

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
CHARLES ROBINSON, et al., individually and on :
behalf of all others similarly situated, :

Plaintiffs, :

- against - :

METRO-NORTH COMMUTER RAILROAD :
COMPANY, :

Defendant. :

Scan note:
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docket # 15
95-85CA

94 CV 7374 (JSR)
95 CV 8494 (JSR)

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STIPULATION OF SETTLEMENT

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. NATURE OF THE CASE	1
III. DEFINITIONS	3
IV. GENERAL TERMS OF THE STIPULATION OF SETTLEMENT	6
A. Computation Of Time	6
B. Jurisdiction and Venue	6
C. Duration of Stipulation of Settlement	6
D. Non-Determination	6
E. Non-Admission	7
F. Finality of Stipulation of Settlement	8
G. Enforcement of Stipulation of Settlement	8
H. Implementation Date	8
V. COURT APPROVAL PROCESS	8
A. Preliminary Order	8
B. First Notice	9
C. Opt Out	10
D. Objections/Comments	11
E. Final Order	12
F. Second Notice	12
G. Nullification	13
VI. DEFINITION OF THE SETTLEMENT CLASS	14
VII. EFFECT OF THIS STIPULATION OF SETTLEMENT; RELEASE/BAR OF CLAIMS	14
VIII. DEADLINES	17
IX. CONFLICTS/CONFIDENTIAL INFORMATION	17
X. MONETARY RELIEF TO CLASS	18
A. Promotion	18
B. Discipline	21
C. Aggregate Cap on Damages	24
XI. ATTORNEYS' FEES AND DISBURSEMENTS	25

XII.	NON-MONETARY RELIEF	27
A.	Communication of Company's EEO Policy and Procedures	27
B.	Workforce Diversity	28
C.	Human Resources Review Committee	28
D.	Consultant	29
E.	Performance Reviews	29
F.	Training	30
G.	Job Posting	30
H.	Promotion and Hiring	31
I.	Career Planning	31
J.	Duration	32
XIII.	ENFORCEMENT	32
XIV.	CONFIDENTIALITY AND RETURN OR DESTRUCTION OF DOCUMENTS	33
XV.	PUBLICITY	33
XVI.	SEVERABILITY	34
XVII.	GOVERNING LAW/ENTIRE STIPULATION OF SETTLEMENT	34

I. INTRODUCTION

This Stipulation of Settlement is in full and final resolution of all claims or potential claims brought or that could have been brought by Named Plaintiffs against Metro-North Commuter Railroad Company ("Metro-North") on behalf of themselves and the alleged class concerning the terms and conditions of their employment. The Class Representatives on behalf of the Class and Defendant have voluntarily entered into this Stipulation of Settlement to avoid the continuation of protracted and costly litigation and to reaffirm Metro-North's commitment to providing equal employment opportunities for all.

II. NATURE OF THE CASE

A. This action was commenced in the United States District Court for the Southern District of New York by a complaint filed in October 1994. The complaint was subsequently amended and a companion suit was brought, which all has been consolidated into this action for various purposes including, by agreement of the parties, for settlement. The Class Representatives assert both pattern-or-practice disparate treatment and disparate impact claims against Metro-North pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. Specifically, they challenge what they allege to be Metro North's company-wide policy of delegating to department supervisors discretionary authority to make employment decisions related to discipline and promotion. The Class Representatives argue that this delegated authority has been exercised in a racially discriminatory manner and has a disparate impact on African- American employees. They have asserted similar claims under 42 U.S.C. § 1981 ("Section 1981"); Article 15 of the Executive Law of the State of New York; and Title 8 of the Administrative Code of the City of New York, and various other claims. The action sought, on behalf of the Class Representatives and the alleged Class, injunctive,

declaratory, back pay, compensatory, and other relief pursuant to the statutory provisions referenced above, together with reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 2000e-5(k).

B. Defendant, Metro-North, is a public benefit corporation incorporated under the laws of New York State responsible for providing commuter rail transportation between New York City and its northern suburbs. Defendant answered the Named Plaintiffs' complaints, and denied, and continues to deny, all of the violations alleged in the complaints filed in this action.

C. The Class was ultimately certified for purposes of liability pursuant to Federal Rule of Civil Procedure 23(b)(2) for the period 1985 through June 30, 2002. The Class Representatives are presently Joseph Kimbro, Donald Hines, James Jackson, Raymond Norris, Saud Hanif, Deborah Wilson, Leroy Brown, Lester Brannon, James Oliver and Eugene Walker. (Named Plaintiffs who did not have claims related to discipline in the 53 positions listed in Exhibit F hereto or related to promotion remaining after this Court's 1998 ruling on defendant's motion for summary judgment are hereby withdrawn as Class Representatives.)

D. Following service of the answer, the Named Plaintiffs and Defendant engaged in extensive discovery, including the exchange of tens of thousands of documents; interrogatories; approximately 100 depositions (some for multiple days) of Named Plaintiffs, class members, and managers and officers of Metro North; and multiple exchanges of expert witness reports and multiple depositions of expert witnesses.

E. The case is presently assigned to the Honorable Jed S. Rakoff, United States District Court, Southern District of New York, and set for trial July 15, 2002.

F. Counsel for the parties have engaged in good faith settlement negotiations for a reasonable resolution of this matter. As a result of those discussions, the Class Representatives

and Defendant have arrived at the Stipulation of Settlement set forth herein in full and final resolution of all charges, claims, and issues raised or that might have been raised in this action, or that are otherwise encompassed by the class action, subject to the approval of the Court.

G. The Class Representatives believe that this Stipulation of Settlement represents a fair and equitable resolution of their claims and will best resolve the issues on behalf of the alleged class. Metro-North believes that this Stipulation of Settlement is consistent with and reaffirms its commitment to equal employment opportunity, fair treatment for all employees, a diverse workforce, and a workplace free from discrimination, harassment, and retaliation. This Stipulation of Settlement will also enable Metro-North to avoid the burden, expense, and disruption of further protracted litigation. The Class Representatives and the Defendant have agreed that it is mutually desirable and in their respective best interests and the interests of the Class to settle this action on the basis of the terms and conditions set forth herein. Thus, this Stipulation of Settlement represents the compromise of disputed claims; it does not constitute, and is not intended to constitute, an admission by either party as to the merits, validity, or accuracy, or lack thereof, of any of the Named Plaintiffs' or Class Members' allegations or claims in this case.

III. DEFINITIONS

For purposes of this Stipulation of Settlement and all exhibits hereto, the following terms in those documents have the meanings set forth below. All terms defined in the singular have the same substantive meaning when used in the plural, and all terms defined in the plural have the same substantive meaning when used in the singular.

- (1) "African-American" is defined as "Black" in conformance with Equal Employment Opportunity Commission Standard Form 100, Employer Information

Report EEO-1. The terms “Black” and “African-American” are used interchangeably for purposes of this Stipulation of Settlement.

(2) “Metro-North,” “Defendant,” or the “Company” refers to Defendant Metro-North Commuter Railroad Company, a public benefit corporation incorporated under the laws of New York State responsible for providing commuter rail transportation between New York City and its northern suburbs.

(3) “Class,” “Class Members,” or any variation of such term means all members (including, but not limited to, Named Plaintiffs and Class Representatives) of the Settlement Class defined in Part VI of this Stipulation of Settlement. Class Representatives as referred to herein are at all times acting on behalf of the Class.

(4) “Class Counsel” refers to the Jacob D. Fuchsberg Law Firm.

(5) “Defendant’s Counsel” for purposes of this Stipulation of Settlement means Proskauer Rose LLP or such other counsel as Metro-North may hereafter designate.

(6) “District Court” or “Court” means the United States District Court for the Southern District of New York.

(7) “EEO” shall refer to equal employment opportunity, as that phrase is understood legally.

(8) “Effective Date” of this Stipulation of Settlement means the date the Court has approved, signed, and entered the Final Order approving this Stipulation of Settlement and the time for appeal has run without an appeal being filed or, if an appeal is filed, the date on which any appeal (including any requests for rehearing *en banc*,

petitions for certiorari, or appellate review) is finally resolved approving this Stipulation of Settlement.

(9) “Final Approval” of this Stipulation of Settlement means the approval of the Final Order by the Court and by the highest court to which any appeal is sought from the Final Order, and the expiration of any time for appeal.

(10) “Released Claim” means any claim, administrative charge, demand, complaint, grievance or appeal under any collective bargaining agreement, or cause of action of any kind, known or unknown, including (except as specifically provided herein) any claim resulting from continuing effects of acts that arose prior to the date the Court signs the Preliminary Order attached hereto, by any Class Member or Members (collectively, the “Releasers”) (other than those who opted out of the Class as provided in the opt out provisions of this Stipulation of Settlement) that has or could have been made against Defendant, its past, present, or future affiliates, parents, subsidiaries, and all of their trustees, officers, employees, agents, and representatives, and their successors, heirs, and assigns, and all persons acting by, through, under, or in concert with any of them or on behalf of any of them, and their respective pension, profit-sharing, savings, , whether acting as agents for Metro-North or in their individual capacities, and other employee benefit plans of whatever nature, and those plans’ respective trustees and administrators (collectively, the “Releasees”), including, but not limited to: (1) any claims for injunctive relief, including, but not limited to, reinstatement, promotions, back pay, front pay, or wage increases; and (2) any claims for damages or other monies, including, but not limited to, compensatory damages, punitive damages, special damages, liquidated damages, attorneys’ fees, or litigation expenses and costs. Without limiting the

foregoing, Released Claims shall encompass claims described in Section VII below and described in Exhibit D to the First Notice (both attached hereto as Exhibit C); however, they shall not encompass claims for accrued vested benefits under any retirement or other employee benefit plan maintained for the benefit of Company employees in accordance with the terms of such plan(s) and applicable law.

(11) “Settlement Arbitrator” or “Arbitrator” refers to Carol A. Wittenberg or, in the event she is unavailable, a mutually agreeable substitute..

IV. GENERAL TERMS OF THE STIPULATION OF SETTLEMENT

A. Computation Of Time

In computing any period of time prescribed or allowed under this Stipulation of Settlement, the period of time shall be computed in accordance with Rule 6(a) of the Federal Rules of Civil Procedure.

B. Jurisdiction and Venue

The Court has jurisdiction over the Class and Defendant, and the subject matter and venue of this action are proper.

C. Duration of Stipulation of Settlement

This Stipulation of Settlement will become effective on the Effective Date and remain in effect for two years thereafter. The Court will have jurisdiction over this Stipulation of Settlement for two years from the Effective Date.

D. Non-Determination

Nothing in or related to this Stipulation of Settlement—including any and all parts of the Stipulation of Settlement itself, and including any action taken to implement it, or any statements, discussions, communications, or any materials prepared, exchanged, issued, or used

during the course of the negotiations leading up to the Stipulation of Settlement— may be introduced, used, or admitted in any way in any judicial, arbitral, administrative, investigative, or other proceeding of any kind or nature whatsoever as evidence of the existence of any class or of discrimination, retaliation, or any violation of Title VII, Section 1981, Article 15 of the New York State Executive Law, Title 8 of the New York City Administrative Code, the common law of any jurisdiction, or any other federal, state, or local law, statute, ordinance, regulation, rule, executive order, or obligation or duty at law or in equity.

E. Non-Admission

1. Neither this Stipulation of Settlement nor any of its terms constitute any admission on the part of Metro-North of any previous or present violation of law or any liability whatsoever to Class Members. This Stipulation of Settlement does not and will not be deemed to constitute an admission by any party as to the validity or accuracy of any of the allegations, assertions, or claims made herein.

2. Defendant Metro-North has maintained throughout this litigation and continues to maintain that it is and has been in full and complete compliance with the provisions of Title VII, 42 U.S.C. Section 1981, Article 15 of the New York State Executive Law, Title 8 of the New York City Administrative Code, the common law of any jurisdiction, or any other federal, state, or local law, statute, ordinance, regulation, rule, or executive order prohibiting discrimination in employment. Metro-North has agreed to settle the claims alleged by the Named Plaintiffs and all other Class Members solely in order to avoid the expense, burdens, and distractions that would be involved in continued litigation and to put to rest all further controversy with respect to the charges, claims, and issues raised, or which might have been raised, in this action.

Named Plaintiffs/Class Representatives have maintained their claim of discrimination throughout this litigation. However, they believe this Settlement is a fair and reasonable resolution of their claims that will promote a non-discriminatory environment at the railroad, further equal employment opportunity on behalf of the Class and allow for compensation of individual claims.

F. Finality of Stipulation of Settlement

This Stipulation of Settlement is final and binding on Named Plaintiffs, Class Representatives and all other Class Members who do not opt out pursuant to Section V.C(1) below, as well as upon their successors, executors, administrators, assigns, and heirs, and on Defendant and its successors and assigns as to the allegations asserted or that could have been asserted by the Named Plaintiffs/Class Representatives and the Class that they represent and the issues raised therein.

G. Enforcement of Stipulation of Settlement

For purposes of this Stipulation of Settlement, Class Members will not be deemed third party beneficiaries hereof and will have no individual right to enforce its terms. Only Defendant and the Class Representatives may seek to enforce the terms of the Stipulation of Settlement.

H. Implementation Date

Unless otherwise set forth herein, implementation of all terms of this Stipulation of Settlement will begin no later than sixty days after the Effective Date.

V. COURT APPROVAL PROCESS

A. Preliminary Order

1. Together with this Stipulation of Settlement, the Class Representatives on behalf of the Class and Defendant are submitting to the Court a proposed order (the "Preliminary

Order”), attached hereto as Exhibit A. The Preliminary Order states that the Court has: (i) certified the Class as defined herein pursuant to Federal Rule of Civil Procedure 23(b)(2) for purposes of liability; and (ii) conditionally certified the Class as defined herein pursuant to Federal Rule of Civil Procedure 23(b)(2) for purposes of damages and pursuant to Federal Rule of Civil Procedure 23(b)(3) for both liability and damages.

2. The Preliminary Order will also enjoin Class Members from bringing any litigation that challenges or seeks review of or relief from this Stipulation of Settlement pending the outcome of the Fairness Hearing. The Preliminary Order also will set forth the date chosen by the Court to hold a fairness hearing on the terms of this Stipulation of Settlement. The Class Representatives and Defendant agree that the Preliminary Order granting class certification in this action is conditioned on the entry of the proposed Final Order and Judgment (the “Final Order”), attached hereto as Exhibit B, which incorporates by reference all of the terms of this Stipulation of Settlement.

B. First Notice

1. The Preliminary Order also provides that each Class Member will be presented with a “Notice of Conditional Class Certification, Proposed Settlement, Objection and Opt Out Rights, and Hearing on Proposed Settlement of Class Action” (the “First Notice”), attached hereto as Exhibit C.

2. The First Notice describes the action and summarizes the terms of this Stipulation of Settlement. The First Notice informs each Class Member of the monetary and non-monetary relief under the settlement and of his/her right to seek the advice of his/her counsel, seek monetary relief, opt out of the Class, object to the terms of the Settlement, and participate in a hearing (“Fairness Hearing”) to be held before the United States District Court for the Southern

District of New York, 500 Pearl Street, New York, N.Y. 10007-1312, Courtroom 14B, on a date to be determined by the Court, at which time any Class Member satisfying the conditions set forth in the First Notice may be heard concerning the terms of this Stipulation of Settlement.

3. Within thirty (30) days of entry of the Preliminary Order by the Court, Metro-North will mail to each Class Member the First Notice, by first-class mail, to the most recent address known to Defendant for each Class Member. Metro-North will also publish notice of this Settlement and the Fairness Hearing in appropriate newspapers.

4. Within ten (10) days of the date of the completion of the mailing, Defendant will serve Class Counsel with, and file with the Clerk of the Court, an affidavit attesting to the mailing of the First Notice as provided herein, together with an alphabetized list of the names and addresses of all persons to whom the First Notice was mailed and a copy of the published notice.

5. Metro-North will bear all costs associated with the printing and mailing of the First Notice.

C. Opt out

1. Class Members who elect to opt out must do so in writing postmarked no later than the date specified in the First Notice (Exhibit C), which will be at least sixty (60) days after the mailing of the First Notice (the close of the opt-out period) and at least forty-five (45) days before the Fairness Hearing. Elections to opt out must be submitted in triplicate pursuant to the procedure set forth in the First Notice and will be reviewed by the Court.

2. Within fifteen (15) days after the close of the opt out period, Metro-North's Counsel and Class Counsel will exchange, by hand, alphabetized, numbered lists of Class Members who have timely submitted opt out requests, as well as copies of the opt out requests.

Metro-North's Counsel and Designated Class Counsel shall forward to the Court for its review a copy of the opt out lists and copies of all opt out requests.

3. If this Stipulation of Settlement receives Final Approval, all persons within the Class, including the Named Plaintiffs/Class Representatives, shall be bound by its terms, except Class Members who opt out of the Class.

D. Objections/Comments

1. Class Members who do not opt out of the Class may object to or comment on the Settlement by filing written objections or comments with the Court and serving such objections or comments upon Class Counsel and Defendant's Counsel, provided that the objections or comments are filed with the Court and received by such attorneys no later than forty-five (45) days before the Fairness Hearing. The objections or comments must specify with particularity the part(s) of the Settlement objected to or commented on and the reasons for the objections or comments. If any Class Member submits written objections or comments as specified above and requests in writing to be heard at the hearing, that Class Member may appear personally or through an attorney. If the Class Member appears through an attorney, the attorney's name must be clearly stated on the document containing the written objections or comments. The notice must be filed with the Court and received by Class Counsel and Defendant's Counsel no later than forty-five (45) days before the Fairness Hearing. Except by special permission of the Court, no Class Member will be permitted to object or comment at the Fairness Hearing unless the foregoing procedure has been followed.

2. Class Representatives and Defendant shall submit briefs supporting the settlement in accordance with the Court's instructions and shall have until five (5) days before the Fairness

Hearing to respond to any timely and proper objections or comments filed pursuant to the above paragraph.

E. Final Order

The proposed Final Order (Exhibit B) provides for the following:

- a. approval of this Stipulation of Settlement; adjudging it to be fair, reasonable, and adequate; directing consummation of the terms and provisions of this Stipulation of Settlement; and requiring Defendant to take the necessary steps to effectuate the terms of this Stipulation of Settlement;
- b. voluntary dismissal with prejudice of the Class Members' claims in this Action, whether asserted individually or in a representative capacity, as to the Defendant, and without attorneys' fees or costs to any party other than as provided for in this Stipulation of Settlement;
- c. voluntary dismissal with prejudice, as provided herein, of this action against the Defendant; and
- d. survival of all prior releases and bars on claims.

F. Second Notice

1. Within twenty (20) days after the Effective Date, Metro-North will send to each Class Member who did not opt out a Notice of Class Certification and Implementation of Settlement (the "Second Notice"), in the form attached hereto as Exhibit D.
2. The Second Notice informs each Class Member that the Court approved the Stipulation of Settlement and also reiterates the release set forth herein at Part VII. The

Second Notice also includes a claim form for use by class members who are asserting promotion or discipline claims in accordance with the procedures set forth below.

3. Metro-North will mail the Second Notice by first-class mail, to each Class Member at the same address that it used for the First Notice unless, after the First Notice is mailed, Metro-North learns of a new address for any Class Member, in which case the new address will be used.

4. Within ten (10) days of the date of the completion of the mailing, Defendant will serve Class Counsel with, and file with the Clerk of the Court, an affidavit attesting to the mailing of the Second Notice as provided herein, together with an alphabetized list of the names and addresses of all persons to whom the Second Notice was mailed.

5. Metro-North will bear all costs associated with the printing and mailing of the Second Notice.

G. Nullification

1. The Class Representatives and Defendant further agree that this Stipulation of Settlement and the conditional elements of the class certification will automatically terminate if the Stipulation of Settlement is not approved by the highest Court that reviews it. If the Stipulation of Settlement is approved by the Court but is disapproved by a reviewing court, then any order granting class certification for settlement purposes, as well as the Stipulation of Settlement, will be null and void, will be vacated without further order of the Court, and will be without precedential value.

2. In the event that Final Approval of this Stipulation of Settlement is not obtained, nothing herein will be deemed to waive any of the Class Representatives' and Defendant's objections, defenses, or arguments, with respect to certification or decertification of

the Class or the prosecution or defense of this Action, and neither this Stipulation of Settlement nor the Court's preliminary or provisional final approval hereof, or any statements, discussions, communications, or any materials prepared, exchanged, issued, or used during the negotiation of the terms of this Stipulation of Settlement, will be admissible in any forum regarding the propriety of class certification or regarding any other issue or subject of this case. In that event, the case would be restored to its status immediately before this agreement was executed.

VI. DEFINITION OF THE SETTLEMENT CLASS

Pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3), the Class Representatives and Defendant hereby stipulate to the certification of the following Class for settlement purposes only:

African American/Black employees who were actively employed by Metro-North at any time during the period from January 1, 1985 to June 30, 2002.

VII. EFFECT OF THIS STIPULATION OF SETTLEMENT; RELEASE/BAR OF CLAIMS

A. This Stipulation of Settlement constitutes a full release and settlement and resolves in full all Released Claims as defined in Part III(10) of this Stipulation of Settlement. In consideration of the monetary and non-monetary relief set forth herein, Releasers irrevocably and unconditionally release and forever discharge the Releasees from any and all Released Claims (including but not limited to those under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17; the Civil Rights Acts of 1866 and 1870, 42 U.S.C. § 1981; the Americans with Disabilities Act, 42 U.S.C. §§ 12,001-12,117; the Employee Retirement and Income Security Act, 29 U.S.C §§ 1001-1461; the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act, 29 U.S.C. §§ 621-634; the Family and Medical Leave Act; New York State Executive Law §§ 296-301; New York State Executive Law and common

law; and the New York City Administrative Code), and, without limitation, any grievance or appeal under any collective bargaining agreement based on a promotion or disciplinary action covered by this Stipulation of Settlement, which Releasors ever had, now have, or hereafter may have up to and including the date that the Court signs the Preliminary Order approving the Stipulation of Settlement in Case No. 94 Civ. 7374. Nothing herein, however, shall be deemed a waiver by Class Members of claims for accrued vested benefits under the terms of any retirement or other employee benefit plan maintained for the benefit of Company employees in accordance with the terms of such plan(s) and applicable law.

B. Without limiting the foregoing, Releasors further agree that, except for a proceeding brought to enforce the terms of this Stipulation of Settlement, Releasors will not at any time commence, maintain, prosecute, participate in, or permit to be filed by any other person on his or her behalf, any action, suit or proceeding (judicial, administrative, arbitral, or other) against Metro-North or any other Releasee with respect to any promotion or disciplinary action occurring during the period January 1, 1985 through June 30, 2002.

C. Without restricting the generality of the foregoing, this Stipulation of Settlement resolves all issues between Releasors and Releasees relating to practices, acts, and omissions of Releasees that arose prior to the date the Court signs the Preliminary Order, as well as any future effects of such practices, acts, and omissions. The foregoing will not bar claims arising from new conduct that occurs after such date or the appropriate admission in another proceeding of prior actions and practices relevant to such new conduct but not for the purpose of establishing liability or damages for such prior actions or practices. Furthermore, nothing herein shall constitute a waiver of the Parties' respective rights and defenses under rules of evidence and all other rules and laws. The doctrines of *res judicata* and *collateral estoppel* will apply to

Releasers with respect to all Released Claims, which are known or unknown, actual or potential, arising on any date up to and including the date that the Court signs the Preliminary Order in this case.

D. This action against Metro-North will be voluntarily dismissed with prejudice, on the Effective Date of this Stipulation of Settlement, pursuant to the terms of this Stipulation of Settlement and of the Final Order.

VIII. DEADLINES

The Class Representatives and Defendant recognize that from time to time unforeseen events, such as exigent business circumstances, personnel issues, and negotiations with third parties may cause delays in the accomplishment of objectives, no matter how well-intentioned and diligent the Class Representatives and Defendant may be. Accordingly, with regard to the provisions of this Stipulation of Settlement that require the Class Representatives and Defendant to take certain acts within specified time periods (other than deadlines set forth in Section V and the ninety-day deadline for filing claims set forth in Section X), the Class Representatives and Defendant understand and agree that Court approval will not be required for reasonable extensions of deadlines. In the event that any party determines in good faith that an action required by this Stipulation of Settlement cannot be taken within the specified time period, counsel for that party shall promptly notify counsel for the other party that it anticipates a delay, the reasons for the delay, and a proposed alternative deadline.

IX. CONFLICTS/CONFIDENTIAL INFORMATION

A. Due to Class Counsel's continuing representation of the Class, their receipt of confidential information regarding Metro-North during this litigation, and their continuing receipt of confidential information in connection with the Stipulation of Settlement, Class Counsel agree not to undertake any representation that would create a conflict of interest or involve the use of Metro-North's confidential information for purposes unrelated to the enforcement of the Stipulation of Settlement.

B. Class Counsel further agree that, in any litigation against Metro-North which arises out of or is in any way related to Released Claims, they will not represent any person who has opted out of the Class. Where Class Counsel is representing in another action a Class

Member who opts out of the Class, Class Counsel shall promptly apply to the court or other forum where the matter is pending to be relieved as counsel.

C. It is understood that Class Counsel may continue to represent Class Members and Named Plaintiffs in connection with the implementation and enforcement of the Stipulation of Settlement.

X. MONETARY RELIEF TO CLASS

Named Plaintiffs (except insofar as they have released claims for individual relief that preceded the date of such releases) and other Class Members are entitled to assert claims for damages under the two circumstances defined below.

A. Promotion

1. a. Any Class Member who demonstrates that he or she applied for and was denied a promotion (other than promotions governed by union seniority provisions) that was awarded to a Caucasian employee on account of intentional race discrimination during the period January 1, 1985 to June 30, 2002 is eligible to seek damages for that denial of promotion in this process. However, each class member may challenge only one denial of promotion.

b. "Applied for" as used in A(1)(a) means taking whatever action or actions the Company required of applicants for the position at issue.

c. For purposes of this subsection X(A), a craft transfer shall be considered a "promotion." A craft transfer is a transfer from a union position in one bargaining unit to a union position in a different bargaining unit. Any other lateral transfer shall not be considered a "promotion" and may not be the basis for a claim for damages under this subsection.

d. Notwithstanding the foregoing, any class member (i) whose claims of discriminatory denial of promotion have previously been adjudicated in this proceeding or is otherwise barred by res judicata or collateral estoppel, (ii) who has released Metro-North from such claims, or (iii) who has discontinued his or her claims against Metro-North with prejudice, shall be ineligible to participate in this process; provided, however, that Named Plaintiffs who previously released claims shall not be barred from this process to the extent they have a claim concerning a promotion that arose after the date they signed their release.

2. Any Class Member who is asserting a promotion claim seeking damages under this subsection must fully complete the claim form which was enclosed with the Second Notice (annexed as Exhibit E) and submit it in duplicate to Alan L. Fuchsberg, the Jacob D. Fuchsberg Law Firm, 500 Fifth Ave., New York, New York 10110 and Office of the General Counsel, Metro-North Commuter Railroad Company, 347 Madison Avenue, New York, New York 10017 on or before the date specified in the claim form accompanying the Second Notice (which date shall be ninety days after its mailing). Claim forms may be submitted by first class mail. No claim form submitted or postmarked after the deadline set in the claim form will be processed. To the extent that a Class Member does not submit a claim form in accordance with this Section, he/she shall be deemed to have waived his/her rights to monetary relief under this Section.

3. Each promotion claim shall be submitted to the Settlement Arbitrator for resolution. Metro-North shall pay the Arbitrator's reasonable fees and costs.

4. An arbitration hearing of each such claim shall be set for an agreed date. The issue in each case shall be whether the claimant was denied the promotion at issue on account of his or her race.

a. In deciding that issue, the Settlement Arbitrator shall consider all relevant factors for which supporting evidence is provided and shall reject unwarranted subjective considerations.

b. The Arbitrator may infer the requisite intent to discriminate if she concludes that the claimant was more qualified for the position at issue than the person promoted and she concludes that the Company offers no persuasive non-discriminatory explanation or justification for the decision.

c. The Settlement Arbitrator may not find that two class members were denied the same promotion for a single position on account of their race; and in such a circumstance (viz. where two or more class members claim they were discriminatorily denied the same promotion), the Settlement Arbitrator can award damages to one class member only.

5. Damages

In the event that the Settlement Arbitrator determines that a claimant was denied the promotion at issue on account of his or her race, the Settlement Arbitrator may award claimant the damages described below, subject to the limitation contained in subsection (C) below. This shall be the only relief or remedy that the Arbitrator may award.

a. Where the promotion at issue was awarded after January 1, 1994, a claimant whom the Settlement Arbitrator determines was denied the promotion on account of his/her race shall be awarded \$15,000 in compensatory damages. In addition, the Settlement Arbitrator may award damages for lost back pay (for the period ending on the day that the hearing before the Settlement Arbitrator commences) in an amount not to exceed \$65,000. In determining whether, and in what amount, to award back pay, the Settlement Arbitrator shall apply the standards for awarding back pay that are normally applied in Title VII cases.

b. Where the promotion at issue was awarded during the period 1985-1993, a claimant whom the Settlement Arbitrator determines was denied the promotion on account of his/her race may be awarded damages for lost back pay (for the period ending on the day that the hearing before the Settlement Arbitrator commences) in an amount not to exceed \$40,000. If the discriminatory conduct occurred after November 20, 1991, the Settlement Arbitrator shall also award \$5,000 in compensatory damages. In determining whether, and in what amount, to award back pay, the Settlement Arbitrator shall apply the standards for awarding back pay that are normally applied in Title VII cases.

6. The Settlement Arbitrator shall issue a written decision stating the result reached. The Settlement Arbitrator's decision shall be final.

B. Discipline

1. a. Any Class Member (occupying one of the positions identified by the Second Circuit in its decision at 191 F.3d 283 (2d Cir. 1999), as set forth more clearly in Exhibit F hereto) who, following the completion of any appeal processes, was (a) terminated, (b) demoted, or (c) suspended without pay for a continuous period of at least sixty days, (hereinafter collectively referred to as "discipline" or "disciplinary action") on account of intentional race discrimination during the period January 1, 1985 to June 30, 2002 is eligible to seek damages for that disciplinary action in this process. However, each class member may challenge only one termination, demotion, or suspension.

b. Subparagraph X(B)(1)(a) shall also include any class member (whether or not employed in a position identified in Exhibit F) who, during the period at issue, was terminated or demoted on account of his or her race in retaliation for applying for or receiving a promotion.

c. Subparagraph X(B)(1)(a) shall include disciplines imposed after June 30, 2002 provided that (i) the discipline was initially imposed prior to July 1, 2002; and (ii) the appeal process has been completed by the commencement of the hearing before the Settlement Arbitrator provided for herein.

d. Notwithstanding the foregoing, any class member (i) whose claims of discriminatory discipline have previously been adjudicated in this proceeding or are otherwise barred by res judicata or collateral estoppel, (ii) who has released Metro-North from such claims, or (iii) who has discontinued his or her claims against Metro-North with prejudice, shall be ineligible to participate in this process; provided, however, that Named Plaintiffs who previously released claims shall not be barred from this process to the extent they have a discipline claim that arose after the date they signed their release.

2. Any Class Member who is asserting a discipline claim seeking damages under this subsection must fully complete the claim form which was enclosed with the Second Notice (annexed as Exhibit E) and submit it, in duplicate, to Alan L. Fuchsberg, the Jacob D. Fuchsberg Law Firm, 500 Fifth Ave., New York, New York 10110 and Office of the General Counsel, Metro-North Commuter Railroad Company, 347 Madison Avenue, New York, New York 10017 on or before the date specified in the claim form accompanying the Second Notice (which shall be ninety days after its mailing). Claim forms may be submitted by first class mail. No claim form submitted or postmarked after the deadline set in the claim form will be processed. To the extent that a Class Member does not submit a claim form in accordance with this Section and has not otherwise opted out pursuant to the procedures set forth in Section V, he/she shall be deemed to have waived his/her rights to monetary relief under this Section.

3. Each discipline claim shall be submitted to the Settlement Arbitrator for resolution. Metro-North shall pay the Arbitrator's reasonable fees and costs.

4. a. An arbitration hearing of each such claim shall be set for an agreed date. The issue in each case shall be whether the claimant was terminated, demoted, or suspended on account of his or her race.

b. In deciding that issue, the Settlement Arbitrator shall consider all relevant factors for which supporting evidence is provided, including whether the claimant was subjected to disparate treatment compared with Caucasian employees who engaged in the same misconduct.

c. The limitation in B(1)(a) that a class member may challenge only one termination, demotion, or suspension is not intended to preclude a claimant from offering evidence of other incidents of allegedly discriminatory discipline in support of that challenge.

5. Damages

In the event that the Settlement Arbitrator determines that a claimant was disciplined on account of his or her race, the Settlement Arbitrator may award claimant the damages below, subject to the limitation contained in subsection (C) below. This shall be the only relief or remedy that the Arbitrator may award.

a. Where the discipline at issue was imposed after January 1, 1994, a claimant whom the Settlement Arbitrator determines was disciplined on account of his or her race shall be awarded \$10,000 in compensatory damages. In addition, the Settlement Arbitrator may award damages for lost back pay (for the period ending on the day that the hearing before the Settlement Arbitrator commences) in an amount not to exceed \$25,000. In determining

whether, and in what amount, to award back pay, the Settlement Arbitrator shall apply the standards for awarding back pay that are normally applied in Title VII cases.

b. Where the discipline at issue was imposed during the period 1985-1993, a claimant who the Settlement Arbitrator determines was disciplined on account of his or her race may be awarded damages for lost back pay (for the period ending on the day that the hearing before the Settlement Arbitrator commences) in an amount not to exceed \$15,000. If the discriminatory conduct occurred after November 20, 1991, the Settlement Arbitrator shall also award \$5,000 in compensatory damages. In determining whether, and in what amount, to award back pay, the Settlement Arbitrator shall apply the standards for awarding back pay that are normally applied in Title VII cases.

6. The Settlement Arbitrator shall issue a written decision stating the result reached. The Settlement Arbitrator's decision shall be final.

C. Aggregate Cap on Damages

1. The total damages awarded pursuant to subsections A and B above shall not exceed \$3,500,000 (3.5 million). Monies paid by Metro-North in settlement of a claim asserted pursuant to A(2) or B(2), shall be considered "damages awarded" for purposes of this Section X.

2. In the event that the total does exceed \$3,500,000 (3.5 million), the individual awards shall be reduced proportionately (i.e., by a fixed percentage) so that total damages do not exceed \$3,500,000 (3.5 million).

3. a. Damages pursuant to this Section X shall not be paid by Metro-North until all such claims have been either decided by the Settlement Arbitrator or settled, and a determination made pursuant to C(2) above whether said damages are to be reduced.

b. Notwithstanding the foregoing, in the event that the number of claims asserted by

Class Members pursuant to A(2) and B(2) are sufficiently small in number so that the \$3,500,000 (3.5 million) aggregate cap could not be exceeded even if every claim were awarded the maximum damages permitted under this Agreement, then Metro-North shall be obligated to pay each damage award within thirty days of its receipt of the Settlement Arbitrator's decision or the execution of an agreement settling the claim.

c. In the event that the number of claims are sufficient in number to potentially exceed the aggregate cap (pursuant to the foregoing), Class Counsel and Defendant's Counsel will attempt to determine what portion of the damage awards can be paid to the claimants without jeopardizing the parties' ability to implement section C(2) above. Any portion so agreed upon will be paid to claimants within thirty days of Metro-North's receipt of the award or a fully executed agreement settling the claim.

XI. ATTORNEYS' FEES AND DISBURSEMENTS

A. Subject to the Court's approval, Defendant agrees to pay Class Counsel's attorneys' fees and costs in the total amount of \$1,500,000 for all work done by Class Counsel or by any other attorney, expert, consultant, or other person retained by Class Members or Class Counsel, as a matter of record or otherwise, to assist with this action and the settlement thereof. Payment for these fees and costs will be delivered within 30 days of the Effective Date to the Jacob D. Fuchsberg Law Firm in amounts and to payees designated by Class Counsel.

B. These fees and costs include Class Counsel's incurred and anticipated attorneys' fees for all legal work, costs, disbursements, etc., in connection with the litigation of this action and the negotiation, obtaining Final Approval, and implementation of this Stipulation of Settlement. Class Counsel have represented to the Defendant that these fees and costs are

reasonable and that Class Counsel are responsible for any tax payments required in connection with these payments.

C. Class Counsel agree to indemnify and hold Defendant harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments, or recoveries of any amounts claimed due by any attorneys or experts as fees for any work performed for or on behalf of Named Plaintiffs or the Class Members in this action, whether a matter of record or not, including any claims made under any federal, state, and/or local law. Class Counsel further agree to hold Defendant harmless from any costs, expenses, or damages, including Defendant's own attorneys' fees, sustained by Defendant by reason of any such claims.

D. 1. In the event that a Class Member asserting a claim for damages pursuant to Section X(A)(2) or X(B)(2) is represented by Class Counsel or counsel designated by Class Counsel, Metro-North will pay said counsel as set forth below:

- No hearing required and claimant does not prevail \$250
- No hearing required and claimant does prevail \$500
- Hearing required and claimant does not prevail \$500
- Hearing required and claimant does prevail \$1,250

However, in no event would Metro-North pay the above to more than one counsel with respect to the same claim. A claimant has "prevailed," for purposes of this paragraph D(1), if the claimant is either awarded damages by the Settlement Arbitrator or paid damages by Metro-North in settlement of a claim submitted pursuant to subsections A(2) or B(2) above.

Notwithstanding the foregoing, a claimant has not "prevailed" if the damages awarded by the

Arbitrator do not exceed the damages offered claimant by Metro-North in advance of the hearing.

2. The Settlement Arbitrator shall have jurisdiction to decide any dispute concerning the interpretation or application of D(1) above. The Settlement Arbitrator's decision shall be final.

E. Except as provided in the foregoing, in no event will Defendant be obligated to pay any attorneys' fees, costs, or disbursements incurred in connection with the litigation of this action and the negotiation, obtaining Final Approval and implementation of this Stipulation of Settlement or any related matter.

XII. NON-MONETARY RELIEF

A. Communication of Company's EEO Policy and Procedures

1. The President of Metro-North, within 30 days of the Effective Date, shall issue the statement attached hereto as Exhibit G (the "Statement") reaffirming the Company's commitment to non-discrimination in employment practices and procedures, discussing the Company's rationale for the settlement, and outlining the steps that the Company is undertaking to better ensure equal employment opportunity for all of its employees.

2. The Statement shall be discussed by the President at a meeting with the Company's officers and the Human Resources Review Committee within 60 days of the Effective Date.

3. Metro-North has reviewed its EEO policy. A copy of that policy is attached hereto as Exhibit H.

4. The President's Statement and a copy of the Company's EEO policy will be mailed to employees at their home addresses contained in Metro-North's records.

B. Workforce Diversity

1. The Workforce Diversity Department will continue to be devoted primarily to implementing the Company's EEO Policy and Affirmative Action Program and Plan. The Workforce Diversity Department will continue to be headed by a Director of Workforce Diversity who reports to the Vice President of Human Resources and Diversity and who, in turn, reports to the President. The Director of Workforce Diversity will continue to meet with Metro-North vice presidents on a periodic basis and with all department heads on an as-needed basis to report on and discuss the fulfillment of their EEO and Affirmative Action duties and responsibilities. The Workforce Diversity Department will continue to receive such data as it may require to enable it to fulfill all of its record-keeping, internal reporting, investigating, counseling, governmental compliance, and reporting duties.

2. On an as-needed basis, the Vice President of Human Resources and Diversity will, within his discretion, continue to raise directly with the President, as well as the Human Resources Review Committee described below, any matter within the Workforce Diversity Department's jurisdiction that he considers appropriate for the attention of the President. In addition, the Vice President will continue to report periodically to the President and the Human Resources Committee, and annually to Metro-North's Board of Directors on the Company's compliance with its EEO Policy and Affirmative Action Program and Plan.

C. Human Resources Review Committee

1. The Company shall establish a Human Resources Review Committee. This Committee will be comprised of the Vice President of Human Resources and Diversity, the Director of Workforce Diversity, the Director of Labor Relations, and two management employees from major operations or transportation services departments within the Company.

Diversity shall be a factor to be considered by the Company in selecting the two Committee members from the departments.

2. The Committee shall meet at least quarterly. The purpose of the Committee is to determine if any steps need to be taken to assist the Company in providing promotional opportunities on a non-discriminatory basis and to make recommendations regarding any activities within the scope of its jurisdiction; this shall include reviewing the Company's hiring and promotion processes, including its policy for selecting individuals seeking craft transfers, and its disciplinary process insofar as it pertains to issues of discrimination. The Committee shall also review all recommendations submitted by the Consultant pursuant to subsection D below. The Committee shall also have the authority to review any complaints of systemic EEO problems. The Committee shall report periodically to the President.

D. Consultant

Metro-North agrees to engage a competent outside consultant to provide advice and guidance and generally assist Metro-North in its actions in accordance with Part XII of the Stipulation of Settlement. Among other things, the consultant will review Metro-North's policies with respect to the following and make recommendations (including whether existing policies should be revised or reduced to writing and whether new policies should be adopted): recruitment, hiring, training programs, job posting, discipline, and EEO policy statement. The Consultant's recommendations shall be consistent with all applicable legal requirements.

E. Performance Reviews

1. Metro-North includes promoting diversity as a significant factor to be assessed in performance reviews and salary decisions for management employees. This factor has been prominently placed on the Company's management performance review form. A copy of the

existing form and proposed revised language is attached hereto as Exhibit I. For employees who are in positions that require them to make recommendations or decisions about promotions, their performance review assessment shall include adherence to the Company's EEO policies in making promotional decisions.

F. Training

1. The Company will conduct training in Conflict Resolution/Diversity for all its employees (including management). This training is to enhance overall corporate morale, increase the appreciation of diversity among officers and employees, decrease conflict, and promote corporate policies of fairness, open access, and equal employment opportunity. The training is a one-hour course generally following the outline in Exhibit J.

2. Metro-North will provide more focused Conflict Resolution/Diversity training for its hiring representatives and hearing officers.

3. The training will be completed no later than two years after the Effective Date of this Stipulation of Settlement. One member of Class Counsel will be permitted to attend one of the training sessions.

G. Job Posting

1. Metro-North will post electronically and/or on bulletin boards, for a minimum of one week, all vacancies (that occur after the Effective Date) in management positions up to and including the director level which it intends to fill.

2. Any exemption from this rule (i.e. that vacancies in management positions are to be posted) must be: a) requested on an individual basis; b) evaluated, on a case-by-case basis, by the Director of Human Resources, to determine the reasons for the exemption and whether there

may be effects adverse to established EEO, affirmative action, or diversity policies, and approved by her; and c) approved by the Vice President of Human Resources and Diversity.

3. Posting will include the minimum qualifications for each position.

H. Promotion and Hiring

1. All hirings to management level positions, up to the director level (including superintendent), and all promotion decisions to positions up to and including the director level (including superintendent) must be approved by the Vice President of Human Resources and Diversity. In the event that a Class Member is found by the Settlement Arbitrator to have been denied a promotion on account of race (pursuant to Section X(A)), and that member subsequently seeks another promotion into a position for which he or she is fully qualified, the decision with respect to the subsequent promotion will take the Arbitrator's finding into account as a favorable factor.

2. A member of the Human Resources Department shall participate in the interviewing process.

I. Career Planning

1. In an effort to assist employees in making informed career decisions and otherwise planning for their future, Metro-North will advise employees of changes to the organization's structure, function, or personnel of sufficient scope or magnitude to be reflected in an organizational chart. A description of any such changes will be placed on the corporate intra-net, and will be generally accessible company-wide. The changes will be posted on an as soon as practicable basis.

2. As a benefit to those employees who identify themselves as seeking a craft transfer or a promotion to or within management, Metro-North will provide them with

reasonable access to its confidential, personalized intra-corporate career planning and counseling services, including assistance and guidance in seeking mentors.

J. Duration

The practices set forth in paragraphs B through I above will remain in effect for a minimum of two years from the Effective Date.

XIII. ENFORCEMENT

A. Class Counsel will be provided with periodic reports (including copies of any new or revised policies) with respect to steps that Metro-North has taken to implement this Stipulation of Settlement.

B. The Named Plaintiffs, Class Counsel, Defendant, and Defendant's Counsel affirm that their intent after the Effective Date of this Stipulation of Settlement is to fully comply with its terms. If conflict arises over compliance, however, the Class Representatives, Class Counsel, Defendant, and Defendant's Counsel agree that they will seek to resolve any differences cooperatively without Court intervention.

C. Prior to instituting any proceeding to enforce the provisions of this Stipulation of Settlement, counsel for the aggrieved party will provide written notice by hard copy or facsimile that specifically sets forth the ways in which the party believes that a section or sections of this Stipulation of Settlement have been violated and the evidence in support thereof. Class Counsel and Defendant's Counsel will in good faith attempt to resolve all compliance issues through discussion and negotiation, and, if necessary, by taking action to remedy the alleged violation.

D. Notice to the Defendant of an alleged violation of the Stipulation of Settlement by Defendant or Defendant's Counsel will be sent to Defendant's Counsel. Notice to the Class

Representatives or Class Members of an alleged violation of the Stipulation of Settlement by any member of the Class or Class Counsel will be sent to Class Counsel.

E. If, after thirty days from receipt of the notice described in Part XIV.C. above, cooperative acts to resolve the alleged violation fail, the aggrieved party will attempt to schedule a conference with the Court for the purpose of resolving the alleged violation. If the Class Representatives, Class Counsel, Defendant, and Defendant's Counsel fail to resolve the conflict, notwithstanding the persuasion of the Court, or if the Court cannot schedule a conference within twenty days of the date of the request, counsel for the aggrieved party may file a formal motion for enforcement with the Court. If such proceedings are brought, counsel for the responding party shall have twenty days to file a response, unless such period is shortened by the Court on its own initiative.

XIV. CONFIDENTIALITY AND RETURN OR DESTRUCTION OF DOCUMENTS

Class Counsel acknowledge that during the course of this litigation they have received, and may hereafter receive, confidential information regarding Metro-North and its personnel, including but not limited to, personnel files, internal memoranda, personnel plans, programs, policies and procedures, computerized data, and other information, and that they and the Parties continue to be bound by all orders of confidentiality entered in this litigation. Upon expiration of the Court's jurisdiction over this case, all of Defendant's confidential information in Class Counsel's possession will be returned to Defendant or destroyed pursuant to the terms and provisions of the orders of confidentiality entered in this litigation.

XV. PUBLICITY

The Class Representatives and Defendant and their respective counsel agree to issue the attached joint publicity statement (Exhibit K) upon the Court's approval of the Final Order.

Thereafter, each party and their counsel may hold a press conference or issue a statement publicizing the facts or terms of the settlement.

XVI. SEVERABILITY

After the Effective Date, if any term or provision of this Stipulation of Settlement, or the application thereof to any person or circumstance, is held to any extent to be invalid or unenforceable, the remainder of this Stipulation of Settlement, or the application of such term or provision to persons or circumstance other than those as to which it has been held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Stipulation of Settlement shall be valid and enforceable to the fullest extent permitted by law.

XVII. GOVERNING LAW/ENTIRE STIPULATION OF SETTLEMENT

A. The Class Representatives and Defendant agree that the validity, construction, and enforcement of this Stipulation of Settlement will be governed by federal law. To the extent that it is determined that the validity, construction, or enforcement of this Stipulation of Settlement is governed by state law, the law of the State of New York will apply.

B. This Stipulation of Settlement, including the Exhibits hereto, contains the entire agreement and understanding of the Named Plaintiffs/Class Representatives and Defendant with respect to the settlement of this litigation. This Stipulation of Settlement does not impose any obligations on the Class and Defendant beyond the terms and conditions stated herein. Accordingly, this Stipulation of Settlement will not prevent or preclude Metro-North from revising its employment practices and policies or taking other personnel actions during the term of the Stipulation of Settlement that do not violate specific requirements of the Stipulation of Settlement. Furthermore, nothing in this Stipulation of Settlement will be construed as

interfering with Metro-North's rights to determine the nature, conduct, organization, or structure of its business as Metro-North deems appropriate or as may be required by law.

C. This Agreement and the terms herein, are subject to Metro-North's other legal obligations, and nothing in this Agreement shall obligate Metro-North to take any action that is contrary to said obligations.

D. Except as specifically provided for herein, this Stipulation of Settlement may not be amended or modified without the express written consent of Class Counsel and Defendant's Counsel and the approval of the Court.

E. The Class Representatives and Defendant acknowledge that this Stipulation of Settlement is final and binding in all respects.

F. This Agreement may be executed in counterparts.

AGREED AND CONSENTED TO BY:

FOR THE PLAINTIFFS AND MEMBERS:
OF THE CLASS:

Lester Brannon
Name: Lester L. Brannon

07.03.02
Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg
Alan L. Fuchsberg

Eugene Walker
Name: Eugene Walker

7-8-02
Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg
Alan L. Fuchsberg

Deborah H. Wilson
Name: Deborah H. Wilson

7-3-02
Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg
Alan L. Fuchsberg

Joseph N. Kimbro
Name: Joseph Kimbro

7/3/02
Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg
Alan L. Fuchsberg

Sa'ud Hanif
Name: Sa'ud Hanif

7-3-02
Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg
Alan L. Fuchsberg

Leroy Brown
Name: Leroy Brown

7-11-02
Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg
Alan L. Fuchsberg

James W. Jackson
Name: James W. Jackson

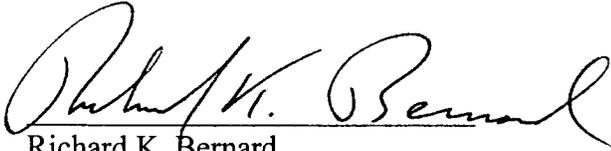
7-11-02
Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg
Alan L. Fuchsberg

PROSKAUER ROSE LLP

FOR THE DEFENDANT:

A handwritten signature in black ink, appearing to read "Richard K. Bernard". The signature is written in a cursive style with a large initial "R" and "B".

Richard K. Bernard

General Counsel

Metro-North Commuter Railroad Co.

Ronald Jones

Name:

7/12/02
Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg

Alan L. Fuchsberg

Name:

Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg

Name:

Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg

Donald Jones

Name:

7/12/02

Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg

Alan L. Fuchsberg

Name:

Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg

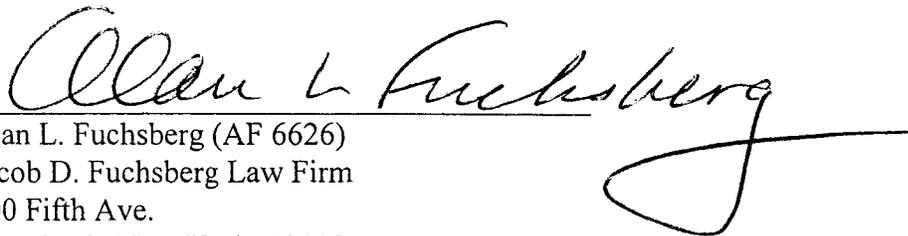
Name:

Date

WITNESSED BEFORE ME:

Alan L. Fuchsberg

APPROVED BY COUNSEL FOR PLAINTIFFS



7/15/02

Alan L. Fuchsberg (AF 6626)
Jacob D. Fuchsberg Law Firm
500 Fifth Ave.
New York, New York 10110
(212) 869-3500

APPROVED BY COUNSEL FOR DEFENDANT

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