the Class Member of what he or she must do to correct the deficiency and resubmit an acceptable Claim and Release Form. The Class Member shall have thirty (30) days to resubmit a proper Claim and Release Form. Failure to cure the deficiency within the 30-day time limit will bar any further rights for consideration of eligibility. Each Class Member's failure to fully and completely execute the individual Claim and Release Form shall constitute a deficiency under this Paragraph, and all payments to Class Members are expressly conditioned on the full, timely, and complete execution of each Class Member's Claim and Release Form.

69. Untimely filed Claim and Release Forms shall be rejected by the Administrator and no payment shall be made.

70. The Administrator shall make payments via (1) check or (2) e-payments to SCMs who have filed timely and verified claims in accordance with this Settlement Agreement. If a check sent to an SCM is not cashed within three (3) months of its mailing, the Administrator shall hold the funds for five (5) additional months, during which time it shall make reasonable efforts to contact the Class Member to whom the uncashed check was written to make arrangements for its cashing or reissuance. Any such check not cashed within ten (10) months of its mailing shall revert to the District. If an electronic payment is not activated within three (3) months after the date it is electronically sent, the Administrator shall hold the funds for five (5) additional months, during which time it shall make reasonable efforts to contact the Class Member to whom the inactivated electronic payment was sent to make arrangements for its reactivation. Any such electronic payment not activated within ten (10) months of after being electronically sent shall revert to the District.

71. The Administrator shall not make payment to any SCM until all claims have been submitted to the Administrator pursuant to the terms of this Settlement Agreement, all verified claims and payments have been calculated, and all disputes relating to claims have been resolved. However, if the amount of the claims is such that all claims—whether they are valid or not—amount to less than the SCM Fund, then payments for claims that are confirmed valid shall be made as soon as possible regardless of the pendency or possibility of disputes relating to other claims.

IX. CLASS COUNSEL FEES

72. Class Counsel shall submit a separate motion for payment of Attorney’s Fees and Litigation Expenses before the motion for final approval. The District will not challenge Plaintiffs’ assertion that the Attorney’s Fees and Litigation Expenses are reasonable, adequate, and fair.

73. The payment of Attorney’s Fees and Litigation Expenses represent a full and final settlement of all claims for past, present and future attorney’s fees and all past, present and future ordinary and extraordinary costs related to the Lawsuit.

74. Class Counsel agrees and acknowledges that they are personally and solely responsible for any further taxes owed, if any, on the payments prescribed in the Settlement Agreement for Attorney’s Fees and Litigation Expenses by any taxing authority, whether federal, state or local. Plaintiffs and Class Counsel acknowledge and understand that the District will report the payments set forth in this Agreement to the U.S. Internal Revenue Service (IRS). Reporting of Class Member payments to the IRS shall be the responsibility of the Class Administrator.

X. INTEGRATION

75. This Settlement Agreement supersedes all prior communications regarding the matters contained here between the signatories hereto or their representatives. This Settlement Agreement is an integrated agreement and contains the entire agreement regarding the matters here

between the signatories hereto and no representations, warranties, or promises have been made or relied on by any party hereto other than as set forth here.

76. This Agreement may not be amended or modified in any respect other than by an agreement in writing signed by the Parties and only if such amendment is agreed to prior to notice to the Class Members and Final Approval by the Court. This Agreement creates no obligations or duties on the part of the Parties other than as specifically stated in this Settlement Agreement. The Parties stipulate, agree, and acknowledge that nothing in this Settlement Agreement may be used by any person or entity for any purpose in any legal proceeding other than as stated specifically here.

77. This Settlement Agreement does not and is not intended to create any rights that can be relied upon or enforced by individuals who are not Parties to this Lawsuit or SCMs. The Parties stipulate, agree, and acknowledge that this Settlement Agreement is not intended to create any third-party beneficiaries.

78. None of the obligations and duties of any party set forth in this Settlement Agreement may be assigned or delegated to any other person without the express, prior written consent of all other Parties. This Settlement Agreement is not severable except with the prior written consent of all Parties.

79. All exhibits attached are incorporated by reference and made part of this Settlement Agreement. This Settlement Agreement was drafted by counsel for the Parties, and there shall be no presumption or construction against any party. This Settlement Agreement shall be governed by and construed and enforced in accordance with the laws of the District of Columbia.

80. Provided that all Parties execute a copy of this Settlement Agreement, the Settlement Agreement may be executed in counterparts, each of which shall be deemed an original

and all of which together shall constitute one and the same instrument. Executed copies of this Settlement Agreement may be delivered amongst the Parties by email or other comparable means. This Settlement Agreement shall be deemed fully executed and entered into on the date of execution by the last signatory.

XI. PRELIMINARY APPROVAL, FAIRNESS HEARING, AND FINAL ORDER OF APPROVAL

81. Before this Settlement Agreement becomes final and binding on the Parties, the Court shall hold a Fairness Hearing to determine whether to enter a Final Order of Approval. A proposed Final Order of Approval shall be submitted to the Court. In the event that a Final Order of Approval consistent with the terms set forth in the Settlement Agreement is not entered, either party has the right to withdraw from the settlement.

XII. NO ADMISSION OR WAIVER

82. The Parties acknowledge and agree that all undertakings and agreements contained in this Settlement Agreement have been agreed to solely for the purpose of finally compromising and resolving all questions, disputes, and issues between them relating to the Litigation. This Settlement Agreement and any proceedings taken under the agreement shall not in any event be construed as, interpreted as, or deemed to be evidence of an admission or concession by any party for any purpose, or deemed to constitute a waiver of any legal position or any defenses or other rights which any of the Parties might otherwise assert in any context. This Settlement Agreement, its provisions, and any other documents related to the agreement—including any negotiations, statements or testimony taken in connection with the agreement—may not be offered or received as evidence in, or used for any other purpose, or in any suit, action or legal proceeding which the Parties may now have or in the future have with any other person, as an admission or concession of liability or wrongdoing, or as any admission or concession on the part of any party, except in

connection with any action or legal proceeding to enforce this Settlement Agreement. The Parties have reached the terms and conditions contained in this Settlement Agreement through negotiations, and to avoid the costs and delays of further disputes, litigation, and negotiations among them. This Settlement Agreement has been entered into without any concession of liability or non-liability and has no precedential or evidentiary value.

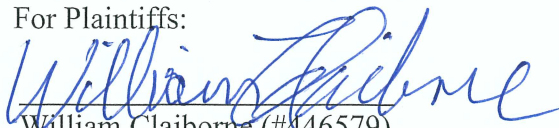
XIII. DUTY TO DEFEND AGREEMENT

83. The Parties and their counsel agree to defend this Agreement. Counsel for Plaintiffs may not undertake the representation of objectors or persons who opt out of the settlement in any matter substantially related to the Released Claims if that representation conflicts with counsel for Plaintiffs' obligations as Class Counsel; however, this prohibition is null and void to the extent it conflicts with the D.C. Rules of Professional Conduct including, but not limited to, Rule 5.6(b). The Parties shall take no positions contrary to, or inconsistent with, the terms of the Settlement Agreement.

XIV. LIST OF EXHIBITS REFERENCED IN SETTLEMENT AGREEMENT

Exhibit A	Claim and Release Forms
Exhibit B	Class Notice
Exhibit C	Proposed Preliminary Approval Order
Exhibit D	Motion for Preliminary Approval
Exhibit E	Memorandum Supporting Plaintiffs' Calculation of Attorney's Fees
Exhibit F	Proposed Order Declaring Class Members' Arrests a Nullity

For Plaintiffs:



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Dated:

8/25/2023



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Dated: 8/24/23

For Defendant:

BRIAN L. SCHWALB
Attorney General for the District of Columbia

STEPHANIE E. LITOS
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Dated: August 25, 2023

Class and Settlement Notice
NOTICE OF CLASS ACTION, PROPOSED CLASS SETTLEMENT AND HEARING

RE: Smith, et al. v. Government of the District of Columbia,
United States District Court for the District of Columbia,
Case No. 15-737 (RCL).

This Class and Settlement Notice is available in Spanish. Call toll-free ----- or visit the following website: xxxxxx.

If, between May 15, 2012 until October 10, 2014, the District of Columbia, through its Metropolitan Police Department (“MPD”): (i) arrested and/or prosecuted you, or your prosecution started before May 15, 2012 and continued during and after that period; (ii) in the District of Columbia; (iii) for a violation of any of the District’s gun control laws; (iv) outside your home or place of business; AND you:

- 1) Did NOT have a felony conviction before your arrest or prosecution;
- 2) Were NOT convicted of a domestic violence misdemeanor within the five-year period before your arrest or prosecution;
- 3) Were NOT subject to a judicial order compelling you to relinquish any firearms in your possession or barring you from possessing any firearms at the time of your arrest or prosecution; and
- 4) Were NOT convicted of any felony or violent misdemeanor charge arising out the arrest;

You may be entitled to receive MONEY. To receive any money in this pending Settlement, you must submit a Claim and Release Form either by U.S. mail or on the website established for the class.

There is currently pending a proposed class action lawsuit involving such issues in the United States District Court for the District of Columbia. There is a proposed Settlement. If the proposed Settlement receives final court approval, CLASS MEMBERS are eligible to receive money.

Your Claim Form must be submitted online or postmarked no later than [DATE].

Commented [WC1]: Choose one - saves confusion. Choosing postmarked saves claimant from delays in the delivery of the mail

If you wish to “opt out,” or be excluded from the Settlement, your opt-out letter must be postmarked or received by the Administrator by [DATE].

If you wish to claim money, submit a claim form online or fill out and mail the enclosed claim form today. DO NOT WAIT. If you do not submit a claim in time, you will not receive any money, but will still be bound by the Settlement.

Commented [WC2]: Per JND - “The paragraph about multiple claims forms is unnecessary. Each person should only be receiving one”

You may receive compensation for only one such arrest and one such prosecution.

NOTICE TO CLASS MEMBERS OF PROPOSED SETTLEMENT AGREEMENT

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. A SETTLEMENT HAS BEEN PROPOSED IN THE SMITH CASE THAT MAY AFFECT THE RIGHTS OF CERTAIN PERSONS WHO WERE ARRESTED OR PROSECUTED IN THE DISTRICT OF COLUMBIA FOR A VIOLATION OF ANY OF THE DISTRICT'S GUN CONTROL LAWS OUTSIDE THEIR HOME OR PLACE OF BUSINESS.

Why Did You Get This Notice?

1. You should read this notice because you may be entitled to claim money from a class action settlement. The purpose of this notice is to inform you about a proposed settlement in the Smith lawsuit. The settlement may affect the rights of certain people who were arrested or prosecuted in the District of Columbia for a violation of any of the District's gun control laws outside their home or place of business during the class period. The settlement is not final. In order for the settlement to become final, the judge in this case, the Honorable Royce C. Lamberth, will hear from class members who wish to be heard and will then decide if the settlement is fair, reasonable, and adequate. If this notice applies to you, you will have an opportunity to file a claim, and indicate in writing if you object to the settlement, before the judge decides whether to approve it. To receive funds from this lawsuit, you must mail the accompanying Claim and Release form or fill out an online Claim and Release Form within the time explained in this Notice.

2. The rest of this notice explains the Smith lawsuit, how to determine whether this lawsuit applies to you, the key terms of the proposed settlement, and how you can file the appropriate papers regarding your participation in the settlement.

Does This Notice Apply To You?

3. This notice applies to you if, between May 15, 2012 until October 10, 2014, the District of Columbia, through its Metropolitan Police Department ("MPD"): (i) arrested and/or prosecuted you, or your prosecution started before May 15, 2012 and continued during and after that period; (ii) in the District of Columbia; (iii) for a violation of any of the District's gun control laws; (iv) outside your home or place of business; AND you:

- 1) Did NOT have a felony before your arrest or prosecution;
- 2) Were NOT convicted of a domestic violence misdemeanor within the five-year period before your arrest or prosecution;
- 3) Were NOT subject to a judicial order compelling you to relinquish any firearms in your possession or barring you from possessing any firearms at the time of your arrest or prosecution; and
- 4) Were NOT convicted of any felony or violent misdemeanor charge arising out the arrest.

What Is This Lawsuit About?

4. The Smith lawsuit was brought in 2015 by a person who was arrested in the District by the MPD for violating the District's gun control laws by carrying a pistol without a license outside of her home or place of business, who believed that the District of Columbia's gun control laws were unconstitutional because they did not allow a person to carry a gun outside the home or place of business for self-defense. She then amended her complaint to add other Named Plaintiffs. The people who represent the classes, called the "class representatives," are Maggie Smith, Gerard Cassagnol, Frederick Rouse, Delontay Davis, Kimberly Buffaloe, and Carl Atkinson. They filed the lawsuit on their own behalf and on behalf of all other persons like them ("plaintiffs").

5. The plaintiffs sued the District of Columbia, whose agency, the Metropolitan Police Department, made the arrests. The District is the "Defendant" here, the party being sued.

6. The plaintiffs and the defendant have written down their agreement in a document called a "Settlement Agreement." On [DATE] the judge gave preliminary approval to the agreement, but the settlement is NOT FINAL. The settlement will be final only after the judge approves it after holding a public hearing called a "fairness hearing." Before the judge decides to approve the settlement, you can tell the judge if you do not like any part of it by filing in writing what is called an "objection," and you can ask the judge to let you speak at the fairness hearing. It is solely up to the judge to decide who will speak at the fairness hearing.

What Are The Key Terms Of The Settlement Agreement?

7. The Settlement Agreement provides for monetary compensation for each class member who was arrested and/or prosecuted for violating the District's gun control laws during the class period *provided* the person does not have any disqualifying convictions or court orders, as described in Paragraph 3. In exchange, the settlement class members are releasing all claims related to such arrests or prosecutions during the Class Period.

8. Without admitting any wrongdoing and to avoid litigating these claims, the Defendant has agreed to pay Five Million and One Hundred Thousand Dollars and Zero Cents (\$5,100,000.00) ("the Settlement Amount"), which is divided as follows:

- a. \$2,361,285.17 to be paid to the Settlement Class members ("SCM Fund");
- b. \$300,000.00 for payment to the class representatives to pay their claims and for their special assistance in the case;
- c. \$438,714.83 for litigation expenses for costs incurred by Plaintiffs' counsel, of which \$142,904.94 will be donated to increase the SCM Fund so that the adjusted SCM Fund available for distribution to SCMs will be \$2,504,190.11;
- d. \$1,900,000 for Plaintiffs' counsel for attorney's fees;
- e. \$100,000 for sending notice to class members and the other costs of administering the class settlement such as distributing payments.

- f. In addition, the District will not oppose Plaintiffs' motion for an Order declaring the arrest of each Class Member null and void and a legal nullity.

How Much Money Will I Receive?

9. The SCM Fund will be distributed to Settlement Class Members who submit timely, valid Claim and Release Forms. The payments to Settlement Class Members who submit timely, valid Claim and Release Forms shall be determined and paid according to the following formula:

- a. Each SCM who is a member of the Class will receive one point for one or more arrests covered by the Class Definition and one point for one or more prosecutions covered by the Class Definition.
- b. Each SCM may recover for only one arrest and only one prosecution.
- c. Each point is valued at \$1,200.00. Each SCM will receive an award equivalent to the value of the sum of their points.
- d. However, if the total cash value of the total number of points exceeds the value of the SCM Fund, each SCM will receive the pro rata value of their points.

10. Whether a claim is valid or not will depend on authenticating your identity according to a review of the relevant records of the District of Columbia. The proper and complete execution of your Claim and Release Form is very important to that process because it will assist finding you in the D.C. records. If you cannot be located in the relevant records, your claim cannot be verified, and you therefore will not be paid.

11. You may choose among the following two payment methods: (1) a check sent by mail; (2) an electronic payment ("e-payment") sent online using an e-payment provider, either Venmo or PayPal. Settlement checks will be void if not cashed within ten months and electronic payments not activated within ten months will be forfeited. You must have a bank account to receive an electronic payment and you will need to provide your bank account number and routing number.

Commented [WC3]: We choose Venmo & PayPal because you do not need a bank account. Also, PayPal gives the recipient a "debit card" if they do not have a bank account. We tried using ATM/ debit cards in Hoyte and it was expensive and a nightmare to administer

How Much Will The Lawyers Be Paid?

12. The lawyers representing the plaintiffs will ask the Court for an attorney's fee of about 37% of the total available class fund of \$5,100,000 by motion which Class Counsel will file within 30 days of the last day on which notice is sent. This amount totals \$1,900,000.

Case litigation expenses are expected to total \$438,714.83 but the actual number may be slightly higher. As explained above, the data analysis company will donate \$142,904.94 of the award for litigation expenses for distribution to class members, so that Litigation Expenses paid out of the Settlement Amount will be reduced to \$295,809.89.

You will not personally pay any attorney's fees or case litigation expenses.

Why Is This A Class Action?

13. In a class action, one or more persons, called the Class Representative(s), bring and maintain a lawsuit on behalf of a group of people who have similar claims – the Class Members. A court then resolves the claims for all Class Members, except for those who exclude themselves from the class.

Are There Lawyers Representing You?

14. The Court has approved the plaintiffs’ lawyers to collectively represent you (called “Class Counsel”). You will not be asked to pay your own personal money for the services of these attorneys and their associates and staff in litigating this case and negotiating this Settlement. Instead, the lawyers have sought payment from the defendant, subject to final approval of the court, as is described further below. Only Class Counsel may act on behalf of the class. However, that does not prevent you from hiring your own lawyer to advise you personally about your rights, options or obligations as a Class Member in this lawsuit. If you want to be represented by your own lawyer, you may hire one at your own expense.

What Do I Need To Do To Collect Money?

15. To get money from the Settlement, you must (1) complete the enclosed Claim and Release Form, sign it, and mail it to the Claims Administrator on or before [DATE]; or (2) go to the class website and submit a Claim and Release form online on or before [DATE]. By accepting the terms of this settlement, you will be waiving your right to assert a claim against the District of Columbia as it applies to seizures of vehicles or currency during the Class Period. Therefore, if you do not want to waive these claims, you should opt-out of this settlement as described in paragraph 22 of this Notice as set forth below.

16. The name and address of the Claims Administrator is:

Smith et al. v. District of Columbia
c/o JND Class Action Administration
[Address information to be added by JND]

17. The Class Administrator maintains a website located at [xxxxxx]. You can go to it and obtain copies of important case documents, such as the Notice in Spanish and English, submit a Claim and Release Form, or review commonly asked question on the FAQ page.. You can also obtain other information about the Smith case on the website.

What Happens If I Do Nothing?

18. If you do nothing, you will not receive any money. You will still be deemed part of the Class Action, and you will be releasing all claims you may have related to the allegations in the case. Thus, it is very important that you act promptly to complete and submit your claim form on time if you wish to receive a payment.

Commented [WC4]: Per JND - “Paragraph 17 is JND’s main postal address, not a case specific one. We will have a case specific address to provide you with once our estimate is complete, and you have provided your approval and have executed it. Then we can request this post office box information for you and provide you that information shortly thereafter.”

Commented [WC5]: Per JND – “we want to avoid providing claims forms available for download online. As discussed before, this reduces the amount of non-valid claims, as anyone who accesses the website can access the forms and submit a claim.”

Commented [WC6]: We discussed this in detail with Helen Rave in the Alexander case. Allowing anyone to get a claim from online encourages strangers to the class who files claims in any class they find online. Then, it costs a lot of time and money to sort through & reject the fake claims

If I Do Not Like The Settlement – Or Some Part Of It – How Do I Tell The Court?

19. Any Settlement Class Member may object to the Settlement, or to any settlement term. Settlement Class Members must object in writing. You must file any objection by [DATE]. Note that the date to file an Objection is different from and earlier than, the date to submit a claim. If you object to any part of the Settlement Agreement and you want to tell the Judge, you must do the following things:

- You must write a letter to the Judge telling him what you do not like about the Settlement Agreement. Include your name, address, phone number, and signature in the letter.
- On the first page of your letter write in large or underlined letters: “Civil Action No. 15-737 (RCL): Objections to Settlement Agreement in Smith v. District of Columbia.”
- Mail your letter to the following address:

The Honorable Royce C. Lamberth
U.S. District Court for the District of Columbia
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

- You must also mail copies of your letter to the lawyers for the plaintiffs and defendant at the following addresses:

Smith Class Counsel William Claiborne and Joseph Scrofano
Attention: Smith Settlement
717 D Street, N.W., Ste 300
Washington, D.C. 20004
1-800-xxx-xxxx

Or

Attention: Smith Settlement
SCROFANO LAW PC
600 F ST NW
SUITE 300
Washington, DC 20004
Phone: 202/870-0889
jas@scrofanolaw.com

AND

Re: Smith Class Action

Brendan Heath, Assistant Attorney General
Office of the Attorney General for the District of Columbia
Civil Litigation Division
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001

- If you need help writing your objections, you may ask someone to object on your behalf. The representative must state in the objection that he or she is your representative and explain the nature of the representation and the name of the class member.
20. You may object to all or any part of the settlement.

21. DO NOT CALL THE COURT. THE COURT WILL NOT ACCEPT PHONE CALLS ABOUT THIS. YOU MUST SUBMIT YOUR OBJECTIONS IN WRITING.

What Do I Need To Do If I Want To Request Exclusion or “Opt Out” From the Settlement?

22. You may request to be excluded, or “opt out,” from the Settlement. Class Members who request to be excluded from the Settlement will NOT receive any money, nor will they have released their claims. They will then be entitled to pursue their claims individually. To request to be excluded from the Settlement, you must prepare and submit a written request with your name and address. The request must state: “I do not want to be part of the plaintiff settlement class in the Smith Class Action Case.” The request must be signed by you and mailed to the Claims Administrator postmarked on or before [DATE]. Note that the date to file an Opt Out is different from, and earlier than, the date to submit a claim. The request for exclusion must be mailed to the following address:

Claims Administrator, Smith, et al. v. District of Columbia
c/o JND Class Action Administration
1100 2nd Ave., Suite 300
Seattle, WA 98101

What Is The Release Of Claims?

23. If you are a class member and have not excluded yourself from the class as described above, you are waiving all your rights to all claims during the class period related to seizures of vehicle or currency for civil forfeiture, including even those you are not aware of at present or do not suspect, in exchange for a monetary payment, as outlined in paragraph 15. By participating, you will not be giving up any other claim(s) that you may have against the District of Columbia that are not covered by this Settlement.

Background of Settlement

24. Plaintiffs’ lawyers believe that this Agreement is fair, reasonable, adequate, and is in the best interest of the class because it provides compensation for past injuries, while

acknowledging that the District has substantially eliminated the problems the lawsuit was intended to address. Although the District denies that it has committed any wrongdoing, it believes that further litigation would be protracted, expensive, and contrary to its best interests. Thus, the Parties entered into settlement negotiations which resulted in the settlement. The Honorable Royce C. Lamberth, United States Senior District Judge, has determined on a preliminary basis that the settlement is fair, reasonable, and adequate and in the best interests of the Class.

25. The judge will retain jurisdiction over the case to decide any disputes about compliance with the Settlement Agreement.

26. You may obtain a copy of the entire Settlement Agreement at [Settlement Administrator's website].

27. The lawyers for the plaintiffs are William Claiborne and Joseph Scrofano. Class members do not pay any fees to these lawyers. The fees are subject to approval by the Court. The contact information for Plaintiffs' counsel is:

Smith Class Counsel William Claiborne
Attention: Smith Settlement
717 D Street, N.W., Ste 300
Washington, D.C. 20004

When And Where Will The Judge Decide Whether To Approve The Settlement Agreement?

28. A final fairness hearing is set for **DATE** before the Honorable Royce C. Lamberth of the U.S. District Court for the District of Columbia, at the E. Barrett Prettyman United States Courthouse. The courthouse is located at 333 Constitution Avenue, NW, Washington, DC 20001. The hearing will be held in Courtroom [xx], **circumstances permitting. This hearing and any other hearing in the case may be held virtually, or on a different date, and interested parties should check the Court's website for details of the hearing.**

29. At the final fairness hearing, the judge will consider whether the settlement is fair, reasonable, and adequate. The judge will consider any objections that were made according to the procedures described above. Plaintiffs' and defendant's lawyers will be available to answer any questions that the judge may have.

30. You may speak at the hearing only if you sent your objections to the judge in writing. The judge alone will determine if objectors will speak at the final fairness hearing. If he does, he may decide to allow some and not others to do so.

31. If the judge decides to approve the settlement, his decision is final and the Lawsuit will end. The class members will no longer be able to petition the courts for the same things the class representatives sued about in the Smith lawsuit.

32. If the judge does not approve the settlement, the Lawsuit will continue.

When Will I Receive Money From the Settlement?

33. No money will be paid until after the Settlement is approved and all possibilities of appeal are completed. After that, it will likely take two to three months, and quite possibly more, to process all the claims, calculate the amount due to each Class Member, and send checks or electronic payments to the Class Members. If you file a claim and do not receive money within eight months after [DATE], which is the last day to mail or file a claim, check the website for this case about when mailings are expected, or contact the Class Administrator by either calling [1-xxxxxx] or writing to the Class Administrator, whose contact information is contained above. Remember that some people who file claims will not be receiving money at all because they do not qualify as class members, and those individuals will be notified that they do not qualify as class members.

Where Can I Learn More?

34. For more details, go to the website titled [www.xxxx.com]. The website has links to the complete settlement documents in this case, as well as the motion for attorney's fees. If you still have questions, you may call [1-800-xxx-xxxx].

All papers filed in this case are also available on PACER, the Public Access to Court Electronic Records system, which is located at: <https://pacer.uscourts.gov/>

CLAIM AND RELEASE FORM

Settlement Class

Smith, et al. v. Government of the District of Columbia, Case No. 15-737 (RCL)

You may be entitled to money as a member of the Settlement Class in the above case.

Each Class Member of the Settlement Class who was arrested and/or prosecuted by the District of Columbia for a violation of the District's gun control laws during the class period, and who (1) did NOT have a felony conviction before their arrest or prosecution, (2) did NOT have a domestic violence misdemeanor within the five-year period before their arrest or prosecution, (3) were NOT subject to a judicial order to relinquish any firearms or barring any firearm possession, and (4) were NOT convicted of any felony or violent misdemeanor charge arising out of their arrest, may submit a claim for compensation. The exact amount you are entitled to receive depends on several factors including whether you were arrested *and* prosecuted, and the number and amount of claims filed by members of the Settlement Class.

The payments to Settlement Class Members who submit timely, valid Claim and Release Forms shall be determined and paid according to the following Distribution Plan based on a point system:

Each SCM who is a member of the Class will receive one point for one or more arrests covered by the Class Definition and one point for one or more prosecutions covered by the Class Definition.

Each point is valued at \$1,200.00. Each SCM will receive an award equivalent to the value of the sum of their points.

However, if the total cash value of the total number of points exceeds the value of the SCM Fund, each SCM will receive the pro rata value of their points.

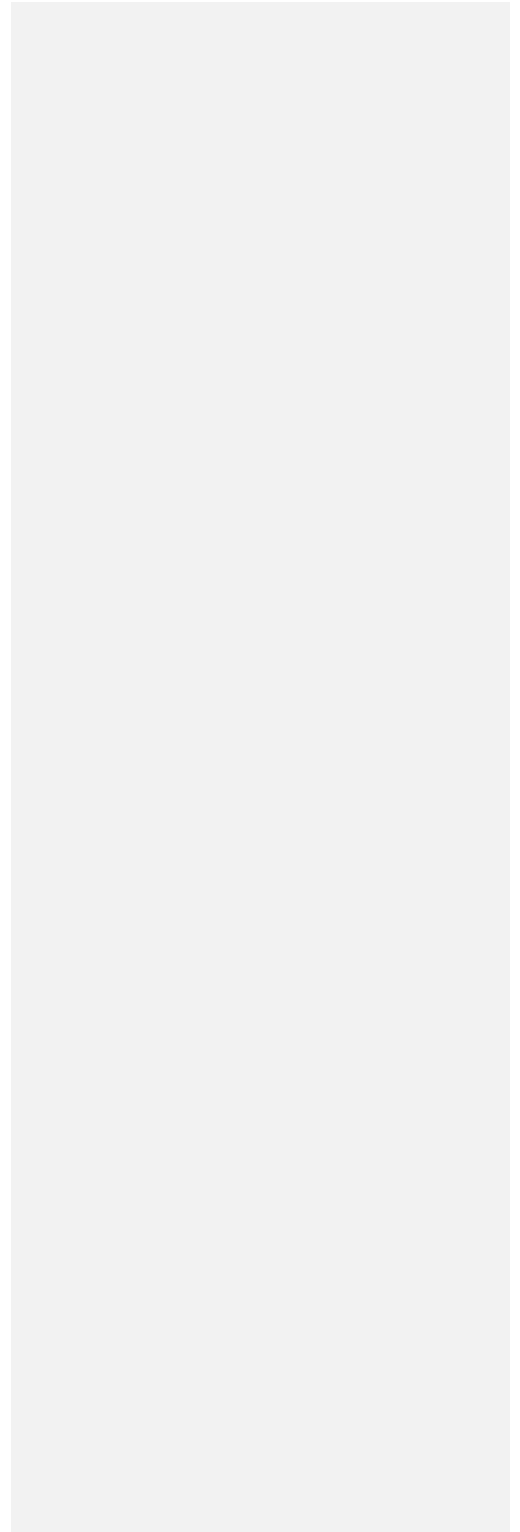
Each SCM may recover for only one arrest and only one prosecution.

The records of the District of Columbia Metropolitan Police Department indicate that you were arrested for a violation of the District's gun control laws on _____.

The records of the District of Columbia Superior Court indicate that you were prosecuted for a violation of the District's gun control laws beginning on _____.

There is a limited Settlement Fund, totaling \$2,504,190.11, set aside to pay claims submitted by members of the Settlement Class. Each member of the Settlement Class may receive lower amounts if the amount of claims submitted by all members of the Settlement Class exceeds \$2,504,190.11. In that event, the amount that members of the Settlement Class receive will be adjusted on a pro-rated basis among valid claimants, which will result in payments to individual members of amounts lower than those set forth above.

To claim your money, fill out, sign and mail this form to the address below or submit a Claim and Release Form online at www.xxx.com.



Your Information	
<p>We will use this information to contact you and process your claim. It will not be used for any other purpose. You must promptly notify the Class Administrator if any of the information below changes. You may update your contact information by telephone at 1-877-xxx-xxxx, or using the "Update My Information" page at www.xxx.com</p>	
NAME	
Social security number (needed to process payment)	
ALTERNATIVE NAMES	
Mailing address	Street address
	Apt. No.
	City
	State
	Zip
	Make certain your address is correct. If it isn't, place your correct address below:
Corrected mailing address	Street address
	Apt. No.
	City
	State
	Zip
Phone number	
Email address	
How You Would Like to Receive Your Payment	

Commented [WC1]: Per JND "The Claim form has no space for SSN information. If SSN information is not provided to JNE on the Claim Form, we will have to mail out IRS W-9 forms and then process completed ones. It will be more cost effective to just request they provide the information."

You can elect to receive your payment either by check or electronic payment. If you choose to receive a check, it will be mailed to your address listed on this form. If you choose to receive an electronic payment, you must have a bank account, and you will have to provide your bank account number and your bank's "ABA number" or "Routing number," which you can get from your bank.

Checks will be void after ten months. Electronic payments will expire after ten months if not activated.

Which do you prefer? Select ONE of the following:

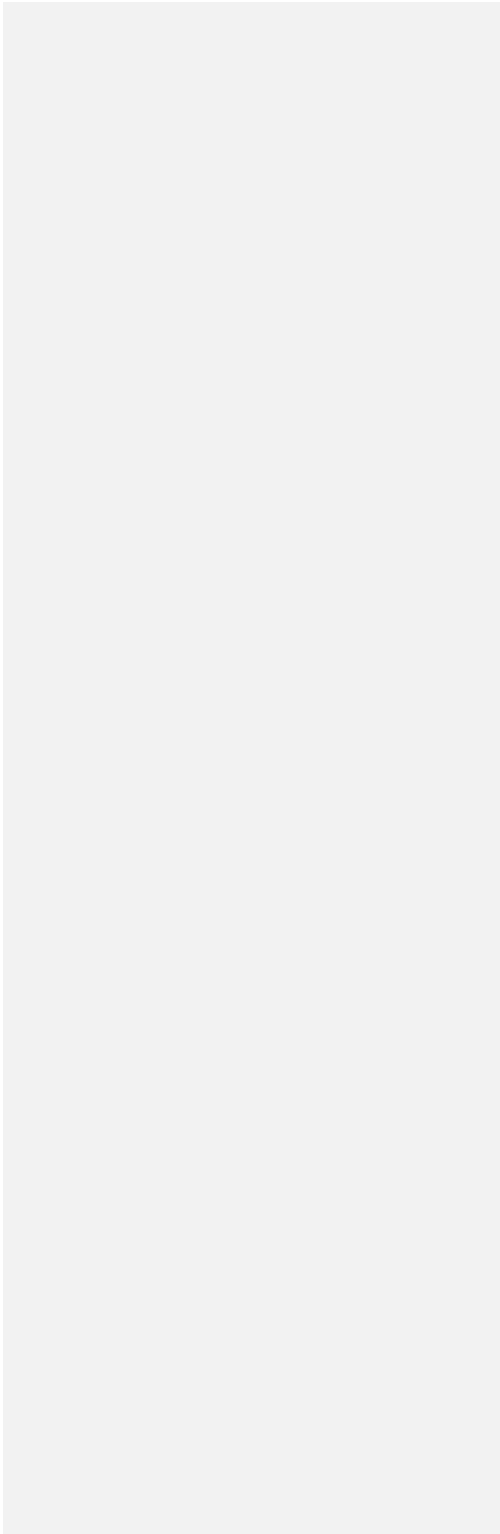
- Check
- Venmo
- Paypal

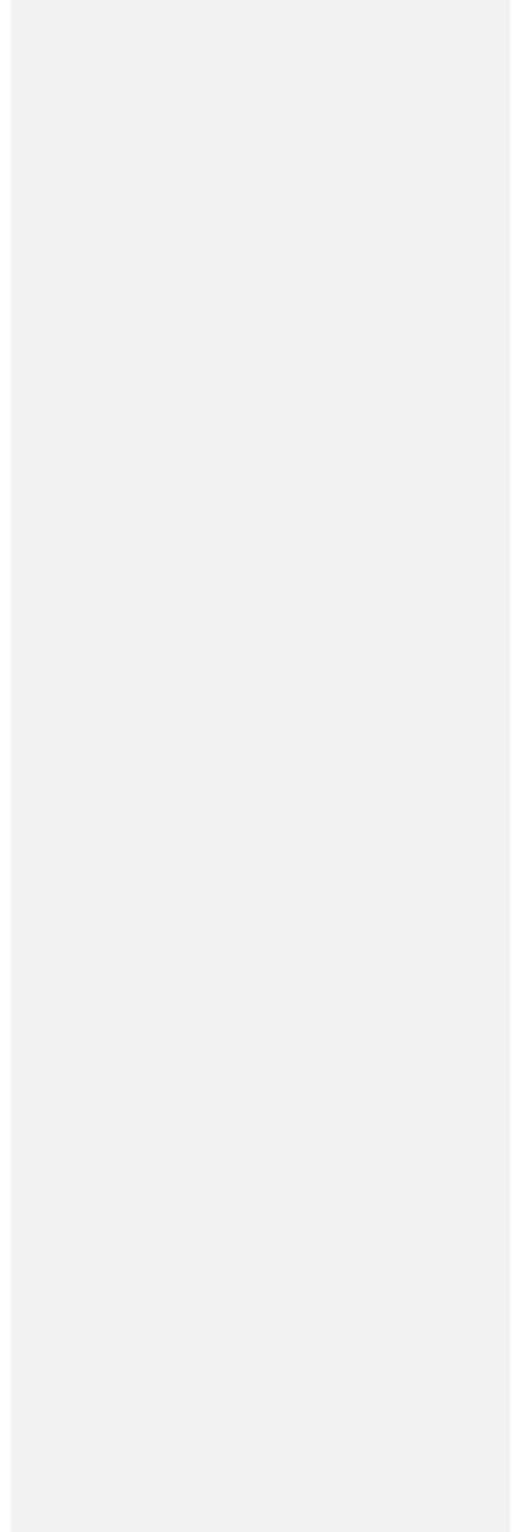
Commented [WC2]: These are the payment options. Direct deposit is expensive and person-time intensive - someone has to contact the claimant. Zelle requires a bank account. Venmo & PayPal do not require the recipient to have a bank account

Signature	
<p>I wish to make a claim as a member of the Class in <i>Smith v. Government of the District of Columbia</i>, Civil Action No. 15-737 (RCL), United States District Court for the District of Columbia, and hereby attest and submit the following information under penalty of perjury as follows:</p> <ul style="list-style-type: none"> • I was arrested or prosecuted between May 15, 2012 and October 10, 2014, or subject to a prosecution beginning before that period that continued during and after that period, by the District of Columbia through its Metropolitan Police Department, in the District of Columbia, for a violation of at least one of the District’s gun control laws, outside of my home or place of business. • I did NOT have a felony conviction prior to my arrest or prosecution. • I did NOT have a domestic violence misdemeanor conviction within the five-year period prior to my arrest or prosecution. • I was NOT subject to a judicial order requiring me to relinquish any firearms in my possession, or barring me from possessing any firearms, at the time of my arrest or prosecution. • I was NOT convicted of any felony or violent misdemeanor charge arising out of my arrest. <p>I affirm under penalty of perjury under the laws of the United States that the information I have supplied in this Claim and Release Form and any copies of documents that I am sending to support my claim are true and correct to the best of my knowledge.</p> <p>I understand that I may be asked to provide more information by the Claims Administrator to verify my claim.</p> <p>I understand that by signing and submitting this form I release all my claims according the release printed below.</p>	
Signature:	Dated:
Print Name:	

Once complete, submit online or mail this form to the below address to submit your claim for payment:

Attn: Smith Settlement Class Claims Processing
 [street number and name]
 [city & zip]





UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAGGIE SMITH, *et al.*,

Plaintiffs,

v.

GOVERNMENT OF THE
DISTRICT OF COLUMBIA,

Defendant.

Civil Action No. 15-737 (RCL)

[PROPOSED] PRELIMINARY ORDER OF APPROVAL AND SETTLEMENT

Upon consideration of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (Motion for Preliminary Approval), and the exhibits attached, including the Settlement Agreement reached between the named Plaintiffs, individually and as representatives of the class conditionally certified by this Order, and the Government of the District of Columbia (the District),

IT IS HEREBY ORDERED:

I. Preliminary Approval of Settlement

This Order (Preliminary Approval Order) incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms shall have the same meanings set forth in the Settlement Agreement.

1. The Court has jurisdiction over the subject matter of the Lawsuit, the Parties, and all members of the Classes.

2. The Settlement is preliminarily approved, subject to further consideration at the Final Approval and Fairness Hearing provided for below. The Court preliminarily finds that the Settlement terms are within the range of a fair, reasonable, and adequate settlement and in the best

interests of each Class as a whole, such that final approval of the Settlement and Request for Attorney's Fees and Costs may be appropriate, following notice to the Classes and a Fairness Hearing. Further, the Court preliminarily finds that the terms of the Settlement Agreement satisfy the requirements of Federal Rule of Civil Procedure 23(e) and due process.

3. The Court approves the notices and forms that have been filed to be used in substantially the same form for notice, claims, and opt outs.

II. Class Certification

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and in light of the proposed Settlement, the Court hereby finds that the prerequisites for a class action have been met and conditionally certifies the following class for settlement purposes (the "Settlement Class"): The Court preliminarily approves the Settlement Class Definitions as follows:

1. Each person who:

(i) in the period from May 15, 2012 (three years before the date of filing of the original complaint in this case) until October 10, 2014; (ii) was arrested or prosecuted, or whose prosecution started before the Class Period and continued during and after the Class Period; (iii) in the District of Columbia; (iv) for a violation of any of the District's gun control laws; (v) outside their home or place of business; except that the following groups of people are excluded from the class:

- 1) persons who were convicted of a felony before their arrests or prosecutions;
- 2) persons who were convicted of a domestic violence misdemeanor within the five-year period before their arrests or prosecutions;

- 3) persons who were subject to a judicial order compelling them to relinquish any firearms in their possession or barring them from possessing any firearms at the time of their arrests or prosecutions; and
- 4) persons who were convicted of at least one felony or violent misdemeanor charge arising out of the arrest.

5. The Court preliminarily finds that there is sufficient and reasonable justification for modifying the definitions of the Classes from the definitions in the Third Amended Complaint [114]. The changes make the case more administratively feasible and are consistent with well-reasoned caselaw. See, e.g., Fonder v. Sheriff of Kankakee Cty., 823 F.3d 1144, 1147 (7th Cir. 2016). Therefore, the class definitions will be revised to reflect the terms of the Settlement Agreement.

6. If final approval does not result from the parties' Settlement, the Settlement Class certification and the Settlement Class Definition will be vacated without further action by the Court, without prejudice to the parties to request and oppose revisions to the Class Definitions as they might otherwise do without this Settlement.

III. Class Representatives and Class Counsel

7. The Court appoints Maggie Smith, Gerard Cassagnol, Frederick Rouse, Delontay Davis, Kimberly Buffaloe, and Carl Atkinson as Class representatives for the Settlement Class.

8. William Claiborne and Joseph Scrofano are appointed as Class Counsel. Class Counsel are authorized to act on behalf of the Classes with respect to all acts reasonably necessary to consummate the Settlement.

IV. Deadlines for Notice and Claims Period

9. Except as may be modified by the Court, the following deadlines shall apply:

Within 21 days after entry of this Order ¹	District shall provide the Settlement Agreement Database to Class Counsel and Class Administrator
Within 30 days after entry of this Order	The District shall wire \$25,000.00 to Class Counsel William Claiborne for payment to the Class Administrator
Within 45 days after entry of this order	Initial Notice: <ul style="list-style-type: none"> • Mailing Notice and Claim and Release Forms • Sending Notice to Superior Court Trial Lawyers' Association and Superior Court Trial Lawyers Association email list • Launching of website by Class Administrator
Within 45 days after the last day of mailing Notice and Claim and Release Form	Bar Date: Opt-Outs and Objections must be filed or received by this date
Within 120 days after the last day of mailing Notice and Claim and Release Form	Claims Filing Date: Claim and Release Forms must be received by this date
Within 30 days after the last day of mailing Notice and Claim and Release Forms	Filing of Plaintiffs' Motion for Award of Attorney's Fees and Costs
At least 10 days after the Bar Date	Final Approval and Fairness Hearing

10. In the event that Class Notice is not mailed and initially published within the time specified above, the subsequent dates will be deferred for the number of additional days before such notice occurs without the need for additional court approval. However, the Court must approve any change of the date of the Final Approval Hearing.

¹ Any deadline in this schedule that falls on a non-business day shall be continued until the next business day.

11. The Court may approve the Settlement with such modifications and amend these dates as may be agreed to by the Parties, without further mailed notice to Class Members.

V. Notice

12. The Court finds that the following proposed notice procedures set forth in the Settlement, and the form of notices attached as exhibits, satisfy due process, the requirements of Federal Rule of Civil Procedure 23, and the Class Action Fairness Act.

13. The Court directs that the Class Notice be provided to the members of the Class substantially in the manner specified in the Settlement Agreement and substantially in the form as attached as Exhibit B to the Settlement Agreement, provided that the Parties, by agreement, may revise the Class Notice in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy, and may adjust the layout of the Notice for clarity and efficient mailing.

VI. Class Administrator

14. JND Legal Administration (“JND”) is approved and designated as the Class Administrator. JND shall be hired by Class Counsel from the funds paid by the District, up to \$100,000.00, with \$25,000.00 of this amount paid within 30 days of this order as set forth above in Paragraph 9 and in the Settlement in Paragraph 41.

VII. Procedures for Claims, Objections, and Opt-Outs

15. Opt-Outs must be sent to and received by the Class Administrator within the deadline set forth above.

16. Claims, Claim and Release Forms, and any supporting documents the Claimant wishes to be considered must be received by the Class Administrator within the deadline set forth above. The Court approves the claims procedures set forth in the Settlement.

17. Objections to Settlement must be filed with the Court within the deadline set forth above and served on counsel of record. The objection must be in writing, must include the case name and number, the objector's name, address, telephone number (if any, or attorney's telephone), and email (if any, or attorney's email); a brief explanation of the reason for objection; be signed by the objector or his or her attorney; and include any documents the objector wishes to be considered in support of the objection. If the objector also wishes to testify and/or present evidence at the fairness hearing, the objection must so state, and identify each witness and document to be presented, together with a summary of the testimony expected from each witness. Such documents also must be served on counsel of record. Whether to permit such testimony or the presentation of such evidence rests in the discretion of the Court. Any Opposition or Response to Objections (including to objections to award of attorney's fees and costs) must be filed no later than 5 days before the Final Fairness Hearing.

18. Upon Final Approval, Class Members who do not opt out will be bound by the Settlement and Release in this case.

VIII. Final Fairness Hearing

19. All other pretrial proceedings in this action are stayed and suspended, except such proceedings as are provided for in the Settlement or which may be necessary to implement the terms of the Settlement or this Order.

20. The Court's preliminary approval of the Settlement shall be subject to further consideration at a hearing to be held before this Court on December 4, 2023, at _____ (Fairness Hearing). The Court will determine at or following the Fairness Hearing whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court. The date and time of the Fairness Hearing shall be set forth in the Class Notice.

21. By no later than 10 days prior to the Fairness Hearing, Class Counsel and counsel for the Defendant shall file with the Court any papers in support of final approval of the settlement.

22. The Court reserves the right to adjourn the Fairness Hearing from time to time without further notice by adjournment announced in open court and to rule upon the settlement at any time after the Fairness Hearing.

23. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, without further notice to Class Members.

24. If for any reason the Settlement is not finally approved by the Court or otherwise does not become effective, this Order shall be rendered null and void and shall be vacated *nunc pro tunc*, the Parties will revert to the positions they occupied prior to the execution of the Settlement (except as provided in Paragraph 41 of the Settlement Agreement), and all proceedings in connection with the Settlement shall be without prejudice to the status quo ante rights of the Parties to the Litigation. In this event, the Parties expressly do not waive, and will not be construed to have waived, any claims, arguments, objections, and/or defenses.

IT IS SO ORDERED.

Royce C. Lamberth
United States Senior District Judge

[Signed by Judge Royce C. Lamberth, on _____ 2023.]