

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROY PARKER; RAJAB ASEP,
CHRISTOPHER CHANDLER, JAMAL
COLEMAN; ALLANA DIXON; CHAUNCEY
MIRANDA; and CESAR RIVERA, on behalf
of themselves and all others similarly situated,

15 Civ. 06733 (JBW) (CPL)

Plaintiffs,

-against-

THE CITY OF NEW YORK,

Defendant.

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STIPULATION

This Stipulation (the “Stipulation”) is made and entered into on this 11th day of August, 2017 between the City of New York (the “City”) and Plaintiffs Roy Parker, Rajab Asep, Christopher Chandler, Jamal Coleman, Allana Dixon, Chauncey Miranda, and Cesar Rivera (collectively, the “Class Representatives”). The City and the Class Representatives shall be referred to herein collectively as the “Parties.”

WHEREAS, this action was commenced on or about November 23, 2015; and

WHEREAS, the Class Representatives filed an Amended Complaint on or about November 12, 2016; and

WHEREAS, the parties engaged in limited pre-answer settlement discovery including a Rule 30(b)(6) deposition and the exchange of documentary support relevant to the methodology for the assemblage of the Class List (defined below); and

WHEREAS, the Parties seek to avoid additional protracted and expensive litigation and therefore agree to the entry of this Stipulation to resolve all issues that were raised in this action by the Class Representatives, both individually and as class representatives; and

WHEREAS, Defendant denies any and all liability arising out of the allegations set forth in the Complaint;

NOW, THEREFORE, with the agreement of all Parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

DEFINITIONS

1. “Punitive Segregation” (also referred to as “PSEG”) shall mean the segregation of an inmate from the general population pursuant to a disciplinary sanction imposed after a hearing, including without limitation placement in the Central PSEG Unit (“CPSU”), or the Mental Health Unit for Infracted Inmates (“MHAUI”).

2. The “Historical Time Practice” shall mean the former practice of the New York City Department of Correction (“NYCDOC”), implemented pursuant to NYCDOC Directive 6500R-B (attached hereto as Exhibit A), that when a detainee housed in a NYCDOC facility was found to have violated a disciplinary rule, and where such detainee was sentenced to placement in PSEG for a period of time as a result of such disciplinary violation, and where such detainee was released from such NYCDOC facility prior to completing such PSEG sentence, and where such person subsequently was readmitted to a NYCDOC facility, such detainee could be placed in PSEG to finish the sentence imposed for the disciplinary violation committed during the prior detention.

3. “Historical Time” shall mean the time spent by a pretrial detainee in PSEG pursuant to the Historical Time Practice.

4. The “Settlement Class” shall mean all people who, while pretrial detainees at any time between November 23, 2012 and September 16, 2015, were confined in PSEG in a NYCDOC facility pursuant to the Historical Time Practice. The Settlement Class shall not include (i) inmates who were, when they served Historical Time, in NYCDOC custody due to an alleged or adjudicated parole violation or (ii) New York State Department of Corrections and Community Supervision prisoners (or convicted prisoners from other jurisdictions) who were, when they served Historical Time, in NYCDOC custody temporarily for purposes of court appearances or pursuant to warrants or as of the date of conviction by verdict or plea or (iii) any person serving a sentence of incarceration.

5. A “Class Member” shall mean any person who is a member of the Settlement Class who does not file a timely Opt-Out Form as provided in Paragraph 90 of this Stipulation.

6. An “Eligible Class Member” shall mean (a) any Class Member who submits a Claim Form in compliance with this Stipulation, who submits a signed Substitute W-9 Form, and who either submits a notarized Claim Form or satisfies the identification requirement set forth in Paragraphs 62-64 of this Stipulation, and whose claim is not otherwise barred for the reasons set forth herein, or (b) any Class Member who files a meritorious Challenge in compliance with Paragraphs 86 through 89 of this Stipulation.

7. An “Adolescent Class Member” shall mean any Class Member who was under the age of eighteen years old when he or she was confined in PSEG in a NYCDOC facility pursuant to the Historical Time Practice.

8. A “SMI Class Member” shall mean any Class Member who was classified by the City’s designee as having a serious mental illness (“SMI”) prior to being confined or during his or her confinement in PSEG in a NYCDOC facility pursuant to the Historical Time Practice.

9. “Preliminary District Court Approval” shall mean an order issued by the Court, prior to holding a fairness hearing or granting final approval of this Stipulation, conditionally certifying the Settlement Class and granting preliminary approval of this Stipulation.

10. “Final District Court Approval” shall mean an order issued by the Court after the Claim Form Deadline, and after the Court has been informed of the percentage of Class Members who have submitted Claim Forms, and following a fairness hearing, finally certifying the Settlement Class, granting final approval of this Stipulation, adjudging the terms hereof to be fair, reasonable, and adequate.

11. The “Anticipated Maximum Total Payment” shall be the amount of money necessary to pay each Adolescent Class Member two hundred dollars (\$200.00) for each day he or she was confined in PSEG in a NYCDOC facility pursuant to the Historical Time Practice; to pay each SMI Class Member two hundred dollars (\$200.00) for each day he or she was confined in PSEG in a NYCDOC facility pursuant to the Historical Time Practice; and to pay each Class Member who is not an Adolescent Class Member or a SMI Class Member one hundred and seventy-five dollars (\$175.00) for each day he or she was confined in PSEG in a NYCDOC facility pursuant to the Historical Time Practice.

12. The “Class List” shall mean the list attached hereto as Exhibit B.

13. The “Class List Challenge Procedure” shall mean the procedure set forth in Paragraphs 86 through 89 of this stipulation.

14. A “Challenge” shall mean a challenge submitted by a Class Member or person not included on the Class List who claims to be a Class Member pursuant to the Class List Challenge Procedure.

15. The “Amended Class List” shall mean the list that shall be generated after all Challenges submitted through the Class List Challenge Procedure have been resolved showing each Class Member’s Tentative Individual Payment Amount or, if such amount has been modified by the result of any Challenge, such Class Member’s Modified Tentative Individual Payment Amount.

16. The “Actual Maximum Total Payment” shall mean the aggregate amount that the City would be obligated to pay, after all Challenges submitted through the Class List Challenge Procedure have been resolved and the Amended Class List has been generated, if all Class Members timely submit Claim Forms.

17. The “Tentative Individual Payment Amount” shall be the amount of money that the Parties tentatively expect the City to pay to each individual Class Member as shown tentatively on the Class List if such Class Member later submits a timely Claim Form.

18. The “Modified Tentative Individual Payment Amount” shall be a Class Member’s Tentative Individual Payment Amount as modified by the result of any Challenge.

19. The “Final Individual Payment Amount” shall be the amount of money that the City shall pay to each individual Class Member as shown finally on the Amended Class List if such Class Member timely submits a Claim Form, submits a signed Substitute W-9 Form, and either submits a notarized Claim Form or satisfies the identification requirement set forth in Paragraphs 62-64 of this Stipulation.

20. The “Last Known Address” of a Class Member shall mean the mailing address that the Parties believe to be his or her current mailing address, or, if his or her current address is unknown, the last known mailing address for such Class Member.

21. The “Last Known Address List” shall be the list of Last Known Addresses for every Class Member that the Parties shall develop and that the Parties and the Administrator shall update from time to time pursuant to Paragraphs 77 through 78 of this Stipulation.

22. The “Notice Form” shall mean a document substantially in the form of the document attached hereto as Exhibit C, or in such other form that may be approved by the Court in the Preliminary District Court Approval, that shall be mailed to each Class Member as set forth on the Amended Class List summarizing the terms and conditions of this Stipulation, providing such Class Member with individualized notice of the amount of compensation he or she may receive under this Stipulation by calculating of the relevant number of days multiplied by the relevant per diem, and notifying such Class Member (a) that in order to be eligible to receive a Final Individual Payment Amount, (i) he or she must timely submit a Claim Form (as well as a Challenge Form if he or she believes he or she is entitled to greater compensation due to a greater number of days than set forth on their individualized Notice Form), (ii) he or she must either submit a notarized Claim Form or comply with the identification requirement set forth in Paragraphs 62-64 of this Stipulation, and (iii) he or she must submit a signed Substitute W-9 Form; and (b) that any payment made hereunder is subject to reduction for any outstanding New York child support or Medicare liens, if any. The Notice Form shall contain instructions about how any of the aforementioned document(s) may be submitted to the Administrator by e-mail.

23. The “Notice Summary” shall mean a document substantially in the form of the document attached hereto as Exhibit D, or in such other form that may be approved by the Court in the Preliminary District Court Approval.

24. The “Notice Date” shall mean forty-five (45) days after Preliminary District Court Approval.

25. The “Claim Form” shall mean a document substantially in the form of the document attached hereto as Exhibit E, or in such other form that may be approved by the Court in the Preliminary District Court Approval, that each Class Member must timely submit in order to be eligible to receive a Final Individual Payment Amount.

26. The Substitute W-9 Form shall mean the document attached hereto as Exhibit F.

27. The “Opt-Out Form” shall mean the document attached hereto as Exhibit G.

28. The “Initial Opt-Out Deadline” shall mean sixty (60) days from the Notice Date (except as provided in Paragraph 94 of this Stipulation).

29. The “Final Opt-Out Deadline” shall mean sixty (60) days after the Initial Opt-Out Deadline if fewer than seventy-five percent (75%) of Class Members identified on the Class List submit Claim Forms or Opt-Out Forms prior to the Initial Claim Form Deadline.

30. The “Challenge Deadline” shall mean sixty (60) days from the Notice Date.

31. The “Initial Claim Form Deadline” shall mean sixty (60) days from the Notice Date.

32. The “Claim Form Deadline Warning” shall mean the document attached hereto as Exhibit H.

33. The “Identification Warning Letter” shall mean the document attached hereto as Exhibit I.

34. The “W-9 Form Warning Letter” shall mean the document attached hereto as Exhibit J.

35. The “W-9 Form and Identification Warning Letter” shall mean the document attached hereto as Exhibit K.

36. The “Final Claim Form Deadline” shall mean sixty (60) days after the Initial Claim Form Submission Deadline if fewer than seventy-five percent (75%) of Class Members identified on the Class List submit Claim Forms prior to the Initial Claim Form Deadline.

37. An “Objection” shall mean any objection made pursuant to F.R.C.P. 23(e)(5) to any aspect of this Stipulation or the Preliminary District Court Approval.

38. An “Objector” shall mean a person who files an Objection.

39. The “Initial Objection Deadline” shall mean sixty (60) days from the Notice Date.

40. The “Final Objection Deadline” shall mean sixty (60) days after the Initial Objection Deadline if fewer than seventy-five percent (75%) of Class Members identified on the Class List submit Claim Forms or Opt-Out Forms prior to the Initial Claim Form Deadline.

41. The “Administrator” shall mean the entity retained to disseminate the Notice Form, process the Opt-Out Forms and Claim Forms, and otherwise administer this settlement according to the terms and procedures set forth in this Stipulation.

42. The “Administrator Order” shall mean the proposed order attached hereto as Exhibit L, which Class Counsel shall ask the Court to enter together with Preliminary Approval.

43. The “Fairness Hearing” shall mean the hearing held by the Court pursuant to F.R.C.P. 23(e)(2), which shall occur after the Claim Form Deadline.

44. The “Effective Date for Payment” shall mean the date when the City’s obligation to pay the Eligible Class Members becomes effective (with individual checks being generated pursuant to the processes set forth below). The Effective Date for Payment shall be one day after the date upon which each of the following has occurred: (1) entry of Final District Court

Approval; and (2) the time for appeal of the Final District Court Approval by an Objector expires, or if an appeal from the Final District Court Approval, or any portion thereof, is taken by an Objector, the appeal by such Objector of the Final District Court Approval is resolved. For the avoidance of doubt, any appeal by Class Counsel or the City relating to attorneys' fees or costs shall not delay the Effective Date for Payment beyond one day after the entry of Final District Court Approval.

45. "Released Claims" shall mean any and all past or present claims or causes of action (including any suits, petitions, demands or other claims in law, equity, or arbitration), and any and all allegations of liability or damages, of whatever kind, nature, or description, direct or indirect, in law, equity, or arbitration, absolute or contingent, whether class or individual in nature, including both known claims and Unknown Claims, asserted or unasserted, for monetary and non-monetary relief (including without limitation attorneys' fees, costs or disbursements incurred by the Class Representatives and/or the Settlement Class and/or any Class Member in connection with or related to this action), that were or could have been asserted by the Class Representatives and/or any Class Member against the Released Parties based upon or arising out of the same transactions, series of connected transactions, occurrences or nucleus of operative facts that form the basis of the claims that were asserted in this action, including any and all claims asserted in the original and subsequently amended complaints filed in this action. The Released Claims do not include or cover any actions or omissions occurring after the date Preliminary Approval is granted, nor do the Released Claims include or cover any claims stemming from any certified class action, other than this action, in which a Class Representative or Class Member in this action already is a member of such class.

46. “Released Parties” means the City of New York and of its parents, subsidiaries, affiliates predecessors, successors and/or assigns and in the case of all such entities, their respective past and present representatives, officers, directors, attorneys, agents, employees, privies and insurers.

47. “Unknown Claims” shall mean any and all Released Claims about which any Class Representative or Class Member does not know or does not suspect to exist in their favor at the time of the release of the Released Parties, which if known by them might have affected their decision(s) with respect to the settlement provided for in this Stipulation. With respect to any and all Released Claims, the Parties stipulate and agree that upon the end of the claims period, the Class Representatives and Class Members shall waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law with respect to Unknown Claim. The Parties acknowledge, and all Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was bargained for and was a material element of the settlement provided for in this Stipulation. For the avoidance of doubt, Unknown Claims do not include any claims that are not within the definition of Released Claims.

48. “Class Counsel” shall mean Alexander A. Reinert, Esq. and Cuti Hecker Wang LLP, collectively.

MUTUAL FULL COOPERATION

49. The Parties agree that they shall fully cooperate with each other and make good faith efforts to effectuate and implement all terms and conditions of this Stipulation.

RELEASES

50. Upon the Effective Date for Payment, in consideration for the agreements by the Parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, all Class Representative and Class Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, and assigns shall hereby release, remise, and forever discharge the Released Parties (as defined above) from each and every Released Claim, and shall forever be barred and enjoined from initiating, continuing, filing, or otherwise prosecuting any Released Claim against any of the Released Parties. Unless a Class Member opts out of the Settlement pursuant to Paragraph 90 of this Stipulation, this Release shall apply whether or not such Class Member has executed and delivered a Claim Form or otherwise actively participated in the Settlement.

51. Every Class Member shall be deemed to have knowingly and voluntarily waived, released, discharged, and dismissed the Released Claims, with full knowledge of any and all rights they may have, and they hereby assume the risk of any mistake in fact in connection with the true facts involved, or with regard to any facts which are now unknown to them.

52. The Parties and Class Members acknowledge that the covenants and promises made by the City herein constitute adequate consideration in exchange for the Released Claims.

53. For the avoidance of doubt, nothing in this Stipulation shall be construed (i) to bar any claims by Class Representative or Class Members based on or arising out of events occurring after the date Preliminary Approval is granted or (ii) any claims by Class Representatives or Class Members based on or arising out of claims in any certified class action, other than this action, in which the Class Representative or Class Member already is a member of such class.

CALCULATION OF PAYMENTS TO CLASS MEMBERS

54. The City shall pay each Eligible Class Member as follows, on a per diem basis, for each day such Class Member was confined in PSEG in a NYCDOC facility pursuant to the Historical Time Practice. In calculating the number of such days, both the day that a Class Member was first confined in PSEG and the day that a Class Member was last confined in PSEG shall each count as a day of confinement in PSEG. In addition, the number of days of Historical Time served by each Class Member shall be calculated as follows: if a Class Member was serving a disciplinary sentence that included both Historical Time and a sentence to PSEG that was not Historical Time, such Class Member served his or her Historical Time days first.

55. For Adolescent Class Members, the City shall pay each Eligible Class Member two hundred dollars (\$200.00) for each day he or she was confined in PSEG in a NYCDOC facility pursuant to the Historical Time Practice.

56. For SMI Class Member, the City shall pay each Eligible Class Member two hundred dollars (\$200.00) for each day he or she was confined in PSEG in a NYCDOC facility pursuant to the Historical Time Practice.

57. For Class Members who are not Adolescent Class Members or a SMI Class Members, the City shall pay each Eligible Class Member one hundred and seventy-five dollars (\$175.00) for each day he or she was confined in PSEG in a NYCDOC facility pursuant to the Historical Time Practice.

58. The City represents that the Class List accurately shows, to the best of the City's knowledge, (i) the identity of every Class Member; (ii) whether such member is an Adolescent Class Member and/or a SMI Class Member; and (iii) the number of days each Class Member was confined in PSEG in a NYCDOC facility pursuant to the Historical Time Practice.

59. Based on the information set forth in the Class List, the amount of the Anticipated Maximum Total Payment is \$4,963,175.

60. To the extent that any person not shown on the Class List believes that he or she is a Class Member, and/or to the extent that any Class Member who has not been listed on the Class List as a Adolescent Class Member or a SMI Class Member believes that he or she is a Adolescent Class Member and/or a SMI Class Member, and/or to the extent that any Class Member believes that he or she was confined in PSEG in a NYCDOC facility pursuant to the Historical Time Practice for a number of days that exceeds the number of days shown on the Class List, such person may avail himself or herself of the Class List Challenge Procedure set forth in Paragraphs 86 through 89 of this Stipulation.

61. As soon as practicable after all Challenges submitted through the Class List Challenge Procedure have been resolved following the Challenge Deadline, the Parties shall generate the Amended Class List.

IDENTIFICATION REQUIREMENT

62. In order to be entitled to collect his or her Final Individual Payment Amount, a Class Member shall first establish his or her identity either (a) by submitting a notarized Claim Form or (b) by providing the Administrator with (i) any available electric, gas, water, telephone, cable, or other utility bills in such Class Member's name; (ii) a lease in such Class Member's name; (iii) a driver's license or other government-issued identification; (iv) a passport or visa; (v) a green card or other identification issued by the Immigration and Naturalization Service or the United States Immigration and Customs Enforcement; or (vi) other documentation that reliably establishes such Class Member's identity.

63. For any Claim Form submitted without being notarized, promptly after receiving such Class Member's identification document(s), the Administrator shall provide copies of such document(s) to Corporation Counsel for the City of New York and Class Counsel. If the City believes that such document(s) is/are insufficient to establish such Class Member's identity, the City shall so inform Class Counsel in writing within ten (10) business days of the Administrator's provision of such document(s), and the Corporation Counsel for the City of New York and Class Counsel shall meet and confer within five (5) business days thereafter. If the City and Class Counsel are unable to agree about whether a Class Member has sufficiently established his or her identity, and if Class Counsel has a good faith and demonstrable basis to believe that such Class Member has sufficiently established his or her identity, then any such dispute shall be submitted to the assigned Magistrate Judge for a final and binding determination with no further review by any Court.

64. A Class Member submitting a non-notarized Claim Form shall have the option to submit identification to the Administrator at any time prior to one hundred and eighty (180) days after Final District Court Approval. In the event that the City disputes whether any Class Member has provided satisfactory proof of identity as set forth in Paragraph 62(b) above, and such dispute is resolved in such Class Member's favor, such Class Member shall be deemed to have provided proof of identity on the date that such Class Member provided the disputed identification document(s).

PRELIMINARY COURT APPROVAL

65. The Parties shall seek to have the Settlement Class certified pursuant to F.R.C.P. 23(b)(3).

66. No later than twenty-one (21) days after this Stipulation is executed, Class Counsel shall move for Preliminary District Court Approval approving the terms of this Stipulation and the form of the Notice Form, the Notice Summary, the Claim Form, and the Opt-Out Form, setting deadlines for mailing the Notice Forms, posting the Notice Summary, and filing Challenges, Claim Forms, Opt-Out Forms, and Objections, entering the Administrator Order, and scheduling the Fairness Hearing.

67. In moving for Preliminary District Court Approval, Class Counsel shall ask the Court to certify the Settlement Class based on the following definition: any person held in a NYCDOC facility between November 23, 2012 and September 16, 2015, who, while a pretrial detainee, was confined to PSEG pursuant to the Historical Time Practice, not including (i) inmates who were, when they served Historical Time, in NYCDOC custody due to an alleged or adjudicated parole violation or (ii) New York State Department of Corrections and Community Supervision prisoners (or convicted prisoners from other jurisdictions) who were, when they served Historical Time, in NYDOC custody temporarily for purposes of court appearances or pursuant to warrants or as of the date of conviction by verdict or plea.

68. If Preliminary District Court Approval is denied, the Parties shall work together diligently and in good faith to remedy the basis or bases for such denial, and Class Counsel shall file a renewed motion for Preliminary District Court Approval as soon as practicable.

69. If the Parties are unable to obtain Preliminary District Court Approval notwithstanding their diligent efforts, then this Stipulation shall become null and void in its entirety, and the Parties shall be restored to their positions immediately prior to the execution of this Stipulation.

ATTORNEYS' FEES AND LITIGATION COSTS

70. The Final Individual Payment Amounts shall not include Class Counsel's reasonable attorneys' fees or litigation costs, which shall be awarded by the Court separately, and paid by the City to Class Counsel separately, in addition to the amount of the Final Individual Payment Amounts.

71. Pursuant to F.R.C.P. 23(h), the Parties agree that the Court shall award Class Counsel reasonable attorneys' fees and costs. Class Counsel shall not move for attorneys' fees or costs without first presenting the City with a demand and making good-faith efforts to negotiate a mutually-agreeable resolution with the City, including by seeking the assistance of the assigned Magistrate Judge. Counsel will not seek attorneys' fees for any work performed related to Challenges which are determined by the parties or by the Court to be without merit.

72. For the avoidance of doubt, the City shall pay Class Counsel the entirety of the attorneys' fees and costs awarded by the Court, and each Eligible Class Member shall receive the entirety of his or her Final Individual Payment Amount.

73. Class Counsel shall provide the City with executed Form W-9s containing Tax Payer Identification Numbers for Class Counsel. The City shall issue Form 1099s to Class Counsel for the payments made to Class Counsel.

THE CLAIMS ADMINISTRATION PROCESS

74. The City shall pay the entirety of all costs and expenses associated with the claims administration process, including without limitation the Administrator's fees, all costs associated with the notice process, and all costs associated with the payment process.

75. The Administrator shall be The Garden City Group, Inc. The Parties and the Administrator shall be bound by and adhere to the Terms of this Stipulation. The Corporation

Counsel for the City of New York shall ensure that the Administrator complies with the terms of this Stipulation.

76. The Administrator shall submit invoices for its services, costs, and expenses on a monthly basis to the Corporation Counsel for the City of New York and to Class Counsel, and the Corporation Counsel for the City of New York shall initiate processing of such invoices within sixty (30) days of receipt, with payment electronically transferred to the Administrator within forty-five (45) days.

77. Promptly after this Stipulation is executed, the Corporation Counsel for the City of New York, Class Counsel, and the Administrator shall work together constructively and in good faith to jointly create the Last Known Address List. The Corporation Counsel for the City of New York, Class Counsel, and the Administrator shall use their best efforts to make the Last Known Address List as comprehensive and accurate as practicable, including by the City accessing all relevant and reasonably available NYCDOC databases and, where appropriate, by the Administrator performing address searches for each Class Member using reasonably available public and proprietary electronic resources that collect data from various sources such as utility records, property tax records, motor vehicle registration records, and credit bureaus. Any disputes between the Parties with respect to the appropriate scope of such searches shall be submitted to the assigned Magistrate Judge for a final and binding determination with no further review by any Court, but in no event will the Parties request that the Court direct the City to research all City databases.

78. The Administrator shall update the Last Known Address List from time to time when new information about a Class Member's Last Known Address is obtained from the City, from Class Counsel, or from Class Members.

79. Promptly after Preliminary District Court Approval, the Administrator shall generate drafts of the Notice Forms (in both English and Spanish) that will be mailed to each Class Member. The draft Notice Form for each Class Member shall be in the form of the template attached hereto as Exhibit C (or in such other form(s) as may be approved by the District Court in the Preliminary District Court Approval), customized based on whether such Class Member is an Adolescent Class Member and/or a SMI Class Member, or neither. The draft Notice Form for each Class Member shall set forth the Tentative Individual Payment Amount for such Class Member.

80. No later than thirty (30) days after Preliminary District Court Approval, the City shall present the Notice Form for each such Class Member to Class Counsel for review and approval.

81. On or before the Notice Date, the Administrator shall cause the Notice Form for each such Class Member, the Claim Form, and the Opt-Out Form (with each form in both English and Spanish) to be mailed to such Class Member at his or her Last Known Address.

82. If the envelope that was mailed to any Class Member is returned with a forwarding address, the Administrator shall so inform the City and Class Counsel and shall promptly re-mail such Notice Form, Claim Form, and Opt-Out Form to such Class Member at such forwarding address.

83. If the envelope that was mailed to any Class Member is returned as “return to sender” (or other similar designation), the Administrator shall so inform the City and Class Counsel and shall promptly perform a standard skip trace in an effort to attempt to ascertain the current address of such Class Member. If such address is obtained, the Administrator shall promptly re-mail such Notice Form, Claim Form, and Opt-Out Form to such Class Member at

such address. If such address is not obtained, then Class Counsel shall make reasonable efforts to obtain such address.

84. On or before the Notice Date, the City shall cause the Notice Summary to be prominently posted and displayed in NYCDOC facilities (specifically, all intake areas, all law libraries, and in the court pens at the state courthouses that are under NYCDOC control) and New York City Department of Probation facilities (specifically, in the waiting areas of the adult supervision office for each borough in New York City in locations where individuals on probation are likely to see them, and as extensively as reasonably possible), and the City shall cause English and Spanish language versions of the Notice Summary to continue to be prominently posted and displayed in such facilities until Final District Court Approval.

85. On or before the Notice Date, the Administrator shall establish a website, email address, and toll-free telephone number (that is accessible to both English and Spanish speakers) through which actual and prospective Class Members can access information, ask questions about the settlement process set forth in this Stipulation, and provide the Administrator with an updated Last Known Address.

86. Any person may, at any time before the Challenge Deadline as explained on the Notice Summary, submit a Challenge to (i) his or her omission from the Class List; (ii) the failure to designate him or her as a Adolescent Class Member or a SMI Class Member; and/or (iii) his or her Tentative Individual Payment Amount.

87. A person may submit a Challenge by providing the Administrator (either directly or with the assistance of Class Counsel) with his or her name; his or her NYSID number, if known; his or her social security number, if known; his or her date of birth; a reasonable

approximation of the dates on which such person alleges to have served Historical Time; and, the NYCDOC facility in which such person alleges to have served Historical Time.

88. Promptly after a Challenge is submitted to the Administrator, the Administrator shall inform the Corporation Counsel and Class Counsel of the Challenge and the information that was provided. The Corporation Counsel and Class Counsel shall then work together in good faith, utilizing the same categories of documents and methodologies utilized by the Parties to generate the Class List, to determine whether the Challenge has merit. The Corporation Counsel shall provide Class Counsel with the same categories of documents and methodologies utilized by the Parties to generate the Class List within five (5) business days, and the Parties shall meet and confer within five (5) business days thereafter. If the Corporation Counsel and Class Counsel agree that the Challenge has merit, then any changes that are warranted shall be reflected on the Amended Class List, the Parties shall so inform the Administrator, and the Administrator shall so inform the person who made the Challenge by first class mail (which mailing shall include the Notice Form, the Claim Form, the Opt-Out Form, and a Substitute W-9 Form). If the Parties agree that the Challenge does not have merit, then the Parties shall inform the Administrator that the Challenge has been rejected, and the Administrator shall so inform the person who made the Challenge. If the Parties disagree about whether the Challenge has merit, then the Challenge shall promptly be submitted to the assigned Magistrate Judge for a final and binding determination. Under no circumstances shall any person submitting a Challenge be entitled to receive any documents relating to the consideration and resolution of such Challenge; any such consideration and resolution shall be undertaken by counsel for the Parties and, in the event of a dispute, by the assigned Magistrate Judge.

89. Any Challenges submitted after the Challenge Deadline shall be null and void unless (i) the person who submitted the Challenge demonstrates a compelling reason for his or her failure to submit the Challenge by the Challenge Deadline and (ii) it is practicable for the validity of the Challenge to be determined before the amount of the Actual Maximum Total Payment has been finally determined.

90. Any Class Member who chooses to opt out of the settlement provided for in this Stipulation shall mail, fax, or email a completed and signed Opt-Out Form (or other signed writing clearly evidencing such intent and containing his or her name and address) to the Administrator such that it is postmarked or received by the Administrator on or before the Initial Opt-Out Deadline (or, if extended, the Final Opt-Out Deadline).

91. Any Class Member who submits an Opt-Out Form to the Administrator by the Initial Opt-Out Deadline (or, if extended, the Final Opt-Out Deadline) shall no longer be a Class Member, shall be barred from participating in the settlement provided for in this Stipulation, shall not receive any payment from the City pursuant to this Stipulation, shall not be entitled to submit any Objection to this Stipulation or to the Preliminary District Court Approval, and shall not be bound by the release provided for in Paragraphs 50-53 of this Stipulation.

92. Any Class Member who does not submit an Opt-Out Form (or other signed writing clearly evidencing such intent and containing his or her name and address) to the Administrator by the Initial Opt-Out Deadline (or, if extended, the Final Opt-Out Deadline) shall be deemed to have accepted the settlement and other terms of this Stipulation and shall be bound thereby and by any and all subsequent proceedings, order, and judgments in this action.

93. If fewer than seventy-five percent (75%) of Class Members identified on the Class List submit either Claim Forms or Opt-Out Forms prior to the Initial Claim Form Deadline,

then the Initial Opt-Out Deadline shall be extended by an additional sixty (60) days, which date shall be the Final Opt-Out Deadline.

94. Notwithstanding anything to the contrary in this Stipulation, if a Class Member's Challenge is rejected, such Class Member shall have thirty (30) days from receipt of notice of such rejection to file an Opt-Out Form.

95. The Administrator shall provide the Parties with bi-weekly updates regarding the number and identity of Class Members who have provided updated Last Known Addresses, who have availed themselves of the Class List Challenge Procedure, whose Notice Forms were returned as undeliverable, who have submitted Opt-Out Forms, and/or who have submitted Claim Forms.

96. On or about fifteen (15) days before the Initial Claim Form Deadline, the Administrator shall send the Claim Form Deadline Warning, via first class mail, to each Class Member who has not yet submitted a Claim Form at such Class Member's Last Known Address.

97. Promptly after the Initial Claim Form Deadline, the Administrator shall inform the Parties which Class Members submitted Claim Forms prior to the Initial Claim Form Deadline.

98. If fewer than seventy-five percent (75%) of Class Members identified on the Class List submit Claim Forms or Opt-Out Forms prior to the Initial Claim Form Deadline, then the Initial Claim Form Deadline shall be extended by an additional sixty (60) days, which date shall be the Final Claim Form Deadline.

99. If the deadline for submitting Claim Forms is extended pursuant to the previous Paragraph of this Stipulation, then during the sixty (60) days between the Initial Claim Form Deadline and the Final Claim Form Deadline, Class Counsel (at their own expense) shall make

diligent efforts to contact each Class Member who has not submitted a Claim Form and inform him or her of his or her eligibility to receive compensation. Class Counsel may seek reasonable assistance from the Corporation Counsel in connection with such efforts, and the Corporation Counsel shall consider any such request for assistance.

100. Any Class Member who fails to submit a Claim Form by the Initial Claim Form Deadline (or, if extended, by the Final Claim Form Deadline) shall not be eligible to receive his or her Final Individual Payment Amount or other compensation pursuant to this Stipulation; provided, however, that the Administrator shall extend the Final Claim Form Deadline for up to an additional thirty (30) days on an individual basis for good cause shown.

101. Within ten (10) business days of receiving a Claim Form from a Class Member that is not notarized and not accompanied by identification, the Administrator shall send the Identification Warning Letter to such Class Member by first class mail and include a self-addressed stamped envelope in which such Class Member may submit either a notarized Claim Form or his or her identification to the Administrator, as well as instructions about how such document(s) may be sent to the Administrator by e-mail.

102. Within ten (10) business days of receiving a Claim Form from a Class Member that is not accompanied by a Substitute W-9 Form, the Administrator shall send the W-9 Form Warning Letter to such Class Member by first class mail and include a self-addressed stamped envelope in which such Class Member may submit a Substitute W-9 Form to the Administrator, as well as instructions about how such document may be sent to the Administrator by e-mail.

103. Within ten (10) business days of receiving a Claim Form from a Class Member that is both (i) not accompanied by a Substitute W-9 Form and (ii) not notarized and not accompanied by identification, the Administrator shall send the Substitute W-9 Form and

Identification Warning Letter to such Class Member by first class mail and include a self-addressed stamped envelope in which such Class Member may submit a Substitute W-9 Form and either a notarized Claim Form or his or her identification to the Administrator, as well as instructions about how such document may be sent to the Administrator by e-mail.

104. As soon as practical after the Initial Claim Form Deadline (or, if extended, by the Final Claim Form Deadline), the Parties shall calculate the amount of the Actual Maximum Total Payment based on the sum of each Eligible Class Member's Tentative Individual Payment amount or, if modified as a result of a successful Challenge, such Class Member's Modified Tentative Individual Payment amount.

105. If the Actual Maximum Total Payment exceeds the Anticipated Maximum Total Payment by more than one percent (1%), then the City shall have the option to cancel this Stipulation by providing Class Counsel notice of such cancelation by email no later than two (2) weeks after the Actual Maximum Total Payment is calculated. If the City timely exercises such option to cancel this Stipulation, then this Stipulation shall become null and void in its entirety, and the Parties shall be restored to their positions immediately prior to the execution of this Stipulation.

106. The Administrator shall provide the City and Class Counsel, at least five (5) business days before the Fairness Hearing, a sworn declaration by a person with knowledge declaring under penalty of perjury that the Administrator has complied with all of the terms, conditions, and procedures set forth above, and which informs the Court of the total number of or percentage of objectors and the total number of challengers.

OBJECTIONS

107. Any Objections to this Stipulation by any Class Member shall be submitted to the Court on or before the Objection Deadline (or, if extended, the Final Objection Deadline).

108. All Objections must be submitted to the Court in writing and must include a detailed description of the basis of the Objection.

109. Only those Class Members who have not submitted timely Opt-Out Forms may submit Objections to this Stipulation.

110. If fewer than seventy-five percent (75%) of Class Members identified on the Class List submit Claim Forms or Opt-Out Forms prior to the Initial Claim Form Deadline, then the Initial Objection Deadline shall be extended by an additional sixty (60) days, which date shall be the Final Objection Deadline.

111. Any Class Member who fails to submit an Objection to this Stipulation by the Objection Deadline (or, if extended, the Final Objection Deadline) shall be deemed to have waived such any and all objections to this Stipulation and shall be foreclosed from making any objection (whether by appeal or otherwise) to this Stipulation and/or to the Preliminary District Court Approval.

112. No Class Member may appear at the Fairness Hearing for the purpose of objecting to this Stipulation and/or to the Preliminary District Court Approval unless he or she submitted an Objection to the Court on or before the Objection (or, if extended, the Final Objection Deadline).

FINAL COURT APPROVAL

113. No later than forty (40) days before the date set by the Court for the Fairness Hearing, Class Counsel shall move for Final District Court Approval.

114. If Final District Court Approval is denied, the Parties shall work together diligently and in good faith to remedy the basis or bases for such denial, and Class Counsel shall re-move for Final District Court Approval as soon as practicable.

115. If the Parties are unable to obtain Final District Court Approval notwithstanding their diligent efforts, then this Stipulation shall become null and void in its entirety, the Parties will arrange for notice to be provided at the City's expense informing the Class Members that the settlement was not approved, and the Parties shall be restored to their positions immediately prior to the execution of this Stipulation.

PAYMENT OF THE FINAL INDIVIDUAL PAYMENT AMOUNTS

116. Promptly after Final District Court Approval is granted, the Administrator shall provide the City and Class Counsel with a list of all Eligible Class Members so that the City may, on a rolling basis, determine whether each person's award will need to be reduced due to New York child support liens and/or Medicare liens.

117. Upon the request of any Class Member or Class Counsel made prior to the mailing of his or her check pursuant to the next Paragraph of this Stipulation, the Administrator shall remit the amount of such Class Member's Final Individual Payment Amount by mail to an alternative address provided by such Class Member or Class Counsel, which shall be deemed his or her Last Known Address; provided, however, that Final Individual Payment Amounts shall not be made payable to agents of Eligible Class Members other than Court-appointed legal representatives of such Eligible Class Members. In no event shall Class Counsel seek fees or

costs for work relating to the appointment of a legal representative or other designee for any Class Member for purposes of effectuating payment.

118. As soon after the Effective Date for Payment as is practicable, the City shall mail to each Eligible Class Member who has submitted a signed Substitute W-9 Form, at his or her Last Known Address, a check in the amount of the Final Individual Payment Amount to which such Class Member is entitled pursuant to this Stipulation, less the amount of any child support lien or Medicare lien that has been imposed against such Class Member.

119. If any Class Member's Final Individual Payment Amount is reduced because of a New York child support lien and/or Medicare lien, then the Administrator shall provide such Class Member with written notice of those deductions, together with such Class Member's Final Individual Payment Amount and information on how to file a challenge regarding such deductions. If the City later determines that the amount of the lien was incorrect, the City shall directly pay such Class Member the amount that was incorrectly withheld from such Class Member's Final Individual Payment Amount.

120. As the claims being resolved in this settlement do not involve medical-related claims but rather only alleged due process violations, the City shall not assert any Medicaid liens against any Class Member's Final Individual Payment Amount.

121. Notwithstanding anything to the contrary in this Stipulation, the Final Individual Payment Amounts for each Class Representative shall be increased by five hundred dollars (\$500.00) in recognition of the time and energy that each has devoted litigating this lawsuit and his or her willingness to serve as a Class Representative. For the avoidance of doubt, this increase shall be in addition to the Final Individual Payment Amount such Named Plaintiff otherwise would have been entitled to receive pursuant to this Stipulation. All Final Individual

Payment Amounts that are paid to each Class Representative shall be paid to Class Counsel as attorneys for such Class Representative.

122. The City shall maintain records confirming the date each check was mailed to each Eligible Class Member.

123. The City and/or the Administrator shall provide Class Counsel with a list, on a bi-weekly basis, reflecting which of the checks sent to each Eligible Class Member have cleared during the prior two-week period.

124. The City and/or the Administrator also shall provide Class Counsel with a list, on a bi-weekly basis, of all Eligible Class Members whose checks were returned to the Administrator as undeliverable during the prior two-week period.

125. The City and/or the Administrator also shall provide Class Counsel with a list, on a bi-weekly basis, of all Class Members who (a) have not submitted a notarized Claim Form or acceptable identification to the Administrator or (b) have not submitted a Substitute W-9 Form to the Administrator.

126. On or about the one hundred and fiftieth (150th) day after a check has been mailed to an Eligible Class Member, the Administrator shall send an overnight notice to any such Eligible Class Member who still has not cashed his or her check, at his or her Last Known Address, informing him or her that his or her Final Individual Payment Amount was mailed to him or her and of the deadline for cashing his or her check provided for in the next paragraph of this Stipulation.

127. If an Eligible Class Member has not cashed his or her check by one hundred and eighty (180) days after the Administrator first mailed it, then the City shall stop payment on such

check, and such Class Member's Final Individual Payment Amount shall be cancelled and deemed forfeited.

128. If a Class Member has not satisfied the identification or notarized Claim Form requirement as set forth in Paragraphs 62-64 of this Stipulation or has not submitted a signed Substitute W-9 Form by one hundred and eighty days (180) after Final District Court Approval, such Class Member's eligibility to receive a Final Individual Payment Amount shall be deemed forfeited.

DISPUTE RESOLUTION

129. Should any dispute arise regarding the implementation of this Stipulation, the Parties shall first meet and confer and attempt to resolve the dispute informally. If such efforts fail, the Parties shall present the issue to and appear before the Magistrate Judge at a conference.

MISCELLANEOUS PROVISIONS

130. This Stipulation constitutes the entire agreement between and among the Parties hereto with respect to the matters covered hereby and supersedes any prior or contemporaneous agreement, understanding, or undertaking, written or oral, by or between or among the Parties.

131. This Stipulation shall not be admissible in any action or proceeding except as necessary to enforce its terms and obligations.

132. The City and Class Counsel shall be deemed to have participated fully in the drafting, review, and revision of this Stipulation. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Stipulation.

133. The signatories to this Stipulation represent that they are fully authorized to enter into this Stipulation and to bind the Parties to the terms and conditions hereof, subject to Court approval.

134. The Parties acknowledge that they each have voluntarily entered into this Stipulation after consulting with counsel, and that no promises or representations were made to them by any person to induce them to enter into this Stipulation other than the express terms set forth herein.

135. No term or provision of this Stipulation may be varied, changed, modified, waived, discharged, or terminated orally, but only by an instrument in writing signed by the Party against whom the enforcement of the variation, change, modification, waiver, discharge, or termination is sought and approved by the Court.

136. The Court shall retain jurisdiction over this action to ensure the fair and effective implementation and enforcement of the terms of this Stipulation, and the Parties and the Class Members hereby submit to the exclusive jurisdiction of the Court for purposes of implementing and enforcing the terms of this Stipulation.

137. This Stipulation may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Copies of this Stipulation shall have the same force and effect as an original, and each of the Parties hereby expressly waives any right to assert that such copies fail to comply with the "Best Evidence" rule of the Federal Rules of Evidence or any equivalent rule of law or evidence of any other jurisdiction. Signatures by facsimile, .pdf, or other electronic imaging shall be deemed to constitute original signatures.

For Plaintiffs:



Alexander Reinert
55 Fifth Avenue, Room 1005
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(212) 790-0403

Dated: August 11, 2017

Eric Hecker
Daniel Mullkoff
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For Defendant:







Martin Bowe
Assistant Corporation Counsel
100 Church Street
New York, NY 10007
(212) 356-2641

Dated: August 10, 2017

EXHIBIT A

415R

		<p>THE CITY OF NEW YORK DEPARTMENT OF CORRECTION</p> <p style="font-size: 24pt; font-weight: bold; margin: 0;">DIRECTIVE</p>					
<input type="checkbox"/> NEW <input type="checkbox"/> INTERIM <input checked="" type="checkbox"/> REVISED			SUBJECT				
EFFECTIVE DATE 09/16/15		*TERMINATION DATE / /			INMATE DISCIPLINARY DUE PROCESS		
CLASSIFICATION # 6500R-C	SUPERSEDES 6500R-B	DATED 03/29/06	APPROVED FOR WEB POSTING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		DISTRIBUTION A	PAGE 1 OF 23 PAGES	
RECOMMENDED FOR APPROVAL BY REVIEW BOARD MEMBER				AUTHORIZED BY THE COMMISSIONER			
 MARTIN J. MURPHY, CHIEF OF DEPARTMENT SIGNATURE				 JOSEPH PONTE SIGNATURE			

I. PURPOSE

The purpose of this directive is to establish New York City Department of Correction procedure for processing pre-hearing detention and inmate disciplinary infractions.

II. POLICY



The New York City Department of Correction (Department) shall fairly prosecute all inmate violations of Departmental rules and regulations in accordance with due process requirements so as to maintain good order, discipline, and security in Department facilities.

III. PROCEDURES

A. INFRACTION PREPARATION

1. When an employee reasonably believes an inmate has violated an institutional or Departmental rule, and such violation is not informally resolved, that employee must prepare Form 6500A, "Report and Notice of Infraction" (Attachment A) concerning that incident and notify a supervising officer who will conduct an investigation. The Report and Notice of Infraction shall be legible, detailed, and specific regarding the time and place of the rule violation(s) and shall include the description of the inmate's actions and behavior.
2. The supervisor conducting the investigation must be of the rank of Captain or above and must not have reported, participated in, or witnessed the incident.
3. The investigation shall commence within twenty-four (24) hours of the incident. At the conclusion of the investigation, the supervisor investigating the incident shall document their official report on Form 6500B "Investigation Report" (Attachment B) and notice of any resulting infraction shall be served upon the

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III. PROCEDURES (Cont.)

inmate as soon as practicable but no later than three (3) business days after the incident, unless extenuating factors exist which would require an extension of such time limit. For infractions comprised solely of Grade II and Grade III violations, that extension shall not exceed ten (10) days after the incident. For infractions that include Grade I rule violations, the time limit may be extended beyond ten (10) days to fifteen (15) days under the following circumstances:



- a. The underlying event is a major disturbance in which multiple inmates are alleged to have committed multiple rule violations;
- b. As a result of the inmate's alleged misconduct, staff or inmate witnesses necessary to the investigation cannot be questioned (e.g., hospitalized or otherwise unavailable) by supervisory staff conducting the investigation;
- c. Sufficient evidence to warrant the initiation of disciplinary proceedings only becomes known to the Department after the ten (10) day period has elapsed.

Note: In the case of an escapee or absconder the time will be held in abeyance until such time as the escapee or absconder is returned to custody.

In any case in which an inmate is served with an infraction more than three (3) business days after the incident, the supervisor conducting the investigation must explain in writing, with specificity, the reasons why the infraction could not be completed sooner and steps that were taken to complete it.

- 4. The supervisor conducting the investigation will interview the inmate(s) involved. In cases where the rule violation in question could lead to a subsequent criminal prosecution, the supervisor will inform the inmate that while the investigation is not pursuant to a criminal proceeding, statements made by the inmate may be used against him/her in a subsequent criminal trial. The inmate must also be informed that he/she may remain silent, and that his/her silence will not be used against him/her. The supervisor will also interview the employee filing the report and all witnesses to the incident to ascertain the facts. The supervisor will examine and secure any physical evidence or contraband. The supervisor will then decide if there is reasonable cause to proceed with disciplinary action.
- 5. If the supervisor determines that the Report and Notice of Infraction is inadequate, he/she shall ensure that the report is revised. If the supervisor determines that no disciplinary action is warranted, he/she should check the

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III. PROCEDURES (Cont.)

“No” box on the Investigation Report (Form 6500B) next to question “Hearing Recommended?”

- If, after concluding the investigation, the supervisor decides that there is reasonable cause to proceed with a hearing, he/she should check the “Yes” box on the Investigation Report (Form 6500B) next to question “Hearing Recommended?” The inmate should then be served with a Report and Notice of Infraction specifying the charges against him/her. This Notice must be specific and must include, at a minimum, details as to the time and place of the rule violation(s), and a description of the inmate's behavior. The Notice must be served at least 24 hours before the commencement of the hearing to give the inmate an opportunity to prepare his/her defense, unless the inmate consents to a shorter time period in writing.



Where two (2) or more incidents are involved, all may be incorporated in a single report, but each incident must be separately described. Separate charges may be included for each offense.

The inmate will be asked to sign the Report and Notice of Infraction as proof of receipt. If the inmate does not sign the Notice, a staff member other than the person serving the Notice must note the inmate's refusal on the Notice and include his/her name and shield number legibly. Any member of the staff, except those who participated in the incident, may serve the inmate with the Report and Notice of Infraction.

When necessary to protect personal safety or institutional security, a supervisor may refer to, but omit confidential information from, the Report and Notice of Infraction.

- Prior to the submission of the infraction and related documentation to the Security Office, the Tour Commander shall review and initial all infractions. Any deficiencies shall be corrected by the Investigating Supervisor.
- The Report and Notice of Infraction may be rewritten after the inmate is served and before the hearing begins. In such cases, the rewritten Report and Notice of Infraction should be marked "Amended" directly after the infraction number. If that happens, the inmate charged will be served with a copy of an amended Report and Notice of Infraction and will be given at least twenty-four (24) hours from the time he/she receives the amended Report and Notice of Infraction to prepare his/her defense.
- Once a copy of the Report and Notice of Infraction is served upon the inmate, copies of the Report and Notice of Infraction, along with copies of any relevant

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III. PROCEDURES (Cont.)

reports relied upon in the decision to proceed with the hearing, and physical evidence or a facsimile of such shall be forwarded to the Correction Officer assigned by the facility's Deputy Warden for Security to assist the Adjudication Captain.

10. If the inmate is transferred to another facility pending the hearing, the Report and Notice of Infraction, and all underlying documentation and physical evidence shall be forwarded to the Correction Officer assigned by the receiving facility's Deputy Warden of Security to assist the Adjudication Captain. It shall be the responsibility of the Security Captain or Tour Commander, as designated by the Commanding Officer at the receiving facility to ensure that the inmate receives a copy of the Report and Notice of Infraction, and that all underlying documentation is available for the inmate's review (see Section III.A.6.).

B. PRE-HEARING DETENTION (PHD)



1. Eligibility Criteria

a. Inmates who may be placed in PHD status shall include those who are under investigation for or charged with a disciplinary infraction and:

i. Are reasonably believed by the Tour Commander to have committed one or more of the following offenses:

- A. Assault on Staff (including splashing incidents);
- B. Criminal Act (assault on civilian);
- C. Possession of scalpels, hobby blades, multiple weapons, including jail-made weapons, single edge razors, etc.;
- D. Serious incidents resulting in injury;
- E. Fights in congregate areas (yards, corridors, program areas);
- F. Riot;
- G. Barricade incident;
- H. Gang assaults (three or more acting in concert);

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III. PROCEDURES (Cont.)

- I. Multiple participant inmate fights/melee; or
- J. Any other serious incident that threatens the safety and security of the Department as determined by OSIU or the Assistant Chief of Security.

Or:

- ii. Whose removal from general population is necessary to:
 - A. Protect any person, including but not limited to staff or inmates prior to a disciplinary hearing;
 - B. Prevent an inmate from intimidating or coercing other inmates to give false testimony or to refuse to testify at a hearing; and
 - C. Protect other significant safety and security interests of the Department.

b. Exclusions

Inmates precluded from assignment to Punitive Segregation housing and, by extension, PHD include:



- i. Adolescents;
- ii. Inmates with serious mental or physical disabilities or conditions.

Note: An inmate who is excluded from punitive segregation at the time of an infraction due to age or health status shall not be placed in punitive segregation for the same infraction at a later date, regardless of whether the inmate's age or health status has since changed.

2. Pre-Hearing Detention (PHD)

- a. An inmate in Pre-Hearing Detention (PHD) shall be afforded one hour of individual recreation per day; and shall be entitled to services in accordance with Directive 4501R-A. An inmate may be placed in Pre-Hearing Detention prior to being served with a "Report and Notice of Infraction."

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III. PROCEDURES (Cont.)



- b. The infraction hearing of an inmate in PHD shall be completed within three (3) business days of the inmate's transfer to PHD housing whenever possible but the inmate shall not be held in PHD for more than seven (7) business days. If the hearing is not held in such time the inmate must be released from PHD. After the completion of the infraction hearing pursuant to Section III.C of this Directive, if the inmate is found guilty of any infractions of Department rules, he/she shall receive credit for the time spent in PHD towards his/her punitive segregation time.
- c. An inmate in PHD may be released from PHD at any time if the Assistant Chief of Security or his/her designee determines that retention of that inmate in PHD is not necessary for the safety or security of that inmate or others in the Department.

3. Placement in PHD:

- a. Prior to placement in PHD, an inmate must be cleared by Mental Health pursuant to Directive 4501R-A (Section IV.A.) If the inmate is cleared, the Tour Commander may authorize the immediate placement of an inmate into PHD status. The Tour Commander must ensure that the inmate is provided with a "Notice of Pre-Hearing Detention," Form 6500C at the time of his placement.
- b. Once the Tour Commander has placed an inmate in PHD, he/she must immediately notify COD to inform the Officer of the Day (OD) (during non-business hours) and the Assistant Chief of Security (during business hours) of that placement. Additionally, the Commanding Officer shall review the placement within twenty-hour (24) hours of the inmate's transfer to PHD.
- c. Within twenty-four (24) hours of placement, the inmate must be issued Form 6500C, "Notice of Pre-Hearing Detention." Upon issuance, the inmate shall have the opportunity to respond, orally or in writing, to the "Reason for placement" specified on the form.
- d. It shall be the responsibility of the Commanding Officer of the facility initiating the PHD placement to ensure that a complete and accurate infraction package is completed in a timely fashion and, if the inmate is transferred to another facility for confinement in PHD status, that the infraction is forwarded to that facility.

C. INFRACTION HEARING PROCEDURES

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III. PROCEDURES (Cont.)

1. Hearings will be conducted by a Captain from the Adjudication Unit, which is a unit of the Legal Division. The Adjudication Unit is composed of Captains and an Assistant Deputy Warden who reports to the General Counsel and supervises the Captains assigned to the Adjudication Unit. The Captains must conduct disciplinary and due process hearings and other business for the Legal Division. The Captains in the Unit rotate among the facilities every four (4) weeks, but they do not report to the Commanding Officer of the facility to which they are assigned.
2. The Adjudication Captain for a particular infraction hearing will not be the reporting employee, the supervisor who conducted the investigation, or a witness to the incident. Hearings must take place within three (3) business days of service of the Report and Notice of Infraction on the inmate, excluding:
 - a. The day the inmate is served;
 - b. When the inmate has a court appearance, whether in person or via a video-conference, and is therefore unavailable for the hearing;
 - c. The day the inmate is hospitalized and unable to attend a disciplinary hearing, or is transferred out of the facility for a hospital or clinic appointment;
 - d. When the inmate leaves the facility for an attorney interview and is therefore unavailable for the hearing;
 - e. When the inmate is unavailable because he/she is transferred to another facility; and
 - f. When the inmate is unavailable due to his/her absence from the facility for any purpose, including significant family events or emergency situations.

Upon receiving notification by the facility, the Assistant Deputy Warden assigned to the Legal Division shall make arrangements to provide hearings for infractioned intermittent inmates. The timeframes outlined in this Directive do not apply to intermittent inmates.

3. The Correction Officer assigned by the facility to assist the Adjudication Captain shall be responsible for recording all infractions processed by the Adjudication Captain in a logbook established exclusively for such purpose. The information to be maintained shall include the following:



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III. PROCEDURES (Cont.)

- a. Infraction number;
 - b. Inmate's name;
 - c. N.Y.S.I.D. #;
 - d. Inmate's commitment number;
 - e. Date of incident;
 - f. Time of incident;
 - g. Location of incident;
 - h. Inmate's housing area;
 - i. Name of individual who wrote the infraction;
 - j. Investigating Captain;
 - k. Rule violation;
 - l. Inmate's statement;
 - m. Hearing date;
 - n. Adjudication Captain's name;
 - o. Inmate's plea to charge(s);
 - p. Tape number; and
 - q. Disposition.
4. Prior to calling the infractioned inmate for his/her hearing, the Adjudication Captain shall review the Report and Notice of Infraction to determine whether there are due process violations within the Report and Notice of Infraction that may require the dismissal of the infraction. Due process violations include the following:
- a. There is no proof of service on the Report and Notice of Infraction - the infractioned inmate did not sign the Report and Notice of Infraction acknowledging receipt of the charges nor was any notation made by staff that the inmate was served with the charges but refused to sign the Report and Notice of Infraction.
 - b. There is contradictory information and/or inconsistent allegations or facts recited in the Report and Notice of Infraction that relate to the alleged misbehavior and are material to the charge(s).
 - c. The "Details of Incident" section on the Report and Notice of Infraction is so vague as to fail to give the infractioned inmate adequate notice of the charge(s) against him/her.
 - d. There is incorrect material information within the body of the charge(s). If the error is purely technical, e.g., an incorrect charge number is given on the Notice of Infraction, but the actual misconduct is adequately recited in the form, then a correction may be made by the Adjudication Captain, so long as a record of such correction is made. If the error is substantive,



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III. PROCEDURES (Cont.)

- the Adjudication Captain should not correct the error on the Notice of Infraction, but may dismiss the charge.
 - e. The Investigating Captain was a witness to and/or a participant in the incident, which formed the basis of the charge(s).
 - f. Investigation of the infraction was not commenced within twenty-four (24) hours of the incident.
- 5. Dismissals based solely on due process violations do not constitute “not guilty” findings. They are not considered dismissals on the merits of the case(s). The dismissal of such infraction(s) does not preclude the institution from redrawing the charges and serving the inmate with the amended infraction(s), except if the due process violation falls within Section III.C.4.e. of this Directive.
 - a. If the institution elects to redraw the charges and serve the inmate with an amended Report and Notice of Infraction, on rehearing the infraction the Adjudication Captain must determine whether the delay in processing the infraction was prejudicial to the inmate and so state in detail on Form 6500D, “Hearing Report and Notice of Disciplinary Disposition” (Attachment D). Factors to be considered include whether the inmate would be unable to call and/or locate necessary witnesses or obtain needed documentation. If no prejudice to the inmate's ability to prepare and present a defense was caused by the delay, the Adjudication Captain should proceed with the disciplinary hearing.
 - b. If an inmate is served more than three (3) business days after the incident, the Adjudication Captain must determine whether the inmate has been prejudiced by the extension of time. The Adjudication Captain must set forth in detail in the Hearings Report and Notice of Disciplinary Disposition his/her basis for the resulting determination.
- 6. At the commencement of the infraction hearing, the Adjudication Captain must begin audiotaping the hearing, in accordance with the procedures set forth in Attachment K, “Audio-taping Procedures.” The Adjudication Captain must ascertain the name and book and case number of the inmate before him/her to ensure that he/she is the inmate charged. The inmate should be asked to present his/her Identification Card and the information contained thereupon should be checked against the infraction. The Adjudication Captain shall, upon such verification, identify him/herself to the inmate.

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7. The Adjudication Captain shall check that the Report and Notice of Infraction was served on the inmate at least twenty-four (24) hours before the commencement of the hearing. The inmate may waive the 24 Hour notice period in writing. If the inmate waives the notice period, the Adjudication Captain shall so note on the taped record.
 - a. If there is no proof of service, i.e., no inmate signature or signature of a staff witness to the service, the Adjudication Captain will personally serve the inmate with a copy of the Report and Notice of Infraction when he/she appears for the hearing and then adjourn the hearing until the twenty-four (24) hour notice period has elapsed, unless the inmate waives the 24-hour notice period in writing on the Hearing Report and Notice of Disciplinary Disposition.



8. The hearing is an administrative process for the prompt resolution of disciplinary charges within a correctional facility. Court rules of evidence do not apply. If security concerns preclude a hearing in the usual hearing location, the hearing may take place in another area of the facility or in another facility.

9. Inmate Rights - The Adjudication Captain will advise the infractioned inmate that he/she has the following rights at the hearing:
 - a. The Right to Appear - An inmate has the right to appear personally unless he/she waives his/her appearance in writing or refuses to attend the hearing.
 - b. The Right to Make Statements - An inmate has the right to make statements. In cases where the infraction in question could lead to a subsequent criminal prosecution, the Adjudication Captain must inform the inmate that while the proceeding is not a criminal one, the statements made by the inmate may be used against him/her in a subsequent criminal trial. The inmate must also be informed that he/she may remain silent, and that his/her silence will not be used against him/her.

If the inmate has been given Miranda warnings as a result of the incident, the Adjudication Captain shall inquire if the inmate wishes to make any statements in light of these warnings.

- c. The Right to Present Material Evidence - An inmate has the right to present material, relevant and non-duplicative evidence. Any material introduced at a hearing or relied on by the facility in support of the infraction must be presented, subject to applicable redactions of

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confidential informant and/or security related information must be shown to the accused inmate. The Department is not required to disclose to an inmate the identity of persons supplying confidential information to the Department or other law enforcement agencies. If after being shown such evidence at the hearing the inmate requires and requests additional time an adjournment may be granted.

- d. The Right to Present Witnesses - An inmate has the right to have witnesses, both inmate and staff, testify at the hearing in the presence of the infracted inmate; provided they are reasonably available and attending the infraction hearing will not be unduly hazardous to institutional safety or correctional goals.
- e. The Right to Assistance of Hearing Facilitator
 - i. A Hearing Facilitator is a civilian employee of the Department, usually a Legal Coordinator from the Law Library, or a Counselor; he/she is not an attorney. He/she shall assist the inmate by interviewing witnesses; obtaining evidence and/or written statements; providing assistance at the disciplinary hearing; providing assistance understanding administrative segregation decisions; providing assistance understanding the evidence relied on by the hearing officer and the reasons for action taken; providing assistance understanding the waiver of any rights provided by this Directive; and providing assistance in filing an appeal as provided by this Directive. The Hearing Facilitator will not advocate for or defend the inmate against the charges. The Adjudication Captain may adjourn the hearing for the inmate to receive this assistance. If the inmate requests the assistance of a Hearing Facilitator and that request is denied by the Adjudication Captain, he/she shall state the reasons for denying the request in the hearing record.
 - ii. An inmate may ask for a Hearing Facilitator in the following circumstances:
 - A. The inmate is non-English speaking;
 - B. The inmate is illiterate;
 - C. The inmate is blind or deaf; or
 - D. For any other reason the inmate is unable to prepare a defense

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- iii. An inmate has the right to assistance of a Hearing Facilitator if the Adjudication Captain cannot obtain material evidence or witnesses requested by the inmate or the Adjudication Captain deems that a Hearing Facilitator is necessary.
- f. The Right to an Interpreter - An inmate has the right to an interpreter in his/her native language if he/she does not understand or is not able to communicate in English well enough to conduct the hearing in English. The Adjudication Captain shall take reasonable steps to obtain an interpreter for the inmate. If an interpreter is utilized, the interpreter shall sign the Hearing Report and Notice of Disciplinary Disposition in the interpreter section indicating his/her presence at the hearing.
- g. The Right to Appeal - An inmate who is found guilty at a disciplinary hearing has the right to appeal an adverse decision within two business days of receipt of the Notice of Disciplinary Disposition (see Section III.E).
- 10. The Adjudication Captain will ensure that the inmate has received copies of the charges. The Adjudication Captain will read the charges to the inmate and ask whether he/she understands them.
- 11. Hearings may be held in absentia (without the inmate present) only under the following circumstances:
 - a. The inmate is notified of the hearing and refuses to appear; or
 - b. The inmate appears and is extremely disruptive, causing a situation, which is unduly hazardous to institutional safety, and necessitating his/her removal from the hearing room, thus constituting a constructive refusal to appear.

When either of these situations arises, the justification for holding the hearing in absentia must be clearly documented in the Adjudication Captain's decision.

- 12. Once the Adjudication Captain has made certain that the infracted inmate understands the charges, in cases where the Report and Notice of Infraction reflects that the inmate was given Miranda warnings in connection with this infraction, the inmate must be informed that while the proceeding is not a criminal proceeding, the statements made by the inmate may be used against him/her in a subsequent criminal trial. The inmate must also be informed that he/she may remain silent, and that his/her silence will not be used against him/her.



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13. The Adjudication Captain shall inquire specifically if the inmate wishes to make any statements in light of these warnings. Then the Adjudication Captain shall ask the inmate for his/her plea to the charges: guilty, not guilty, or guilty with an explanation.
14. Once apprised of the charges against him/her and advised of his/her rights and the possible penalties if found guilty, the infracted inmate shall be interviewed by the Adjudication Captain outside the presence of any and all witnesses, including those the inmate wishes to call on his/her own behalf.
15. The testimony of the infracted inmate shall be documented on the Hearing Report and Notice of Disciplinary Disposition. Additionally, the entire hearing shall be recorded on tape in accordance with the procedures set forth in Attachment K.
16. For infractions involving Use of Force/Injury: If the infracted inmate makes any allegation that staff used unnecessary or excessive force in connection with the incident giving rise to the charges levied against him/her, the Adjudication Captain shall report such allegation per existing Departmental procedures. Unless the Adjudication Captain believes that additional investigation is necessary, the Adjudication Captain should conduct the disciplinary proceeding and determine whether the inmate is guilty of the infraction with which he/she has been charged.
 - a. The Adjudication Captain should review all of the relevant evidence, including injury reports and physical evidence. The Adjudication Captain should make a rational determination of how, why, and where injuries were inflicted on the inmate and/or the staff person involved.
17. If the infracted inmate makes any allegation of abuse of authority, malfeasance or corruption on the part of Department of Correction personnel, that allegation shall be reported in writing directly to the Inspector General's Office.
18. If during the hearing the infracted inmate exhibits any unusual behavior that may indicate a need for a mental health evaluation, appears unable to understand the nature of the proceedings due to mental or emotional disturbance, express a desire to harm and/or kill him/herself, or a witness relates that the infracted inmate has shown evidence of being a suicide risk, the hearing shall be adjourned and the Adjudication Captain shall refer the infracted inmate to Mental Health for evaluation. If Mental Health determines that the infracted inmate is competent to proceed and that continuing the hearing does not present a risk, the hearing shall be reconvened. If Mental

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Health determines that an inmate is not competent to proceed at that time, the hearing shall be adjourned pending a further evaluation by Mental Health.

19. Witnesses at the Hearing: The Adjudication Captain shall ask the inmate if he/she wishes to call any witnesses. This shall be done whether or not there is an indication on the Report and Notice of Infraction that the inmate requested witnesses at the hearing.
 - a. If the inmate waives his/her right to have witnesses appear on his/her behalf, the inmate shall so indicate on the Hearing Report and Notice of Disciplinary Disposition Form and sign same.
 - b. If the inmate wishes to call inmate or staff witnesses, the witnesses should be called in accordance with the procedures set forth in Section III.C.9.d of this Directive.
 - c. If an inmate witness requested by the infractioned inmate is no longer in the Department's custody, or cannot be called within a reasonable time, that fact should be noted on the Hearing Report and Notice of Disciplinary Disposition.
20. If the witness is not reasonably available, the Adjudication Captain may obtain the witness' written statement and substitute the statement for the witness' testimony. Statements taken from a witness who is not present at the hearing shall be made known to the inmate, and the inmate afforded an opportunity to respond on the record.
21. For safety and security purposes, the Adjudication Captain may question a witness outside of the presence of the inmate. In these instances the Adjudication Captain will ask the inmate what questions he/she would like to ask the witness and will pose these to the witness. This would also apply to any witness who is not reasonably available.
22. When an inmate witness testifies at an infraction hearing, the Adjudication Captain must ascertain the name and book and case number of the inmate witness. The Adjudication Captain shall verify the identity of the inmate witness present and put the information on the record.
23. There is no minimum or maximum number of witnesses who may be called. All witnesses must give factual testimony as to some element of the charge against the infractioned inmate; however, the Adjudication Captain may impose reasonable limits on the number of witnesses an inmate may call. In such

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cases, the Adjudication Captain shall document the reasons for these limits in the hearing record.

24. The Adjudication Captain will determine whether a witness may testify and the conditions under which that testimony will be given. Witnesses must provide material testimony that is relevant and not repetitive of other testimony already in the record, although a witness will not be excluded solely because his/her testimony addresses the same subject as that of another witness. When a question arises whether an inmate should be allowed to call a staff or inmate witness, the Adjudication Captain will ask the inmate to state what the witness is expected to say.
25. The Adjudication Captain will show the inmate the testimony of any witness who testifies outside the inmate's presence, except where confidential information is provided and safety or security would be jeopardized if that information was revealed. When an inmate is not afforded an opportunity to review the testimony of a witness not present at the hearing, the substance of the testimony should be provided to the inmate, and he/she afforded the opportunity to respond on the record.
26. When witnesses are questioned outside the presence of the inmate, their statements should be recorded on Form 6500E, "Inmate Witness Statement" (Attachment E) or Form 6500G, "Staff Witness Statement" (Attachment G), and the witness shall be asked to sign such form. Adjudication Captain shall make a part of the record the reasons why this was done. If an inmate is excluded during the testimony of a witness, the Adjudication Captain will play the taped testimony of that witness's testimony to the inmate so that he/she may respond, except where confidential information is provided and/or someone's personal safety would be jeopardized if that information was revealed. The Adjudication Captain must make an independent assessment of the credibility of any confidential informant and document the assessment in detail in the Hearing Report and Notice of Disciplinary Disposition without revealing any confidential information. When for security reasons an inmate is not afforded an opportunity to listen to the taped testimony of a witness not present at the hearing, the substance of the testimony should be provided to the inmate, and he/she afforded the opportunity to respond on the record.
27. The Adjudication Captain shall summarize the testimony of each witness on the Hearing Report and Notice of Disciplinary Disposition and the witness shall sign this form indicating his/her presence at and participation in the hearing.



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28. Inmate witnesses who refuse to testify shall be asked to state their reasons for such refusal and to sign Form 6500F, "Inmate Refusal to Testify as a Witness" (Attachment F). If either the Witness Statement Form or the Refusal to Testify Form is utilized, it shall be made part of the record in the case.
29. Once the hearing has begun, the Adjudication Captain will make a reasonable effort to conclude the hearing in one session. Adjournments may be granted if an inmate requests additional time to locate witnesses, obtain the assistance of a hearing facilitator, or prepare his/her defense. Adjudication Captains may also adjourn a hearing in order to question additional witnesses not available at the time of the hearing, gather further information, refer a case to Mental Health, or if issues are raised that require further investigation or clarification in order to reach a decision. However, hearings must be completed within five (5) business days of its convening unless otherwise authorized by the Assistant Deputy Warden of the Adjudication Unit, unless this timeframe is waived by the inmate in writing.
30. When a case is adjourned, the adjournment and the underlying reason(s) for it must be stated on the record and noted on the Hearing Report and Notice of Disciplinary Disposition. Adjournments should be as brief as possible.
31. The Adjudication Captain may question any party or witness about any relevant matter to help in reaching a fair decision based on the facts. The hearing shall be recorded on tape, in accordance with the procedures set forth in Attachment K. The Hearing Report and Notice of Disciplinary Disposition shall be a summary of the testimony and evidence presented.
32. The record of the hearing shall include a description of each document provided by the facility to the Adjudication Captain, a description of each document provided by the Adjudication Captain to the infracted inmate (together with a list of documents, or portions of documents, withheld from the inmate), a list of witnesses requested by the inmate, a list of witnesses who testified, an indication whether the inmate was present when each witness testified, and an indication whether a Hearing Facilitator was requested and if so, was present during the hearing.
33. After the hearing concludes, the Adjudication Captain will weigh the evidence presented at the hearing and reach a decision as to the inmate's guilt or innocence and the appropriate disposition or penalty, if any, to be imposed.
34. The Department has the burden of proof in all inmate disciplinary proceedings. The Adjudication Captain must be persuaded by a preponderance of the

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credible evidence (greater than 50%) that an inmate committed the alleged violation or some lesser included violation, as described in "Description of Lesser Included Offenses" (Attachment I) in order to find him/her guilty.

35. Infractions may be dismissed for lack of evidence if no physical evidence or facsimile thereof is provided in a case in which the charges hinge on the existence of such object, or if testimonial, documentary or physical evidence is insufficient to substantiate the charges as presented.
36. A disposition shall be reached within five (5) business days after the conclusion of the hearing. The Adjudication Captain must complete the Hearing Report and Notice of Disciplinary Disposition. The inmate will receive a Notice of Disciplinary Disposition within one business day after the Adjudication Captain makes a decision, unless extenuating circumstances prevent the Department from being able to serve the inmate within one business day.
37. Inmates in Pre-Hearing Detention status must receive a Notice of Disciplinary Disposition within one business day of the conclusion of the hearing. If the inmate has been transferred to another facility in the interim, he/she will be served with the Disposition as soon as it is reasonably possible to do so.
38. The disposition shall be supported by substantial evidence and shall be in writing and shall contain the following:
 - a. A finding of guilty, not guilty or dismissed on each charge in the infraction;
 - b. The evidence relied upon by the Adjudication Captain in reaching such finding;
 - c. The sanctions imposed, if any;
 - d. The testimony of each witness should be summarized and either credited or rejected, with a statement of the reasons therefore.
39. The facility of occurrence shall maintain a disciplinary record including the infraction, the investigation report (if prepared), the formal disposition, any sanctions imposed, and the appeal documents.
40. Records generated pursuant to a disciplinary hearing in which an inmate is found not guilty of charges brought against him/her, after either the disciplinary hearing or appeal, shall be kept confidential and shall not be considered in

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making decisions pertaining to the inmate’s access to programs, services or in the granting of or withholding of good time for sentenced inmates.

D. PENALTIES THAT CAN BE ADMINISTERED

1. The authorized dispositions that the Adjudication Captain may impose include:
 - a. Reprimand;
 - b. Loss of one or more privileges, temporarily, but no inmate shall be deprived of the following rights:
 - i. Receiving visitors, although a sanction of the loss of one hour of weekly contact visitation may be imposed, each week until the term of the imposed penalty has been served, if the penalty is pursuant to a visit related infraction including receiving contraband;

Note: Each visit week the facility shall impose the pending non-contact visit sanction on the inmate’s first visit only. Only one non-contact visit sanction may be imposed per visit week. If an inmate does not receive a visit for any period of time, the non-contact visit sanction term owed shall be held in abeyance, until such time it may be imposed.
 - ii. Sending or receiving mail;
 - iii. Contacting legal counsel;
 - iv. Recreation (unless an inmate is found guilty of an infraction that occurred in a recreation area).
 - c. Loss of part or all good time, if sentenced;
 - i. Grade I infractions can result in the loss of all good time.
 - ii. Grade II infractions can result in the loss of up to two-thirds of all good time.
 - iii. Grade III infractions can result in loss of up to one-third of all good time.

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- d. Punitive Segregation, for inmates aged eighteen (18) and older, for a period not to exceed thirty (30) days for each disciplinary charge. The Adjudication Captain will make the final determination whether multiple charges shall be served consecutively or concurrently. However, after thirty (30) consecutive days in a punitive segregation area, the inmate must receive a seven (7) day reprieve before returning to punitive segregation again. Further, no more than sixty (60) days of punitive segregation may be served in a six (6) month period, unless the inmate continues to engage in persistent acts of violence, other than self-harm, throughout the sixty (60) days, such that placement in enhanced supervision housing, would endanger inmates or staff. In such instances, the Chief of Department must approve extension of the inmate's punitive segregation placement and the Department must provide to BOC and DOHMH with immediate notification containing an explanation of the security concerns presented by the inmate. If a PHD inmate is found guilty and the penalty administered is a period of Punitive Segregation, the time the inmate served in PHD shall be credited towards the penalty imposed;
 - i. Punitive Segregation may not be administered for Grade III offenses.
 - ii. Inmates who are found guilty of non-violent or Grade II offenses shall serve their time in Punitive Segregation II.
 - iii. Inmates shall not serve Punitive Segregation time that had been earned in a previous incarceration.

Note: Nothing in this Directive shall prohibit the Department from housing inmates according to their custody management needs, including moving inmates to support-based housing units (such as the Transitional Restorative Unit or the Second Change unit).
- e. Inmates in adolescent or young adult programming shall be managed in accordance with their individualized behavior support plans.
- f. Restitution for costs incurred by the City as permitted by law, including restitution for costs of restoration or replacement of property intentionally damaged or destroyed;
- g. Any combination of the above;

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- h. Penalties detailed in "List of Penalties That Can Be Administered" (Attachment J);
 - i. The third time an inmate is found guilty of committing a rule violation for the same offense, including any subdivision of the rule violation specified in that offense, within his/her current term of incarceration, the Adjudication Captain may sentence that inmate to a penalty within the normative range prescribed for the next higher grade of offenses. For example, the third time an inmate is found guilty of violating any of the Grade III rules for an identification procedures offense, Rules 115.10, 115.11 or 115.12, that inmate may be given a Grade II sentence. No inmate found guilty of a Grade II offense, even one who has been found guilty three (3) previous times during the current period of incarceration of the same offense, shall be sentenced to more than ten (10 days in Punitive Segregation;
 - j. A \$25.00 (twenty-five dollars) disciplinary surcharge shall be imposed on all inmates found guilty of Grade I or Grade II offenses.
2. If an inmate has been found guilty of multiple charges the Adjudication Captain must decide whether the penalties should be served concurrently or consecutively. An inmate may be found guilty of and sentenced for multiple charges only if the violations are specifically charged individually and each separate violation is proven by a preponderance of the evidence.
 3. If an inmate believes that the decision was in error or that a penalty should be reduced, he/she has a right to appeal, in accordance with the procedures set forth in Section III.E. The Adjudication Captain must inform an inmate of his/her right to appeal and to whom an appeal must be forwarded.
 4. If an inmate is released on bail or on his/her own recognizance, is discharged, or is transferred to the custody of another jurisdiction or agency before he/she commences the infraction hearing, the Adjudication Captain may suspend the hearing pending the inmate's possible return to Department custody. If the inmate returns and the infraction hearing is recommenced, the Adjudication Captain then presiding shall determine whether the passage of time since the suspension of the hearing has prejudiced the inmate.

Note: Punitive Segregation time may not be served for these charges from previous incarcerations, but the infraction hearing should be adjudicated so

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that the inmate’s behavioral history is accurate and the inmate can be appropriately classified.

5. If an inmate is released on bail or on his/her own recognizance, is discharged, or is transferred to the custody of another jurisdiction or agency before he/she makes restitution in accordance with a penalty imposed as a result of a disciplinary hearing, he/she may be required to finish making restitution upon returning to the jurisdiction of the Department.

E. APPEALS

1. An inmate who is found guilty at a disciplinary hearing has the right to appeal an adverse decision. The appeal shall be submitted on Form 6500H, “Notice of Appeal of Disciplinary Disposition” (Attachment H), within two (2) business days of the inmate’s receipt of the disposition, specifying the grounds for the appeal.
2. The appeal must be in writing, must be based on facts already in the record, and must clearly set forth the basis for the appeal except that an inmate may raise any newly discovered evidence at his/her appeal. He/she may appeal based on the belief that there was a due process violation, that there was insufficient evidence to support a guilty finding, or because the Adjudication Captain was biased.
3. The inmate may appeal his/her penalty to the Department. The appeal shall be made to the Commanding Officer of the institution in which the infraction occurred and must be filed within two (2) days of service of the Notice of Disciplinary Disposition on the inmate. A decision on the appeal shall be rendered and delivered by the Department to the inmate within five (5) business days after receipt of the appeal by the Warden. In such appeals, the determination of the Warden is final.
 - a. In the event the Warden fails to render the decision within the 5-day threshold, the Warden is responsible for forwarding the appeal to Writ Court.
 - b. In the event that the Commanding Officer determines that additional documentation or information is needed to adequately respond to the inmate's appeal, the time limit shall be extended and the reason for the delay noted on the inmate's appeal.

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4. A penalty may remain the same or be lowered as a result of an appeal, but it cannot be increased.
5. If, as a result of an appeal, an inmate's conviction is reversed or an inmate's penalty is decreased, the inmate's record (IIS and legal folder) as well as infraction logbook shall be corrected to reflect that action.
6. If the inmate receives a favorable decision, the Department records shall be corrected to reflect the Court's decision and filed in the inmate's legal folder.



IV. REFERENCES

- A. Directive 4016R, entitled "Mental Health Referral of Inmates Awaiting Disciplinary Action," dated 08/02/99.
- B. SCOC Minimum Standards and Regulations

V. ATTACHMENTS



- A. Form 6500A, "Report and Notice of Infraction," dated 08/04/15.
- B. Form 6500B, "Investigation Report," dated, 08/04/15.
- C. Form 6500C, "Notice of Pre-Hearing Detention," dated 08/04/15.
- D. Form 6500D, "Hearing Report and Notice of Disciplinary Disposition," dated 08/04/15.
- E. Form 6500E, "Inmate Witness Statement," dated 08/04/15.
- F. Form 6500F, "Inmate Refusal to Testify," dated 08/04/15.
- G. Form 6500G, "Staff Witness Statement," dated 08/04/15.
- H. Form 6500H, "Notice of Appeal of a Disciplinary Disposition," dated 08/04/15.
- I. Inmate Rule Offenses, Grades and PSEG Level Placement, dated 08/04/15.
- J. Audio - Taping Procedure, dated 08/04/15.



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VI. SUPERSEDES

- A. Directive 6500R-B, entitled "Inmate Disciplinary Due Process," dated 03/29/06 (as amended).
- B. Any Directives or Operation Orders that conflict with this Directive.

	CORRECTION DEPARTMENT CITY OF NEW YORK	ATTACHMENT A	
REPORT AND NOTICE OF INFRACTION		Form: 6500A Rev. : 08/04/15 Ref. : Dir. #6500R-C	
Infraction #:	Institution:	Date of Incident:	Time Infraction Written:
Inmate Name (Last, First):		B&C/ Sentence #:	
Location of Incident (Be Specific):		Housing Area Location:	Approximate Time of Incident: Hrs.
Charge #	Offense	Charge #	Offense
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Reporting Official (Print Name, Rank and Shield #):		Reporting Official (Signature):	
Details of Incident (Include details as to How, When and Where Infraction was Committed):			
You are entitled to a hearing for this infraction no sooner than twenty-four (24) hours after you are served with this notice. If you are a sentenced inmate and you commit an infraction within twenty-four (24) hours prior to your discharge, and have not reached your maximum sentence expiration date, you may be served with charges and held for a hearing. The Department will make every effort to hold this hearing within three (3) business days of the service of this notice. This three (3) business day period excludes the day you are served, weekends, holidays, days you go to court (whether in person or via teleconference), days you are hospitalized or at a hospital attending a clinic, days you leave the facility for an attorney interview, days you are unavailable because you are transferred to another facility and days you are unavailable due to your absence from the facility for any purpose. The three (3) business day period is automatically extended by one (1) business day if you are transferred to another facility prior to your hearing (unless you are a Pre-Hearing Detention Inmate). Commencement of a hearing after three (3) business days is at the discretion of the Adjudication Captain and is not barred by Department rules.			
At your hearing you have the following rights: <ol style="list-style-type: none"> 1. Right to appear personally, unless you waive your right to appear, refuse to attend the hearing or appear at the hearing and become disruptive. 2. Right to make statements. If you choose to remain silent, your silence cannot be used against you. If you make a statement, such statement cannot be used in a subsequent criminal trial unless you have been given a Miranda Warning and then voluntarily testify. 3. Right to present material evidence. 4. Right to present witnesses. 5. Right to the assistance of a Hearing Facilitator. 6. Right to an interpreter if you cannot communicate well enough in English. 7. Right to appeal. 			
Within twenty-four hours of the Adjudication Captain reaching a decision of guilty, you will receive a copy of the "NOTICE OF DISCIPLINARY HEARING DISPOSITION" form informing you of the violation(s) you are found guilty of, the basis for that finding, the evidence relied upon and the penalty to be imposed. The following penalties are the maximum which may be imposed individually or in any combination: <ol style="list-style-type: none"> 1. Reprimand. 2. Loss of privileges. 3. Loss of good time if you are a sentenced inmate. 4. Punitive segregation for up to thirty (30) days per each applicable individual charge. 5. Restitution for intentionally damaging or destroying City property. A twenty five (\$25) dollar disciplinary surcharge will be imposed on all inmates found guilty of a Grade I or Grade II offense. You have the right to appeal an adverse decision rendered by the Adjudication Captain.			
Interpreter Requested: <input type="checkbox"/> Yes (If yes, include what language) _____ <input type="checkbox"/> No			
Hearing Facilitator Requested: <input type="checkbox"/> Yes <input type="checkbox"/> No			
Witness(es) Requested: <input type="checkbox"/> Yes (If yes, include witness(es) Name, Book and Case Number (if inmate) or Shield/ID (if staff) and Location (if inmate) or Post (if staff).) <input type="checkbox"/> No			
Witness (Print Name): _____		B&C Number: _____	
Witness (Print Name): _____		B&C Number: _____	
Witness (Print Name): _____		B&C Number: _____	
Witness (Print Name): _____		Shield/ID Number: _____	
I certify that I received a copy of this notice:		Date: _____	
Signature of Inmate: _____		Time: _____	
Served by (Print Name, Rank and Shield #): _____		Signature of Server: _____	
Refused to Sign for Notice: <input type="checkbox"/> Yes <input type="checkbox"/> No		Witnessed By: _____	

	CORRECTION DEPARTMENT CITY OF NEW YORK	ATTACHMENT B	
INVESTIGATION REPORT		Form: 6500B Rev. :08/04/15 Ref. : Dir. #6500R-C	

Please indicate which of the following items are part of the Investigation:

<input type="checkbox"/> Injury to Inmate	<input type="checkbox"/> Photos	<input type="checkbox"/> Mental Health Clearances
<input type="checkbox"/> UOF Reports	<input type="checkbox"/> Drug Test Results	<input type="checkbox"/> Other _____
<input type="checkbox"/> Red ID/Enhanced Restraint Placement	<input type="checkbox"/> NIK Reports (IU)	_____
<input type="checkbox"/> PHD (Specify where below)	<input type="checkbox"/> Witness Statements	
<input type="checkbox"/> Property Damage Report	<input type="checkbox"/> Confidential Informant	

Date Investigation Started:	Date Investigation Concluded:	Infraction #:
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INVESTIGATING OFFICIAL'S REPORT

Investigating official's report shall include observations and conclusions of the physical and documentary evidence. Identify each item and/or document evaluated. If inmate was served more than three (3) business days after incident, state why. Attach 600AR if necessary. If results of investigation indicate that no disciplinary action is warranted, specify the reason(s) for not pursuing disciplinary action.

Statement of Inmate Charged:

Statement of Witness(es) - (If more witnesses, attach additional sheets)

Witness Name (Last, First):	Rank/Title, Shield/ID (If staff) B&C#/Sentence# (If inmate):
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Statement (If none, state such):

Witness Name (Last, First):	Rank/Title, Shield/ID (If staff) B&C#/Sentence# (If inmate):
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Statement (If none, state such):

Was inmate Mirandized in connection with this Infraction? Yes No Hearing Recommended? Yes No

Inmate transferred pending hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, Where?	If PHD, check <input type="checkbox"/>	Date:	Time:
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Investigating Official's Signature:	Investigating Official (Print Name, Rank and Shield #):
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**CORRECTION DEPARTMENT
CITY OF NEW YORK**

**ATTACHMENT
D**



**HEARING REPORT AND NOTICE OF
DISCIPLINARY DISPOSITION**

Page 1
of
2 Pages

Form: 6500D
Eff. : 08/04/15
Ref. : Dir. # 6500R-C

Infraction #:	Institution:	
Inmate Name (Last, First):	B&C/ Sentence #:	NYSID #:
Location:	Disposition Date:	Disposition Time: Hrs.

Adjudication Captain (Print Name, Rank & Shield #): _____

Folder #:	Hearing Start Date:	Hearing End Date:
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Inmate's Accompanying card Indicates Inmate Received Rule Book: Yes No

Inmate requested Witness(es): Yes No Waived Request Granted Denied (If waived, inmate must sign. If denied, state reason.)
Reason: _____

Inmate requested Hearing Facilitator: Yes No Waived Request Granted (If yes, Hearing Facilitator must sign. If waived, inmate must sign.)
Reason: _____

Inmate Requested Interpreter: Yes No Waived Request Granted Denied (If yes, interpreter must sign. If waived, inmate must sign. If denied, state reason.)
Reason: _____

If inmate advised of right to remain silent was inmate advised that statements could be used against him/her. Yes No Not Applicable

Special Situations

Hearing in Absentia: Inmate Refused to Appear Removed from Hearing Due to _____ Specify Reason

Adjournment: By Adjudication Captain Date Reconvened ____/____/____
 By Inmate Waived Time Limits to Facilitate Adjournment (Inmate Signature) _____

Referral: Security Mental Health Inspector General

Inmate Pled: Guilty Not Guilty Guilty with an Explanation

Summary of inmate's Testimony:

The following witness(es) testified at your hearing. (If additional witnesses testified, attach additional sheets.)

Witness Name (Last Name, First Name):	Rank/Title, Shield/ID # (if staff), B&C/Sentence # (if inmate):
---------------------------------------	---

Witness Signature (Present at Hearing): _____

Witness testified in the presence of the charged inmate: Yes No If no, state reason: _____

Summary of Testimony: _____

Testimony was: Credited Rejected Reason: _____

Witness Name (Last Name, First Name):	Rank/Title, Shield/ID # (if staff), B&C/Sentence # (if inmate):
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Witness Signature (Present at Hearing): _____

Witness testified in the presence of the charged inmate: Yes No If no, state reason: _____

Summary of Testimony: _____

Testimony was: Credited Rejected Reason: _____



**CORRECTION DEPARTMENT
CITY OF NEW YORK**

**ATTACHMENT
D**



**HEARING REPORT AND NOTICE OF
DISCIPLINARY DISPOSITION**

Page 2
of
2 Pages

Form: 6500D
Eff. : 01/17/15
Ref. : Dir. # 6500R-C

DOCUMENTARY EVIDENCE (Where applicable)

Photograph of Injury:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Shown to Inmate:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Photocopy of Weapon:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Shown to Inmate:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Reports - Specify Types:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Shown to Inmate:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Logbooks - Specify Types:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Shown to Inmate:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Infraction Investigation:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Shown to Inmate:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physical Evidence (List):	<input type="checkbox"/> Yes <input type="checkbox"/> No	Shown to Inmate:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Witness Statements (List Witnesses):	<input type="checkbox"/> Yes <input type="checkbox"/> No	Shown to Inmate:	<input type="checkbox"/> Yes <input type="checkbox"/> No

On this date and time following disposition was reached after a hearing on the charges listed below:

Charge #	Dismissed	Penalty	Guilty	Not Guilty	Basis for Findings & Evidence Relied On

Twenty Five Dollar (\$25) Disciplinary Surcharge Grade I or Grade II offenses only: Yes No

If you have been found guilty of multiple rule violations, these penalties will be served: Consecutively Concurrently

Infraction Dismissed: Yes No

Reason:

Pre-Hearing Detention Time Credit: _____ Days.

Adjudication Captain (Print Name, Rank, Shield #):

Signature of Adjudication Captain:

You have the right to appeal an adverse decision rendered by the Adjudication Captain within two (2) days of service of this decision. If you have been sentenced to a total of thirty (30) days of punitive segregation or loss of all your good time on any one (1) Notice of Disciplinary Disposition (6500D), you may file a petition for a writ under Article 78 of the CPLR. If you are sentenced to less than thirty (30) days punitive segregation or loss of less than all your good time, you may appeal that decision to the Warden of the facility where the infraction occurred.

I certify that I received a copy of this notice:	Signature of Inmate:	B&C/Sentence #:	Date:	Time:
Served by (Print Name, Rank and Shield #):		Signature of Server:		
Refused to Sign for Notice:	<input type="checkbox"/> Yes <input type="checkbox"/> No	Witnessed By:		



**CORRECTION DEPARTMENT
CITY OF NEW YORK**

**ATTACHMENT
E**



INMATE WITNESS STATEMENT

Form: 6500E
Rev. : 08/04/15
Ref. : Dir. #6500R-C

INFRACTION INFORMATION

Infracted Inmate's Name:

Infraction #:

Book & Case #:

NYSID #:

Institution:

The following is the statement of inmate witness _____ B&C/NYSID #: _____
Last Name, First Name
regarding the incident described in Infraction # _____ was made to me outside the presence of above referenced inmate.

Inmate Witness' Signature: _____

Facility Hearing Officer's Signature: _____

Facility Hearing Officer's Name, Title & Shield # (print): _____

Date: _____



CORRECTION DEPARTMENT CITY OF NEW YORK

**ATTACHMENT
F**



INMATE REFUSAL TO TESTIFY

Form: 6500F
Rev. : 08/04/15
Ref. : Dir. #6500R-C

INFRACTION INFORMATION

Infracted Inmate's Name:	Infraction #:
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Book & Case #:	NYSID #:	Institution:
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I _____ B&C/NYSID #: _____
Last Name, First Name

do not wish to testify at the disciplinary hearing regarding the Infraction(s) specified above.

Reason(s) for refusal to testify:

Inmate's Signature: _____

Facility Hearing Officer's Signature: _____

Facility Hearing Officer's Name, Title & Shield # (print): _____

Date: _____



CORRECTION DEPARTMENT CITY OF NEW YORK

ATTACHMENT
H



NOTICE OF APPEAL OF DISCIPLINARY DISPOSITION

Form: 6500H
Rev. : 08/04/15
Ref. : Dir. #6500R-C

Inmate's name (Last, First):	B&C #:	NYSID #:	Infraction #:
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Date of incident:	Approximate time of incident: Hrs.	Facility:	Location of incident (Be specific):
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Number of Punitive Segregation days sentenced to: _____ Number of good days removed: _____



You are appealing: (Choose only one) The finding of guilt The penalty imposed

Is there new evidence you wish to present: Yes No



Basis for the appeal: (Must clearly set forth the basis for the appeal.)

NOTE: All supporting documents must be attached to this Appeal.

Signature:	Date:
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	CLASSIFICATION				
	ATTACHMENT - I				Ref.: Dir. #6500R-C Eff.: 08/04/15
	INMATE RULE OFFENSES, GRADES AND PSEG LEVEL PLACEMENT				Page 1 of 3 Pages

PSEG Placement	Rule Violation	Rule No.	Grade	Penalty Guidelines	
				Max. PSEG Sentence.	Loss of Good Time
PSI - 23 hrs locked in	Arson -- intentionally starts or attempts to start any fire or causes or attempts to cause any explosion	100.10	I	Up to 30 days	All
	Assault on staff with injury or attempted injury at any staff member, including spitting, throwing any object or substance	101.10	I	Up to 30 days	All
	Assault on staff with injury or attempted injury at any staff member, including spitting, throwing any object or substance	101.10	I	Up to 30 days	All
	Assault on staff with injury or attempted injury at any staff member, including spitting, throwing any object or substance	101.10	I	Up to 30 days	All
	Assault on any other person with injury or attempted injury, including spitting, throwing any object or substance	101.11	I	Up to 30 days	All
	Assault on any other person with injury or attempted injury, including spitting, throwing any object or substance	101.11	I	Up to 30 days	All
	Assault on any other person with injury or attempted injury, including spitting, throwing any object or substance	101.11	I	Up to 30 days	All
	Assault on inmate with injury or attempted injury, including spitting, throwing any object or substance	101.12	I	Up to 30 days	All
	Assault on inmate with injury or attempted injury, including spitting, throwing any object or substance	101.12	I	Up to 30 days	All
	Assault on inmate with injury or attempted injury, including spitting, throwing any object or substance	101.12	I	Up to 30 days	All
	Assault or attempted assault to any person with a weapon	101.13	I	Up to 30 days	All
	Fighting / physical struggle with an inmate resulting in injury	101.14	I	Up to 30 days	All
	Make, possess, sell or exchange any type of contraband weapon	103.10	I	Up to 30 days	All
	Possess or transport Department-issued razor outside of housing area	103.10.5	I	Up to 30 days	All
	Return all Department-issued razors after shaving is completed	103.10.6	I	Up to 30 days	All
	Make, possess, sell, give or exchange any amount of narcotic, narcotic paraphernalia or any other controlled substance	103.11	I	Up to 30 days	All
	Shall not lead / attempt to lead or encourage others to participate in boycotts, work stoppages or other demonstrations	106.10	I	Up to 30 days	All
	Shall not physically resist staff members	109.10	I	Up to 30 days	All
	Shall not harass or annoy staff members by touching or rubbing against them	109.11	I	Up to 30 days	All
	Shall not escape or aid others to escape or attempt to escape or aid others to escape	111.10	I	Up to 30 days	All
	Shall not take or hold any person hostage	114.10	I	Up to 30 days	All
	Shall not take any action with the intention of taking control over any area of any facility (rioting)	121.1	I	Up to 30 days	All
	Shall not encourage or in any way persuade other inmates to take any action in order to take control over the area (rioting)	121.12	I	Up to 30 days	All
	Shall not force or in any way coerce any person to engage in sexual activities	122.10	I	Up to 30 days	All
	Smuggle weapons (does not include drugs or drug-related products, alcohol or tobacco)	123.10	I	Up to 30 days	All
	Shall not engage in acts of hate regarding such person's race, color, national origin, affiliation with any group, religious practice, age, gender, disability or sexual orientation	131.00	I	Up to 30 days	All
	Any actions that targets a person or group in a negative or hostile manner (acts of hate, issues listed in 131.00)	131.10	I	Up to 30 days	All
	Possess any contraband with intent to sell or distribute such contraband - if contraband is weapon or escape contraband	103.12.6	I	Up to 30 days	All
	Bribery	102.10	I	Up to 30 days	All
	Possess tobacco-related products	103.05	I	Up to 30 days	All
	Sell, exchange or distribute tobacco-related products	103.07	I	Up to 30 days	All
	Make, possess, sell or exchange alcoholic beverage	103.08	I	Up to 30 days	All
	Make, possess, sell, give or exchange any type of escape paraphernalia	103.12	I	Up to 30 days	All
	Possess any type of electronic telecommunication and/or recording devices	103.12.5	I	Up to 30 days	All
	Possess any contraband with intent to sell or distribute such contraband - if contraband is not weapon or escape contraband	103.12.6	I	Up to 30 days	All
	Possess money exceeding \$20	103.12.7	I	Up to 30 days	All
	Shall not participate in boycotts, work stoppages, or other demonstrations	106.11	I	Up to 30 days	All
	Misuses, defaces, or destroys City property with a value greater than \$100	107.10	I	Up to 30 days	All
	Shall not make threats, spoken, in writing or by gesture against a staff member for the purpose of obtaining any benefit	112.10	I	Up to 30 days	All
	Shall not impersonate any staff member	116.10	I	Up to 30 days	All
	Smuggle drugs or drug-related products, alcohol or tobacco (not weapons)	123.10	I	Up to 30 days	All
	Shall not tamper with, destroy or sabotage any security related devices or equipment	126.10	I	Up to 30 days	All
	Shall not make any threat whether spoken in writing or by gesture against staff member	127.10	I	Up to 30 days	All
	Shall not gather in unauthorized groups anywhere	128.10	I	Up to 30 days	All
	Shall not refuse to provide a DNA sample	129.10	I	Up to 30 days	All
Shall not refuse to provide a urine, hair, salive or other sample	130.10	I	Up to 30 days	All	
Shall not test positive for or be found under the influence of alcohol or illegal drugs / substances	130.11	I	Up to 30 days	All	
Shall not adulterate or tamper with or attempt with a urine sample or offer their own urine sample of another individual	130.12	I	Up to 30 days	All	

	CLASSIFICATION		
	ATTACHMENT - I		Ref.: Dir. #6500R-C Eff.: 08/04/15
	INMATE RULE OFFENSES, GRADES AND PSEG LEVEL PLACEMENT		Page 2 of 3 Pages

PSEG Placement	Rule Violation	Rule No.	Grade	Penalty Guidelines	
				Max. PSEG Sentence.	Loss of Good Time
PSII - 17 hrs locked in	Assault or attempted assault to any other person, not a staff person, no weapon, no injury	101.16	II	Up to 20 days	2/3
	Fighting / physical struggle with an inmate, no injury	101.17	II	Up to 20 days	2/3
	Exchange or sell prescription drugs or non-prescription drugs	103.13	II	Up to 20 days	2/3
	Possess prescription or non-prescription drugs (excess of authorized amounts)	103.13.5	II	Up to 20 days	2/3
	Possess any drug that by prescription/medical order must be ingested in view of Department or medical staff	103.13.6	II	Up to 20 days	2/3
	Possess more than one Department-issued razor	103.13.7	II	Up to 20 days	2/3
	Make, possess, sell, exchange, use or display any item that identifies the inmate as a SRG member	103.14	II	Up to 20 days	2/3
	Possess money not in excess of \$20	103.15	II	Up to 20 days	2/3
	Shall not intentionally cause a miscount	104.10	II	Up to 20 days	2/3
	Shall not intentionally delay the count	104.11	II	Up to 20 days	2/3
	Shall not create a fire hazard, health hazard or other safety hazard	105.10	II	Up to 20 days	2/3
	Shall not tamper with any fire safety equipment	105.11	II	Up to 20 days	2/3
	Shall not cause any false alarms about a fire, claimed health emergency or create any kind of a disturbance or security problem	105.12	II	Up to 20 days	2/3
	Shall not flood any living area or another area in the facility	105.13	II	Up to 20 days	2/3
	Misuses, defaces, or destroys City property with a value between \$10 and \$100	107.11	II	Up to 20 days	2/3
	Shall not verbally abuse or harass staff members or make obscene gestures towards any staff members	109.12	II	Up to 20 days	2/3
	Shall not interfere with or disrupt institutional services, programs or special activities	110.10	II	Up to 20 days	2/3
	Shall not make any threats, spoken, in writing or by any gesture against any person other than a staff member for the purpose of obtaining any benefit	112.11	II	Up to 20 days	2/3
	Shall not provide to Department or other officials, false oral or written statements	112.50	II	Up to 20 days	2/3
	Shall not impersonate another inmate or any other person	116.11	II	Up to 20 days	2/3
	Shall follow facility rules and staff orders relating to movement inside and outside of the facility, including dealing with seating, lock-in and lock-out	117.10	II	Up to 20 days	2/3
	Shall obey all orders of Department staff (stop fighting /assaulting another inmate, to be frisked, to have cell searched to be locked-in/out, etc	120.10	II	Up to 20 days	2/3
	Shall not voluntarily engage in sexual activity with any other person	122.11	II	Up to 20 days	2/3
	Shall not expose private parts in lewd manner	122.12	II	Up to 20 days	2/3
	Shall not steal property belonging to another person or the City	124.10	II	Up to 20 days	2/3
Shall not possess property belonging to any other person or the City	124.11	II	Up to 20 days	2/3	
Shall not destroy, tamper with, change, counterfeit or give other inmates any institutional documents, passes, ID cards	125.10	II	Up to 20 days	2/3	
Shall not forge the signature of staff, an inmate or other person	125.11	II	Up to 20 days	2/3	
Shall not make any threat whether spoken in writing or by gesture against any person other than staff member	127.11	II	Up to 20 days	2/3	



CLASSIFICATION

ATTACHMENT - I

INMATE RULE OFFENSES, GRADES AND PSEG LEVEL PLACEMENT

Ref.: Dir. #6500R-C
Eff.: 08/04/15

Page 3 of 3 Pages



PSEG Placement	Rule Violation	Rule No.	Grade	Penalty Guidelines	
				Max. PSEG Sentence.	Loss of Good Time
No PS	Fighting / non-violent physical struggle, horseplay, boxing, wrestling, sparring, no injury	101.18	III	No days	1/3
	Possess unauthorized hobby materials, art supplies or tattooing equipment or writing implements	103.16	III	No days	1/3
	Possess unauthorized amounts of jewelry, clothing, food or personal property	103.17	III	No days	1/3
	Possess unauthorized amounts of City-issued property	103.18	III	No days	1/3
	Possess any other unauthorized items	103.19	III	No days	1/3
	Shall not store food in their housing area or workplace except commissary items	105.14	III	No days	1/3
	Shall not litter, spit or throw garbage or any kind of waste or substance	105.15	III	No days	1/3
	Shall follow all local facility rules relating to fire, health or safety	105.16	III	No days	1/3
	Shall clean their cell or living area, toilet bowl, sink, etc.	105.17	III	No days	1/3
	Shall not obscure, block or obstruct, mark up or write on or poster any pictures on Department property	105.19	III	No days	1/3
	Shall not cook in any living area, including any cell	105.20	III	No days	1/3
	Must keep themselves and their clothes clean	105.22	III	No days	1/3
	Shall not block the view into or out of any cell by putting anything on the bars of the cell or any cell door, etc	105.24	III	No days	1/3
	Misuses, defaces, or destroys City property with a value less than \$10	107.12	III	No days	1/3
	Shall not shout out to or curse, use abusive language or make obscene gestures	108.10	III	No days	1/3
	Shall not behave in a loud and noisy manner	108.11	III	No days	1/3
	Shall not engage in any form of gambling	113.10	III	No days	1/3
	Shall carry and display ID cards at all times	115.10	III	No days	1/3
	Shall produce ID cards at the direction of a staff member	115.11	III	No days	1/3
	Shall report the loss of an ID card	115.12	III	No days	1/3
	Shall not be out of their assigned area	117.11	III	No days	1/3
	Shall not sell, buy or exchange services or personal property with any other inmate without permission	119.10	III	No days	1/3
	Shall obey all orders of Department staff (other)	120.11	III	No days	1/3
Shall not request, solicit or others encourage another person to engage in sexual activity	122.13	III	No days	1/3	
Smuggle contraband other than items listed in 123.10	123.11	III	No days	1/3	

ATTACHMENT J

Rev.: 08/04/15
Ref.: Dir. #6500R-C

AUDIO-TAPING PROCEDURE

1. On the cassette case label, note the date at the start of the day. For each individual hearing conducted that day, note the inmate's name, book and case number and the counter numbers at the beginning and end of the hearing.

2. Place a heading on the tape - state the date, time, your name, shield number, the facility in which the hearing is being conducted, and the name of the inmate before you.

Example: "Today is the 1st of January, 1993, it is 0900 hours. I am Captain Blank, Shield #3987. I am conducting a disciplinary hearing at JATC. Before me is Ty Cobb."

3. Have the inmate identify him/herself by giving his/her name and number.

Example: "Please state your name and Book and Case Number for the record".

4. Read (do not summarize) the charges to the inmate.

5. Ask the inmate how he/she pleads - guilty, not guilty, or guilty with an explanation.

6. State on the record if the inmate requested, or did not request, as per the 6500A Form, any witness(es), a Hearing Facilitator, or an interpreter, if applicable. If no witnesses were requested on the 6500A Form, but the inmate wishes to call witnesses at the time of the hearing, make the arrangements for the production of the witnesses.

7. Read the Investigating Captain's report to the inmate.

8. If an inmate has been given Miranda warnings prior to the hearing, state the following:

"While this proceeding is not a criminal proceeding, any statements made by you may be used against you in a subsequent criminal trial. You may remain silent. If you choose to remain silent, your silence will not be used against you."

9. Ask the inmate to relate his/her version of the incident.

EXHIBIT B

FILED UNDER SEAL

EXHIBIT C

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK
(A federal court authorized this notice. This is not a solicitation from a lawyer. You are not being sued.)

IF YOU WERE A PRE-TRIAL DETAINEE HELD IN THE CUSTODY OF THE NEW YORK CITY DEPARTMENT OF CORRECTION AND SERVED “OLD TIME” IN THE “BING” BETWEEN NOVEMBER 23, 2012 AND SEPTEMBER 16, 2015, YOU MAY BE ENTITLED TO MONEY.

MR. _____: BASED UPON OUR INITIAL CALCULATIONS, IT APPEARS THAT IF YOU CHOOSE TO PARTICIPATE IN THIS CLASS ACTION SETTLEMENT AND COMPLY WITH ITS REQUIREMENTS, YOU WILL BE PAID \$ _____.

- This is a proposed Settlement of a class action lawsuit. The City of New York ("City") has agreed to pay money damages to current or former Department of Corrections ("DOC") inmates who, while they were **pre-trial detainees**, served "Old Time" (described in the next paragraph) in Punitive Segregation ("PSEG") (also known as the "bing") between November 23, 2012, and September 16, 2015. Additional restrictions are explained in this notice.
- You served Old Time if you (a) were sentenced to serve time in PSEG in connection with a disciplinary violation (also known as a "ticket"); (b) were then released from DOC custody prior to completing your PSEG sentence; and (c) were later readmitted to a DOC facility and, between November 23, 2012, and September 16, 2015, while you were a **pre-trial detainee**, you were placed in PSEG to finish a disciplinary sentence imposed during your prior detention.
- You are **only** eligible to receive money if you were a **pretrial detainee** when you served Old Time. You are not eligible if you were a state prisoner temporarily in DOC custody, if you were serving a sentence but remained in DOC custody, if you were in custody pursuant to a warrant relating to a prior conviction or for a parole violation, or if you were otherwise serving a sentence as a result of any conviction.
- The Settlement would entitle each Class Member to between \$175 to \$200 for each day that he or she served Old Time while a **pretrial detainee** between November 23, 2012, and September 16, 2015.
- **You must fill out and mail a Claim Form postmarked by ** to be eligible for any payment.** You may use the enclosed stamped, self-addressed envelope, or any other envelope, to mail the Claim Form to **. You also may email it to _____ or fax it to _____.
- **You may also need to send in Proof of Identity to be eligible for any payment (see #8 below).** If you are required to provide Proof of Identity, you may do so when you send in your Claim Form or at another later date.
- **Before you receive any payment, you also must complete and submit the W-9 form that is provided with this notice. You do not need to submit this form with your Claim Form, but you must submit it prior to ** to receive payment.**
- **Your legal rights are affected, whether you act or don't act.** Read this notice carefully.

Summary of Your Legal Rights and Options in this Settlement

Your Options		Due Date
Submit a Claim Form, a W-9 Form, and, if your Claim Form is not Notarized, Proof of Identity	The only way to get a payment.	Claim Form Postmarked By: ** W-9 Form Postmarked By: ** Proof of Identity Postmarked By: **
Exclude Yourself From The Settlement	Get no payment from the Settlement. This is the only option that allows you to ever be part of any other lawsuit against the City, DOC, or anyone else about the claims in this case.	Opt-Out Form Postmarked By: **
Object to Settlement	Remain a Class Member but write to the Court about why you don't like the Settlement.	Objections Postmarked By: **
Go to the Fairness Hearing	Ask to speak in Court about the fairness of the Settlement.	** at ** p.m.
Do Nothing	Get no payment and give up all rights to sue the City, DOC, or their employees about the claims in this case.	N/A

- These rights and options—**and the deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.
- The Court in charge of the case is the United States District Court for the Eastern District of New York. The case is called *Parker v. City of New York*, 15 Civ. 06733 (CPL). The Judge is Magistrate Judge Cheryl Pollak.

1. Why did I get this notice packet?

You have received this notice either because the City's computer records indicate that you may be a class member or because you contacted the Administrator and requested a notice. You have a right to know about the proposed Settlement of this class action lawsuit, and about your options, before the Court decides whether to approve the Settlement. This packet explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. Who are the parties to the Settlement?

There are ten named plaintiffs in this case. All of them were **pre-trial detainees** when they served Old Time in a DOC facility. They are called Class Representatives because they brought this lawsuit on their own behalf and on behalf of other **pre-trial detainees**. The Defendant is the City of New York. The parties have agreed to resolve this case through this Settlement.

3. What happened in Court?

This lawsuit was brought on November 23, 2015. The Plaintiffs amended their complaint on November 12, 2016. The parties have exchanged information and conducted settlement negotiations for approximately one and a half years.

4. How do I know if I am part of the Settlement?

Everyone who meets the following description is a Class Member: any person held in a DOC facility between November 23, 2012 and September 16, 2015 who, while a **pre-trial detainee**, served Old Time (as defined above and in the Settlement Stipulation).

To receive damages as part of the Settlement, you must have been a **pre-trial detainee** when you served Old Time. This Settlement does not provide compensation to (i) persons who served Old Time while they were in DOC custody due to an alleged or adjudicated parole violation or (ii) New York State Department of Corrections and Community Supervision prisoners (or convicted prisoners from other jurisdictions) who were in DOC custody temporarily for purposes of court appearances or pursuant to warrants relating to convictions or as of the date of conviction by verdict or plea.

5. What is the “Old Time” Practice?

The “Old Time” practice at issue in this case is the former DOC practice that when a person housed in a DOC facility was given a so-called “ticket” and found to have violated a disciplinary rule, was sentenced to placement in PSEG (also known as the “bing”) for a period of time as a result of that violation, and was released from DOC custody prior to completing that PSEG sentence, and then at some later date that person was readmitted to a DOC facility, and while that person was a **pre-trial detainee**, he or she was placed in PSEG to finish the sentence imposed for the disciplinary violation committed during the prior detention.

6. What should I do if I think I am a Class Member but I have not received a Claim Form?

The Administrator has mailed letters and a Claim Form to everyone whom the City and Class Counsel believe is a class member. It is possible that you are a Class Member even if you did not receive a Claim Form. If you believe you are a Class Member but did not receive a letter with a Claim Form in it, you may request to be included in the Settlement and for a Claim Form. To request that you be included in the Settlement and to obtain a Claim Form, go to ** or contact the Administrator at the address or phone # below. Include your name, date of birth, address, NYSID # (if known), phone # (if any), the dates you believe you served Old Time and the DOC facility in which you served Old Time, and any other information you believe will assist in confirming that you in fact served “old” or “owed” or “historic” time. **The deadline for submitting this information is **.** **The Administrator and the Parties will seek to determine if you are a Class Member and should be included in the Settlement and will notify you of their determination.**

7. What does the Settlement provide?

The Settlement provides for Class Members to receive compensation as follows:

- a. Class Members will receive \$175 for each day that they served Old Time if they were neither under the age of 18 years old nor classified by the City as having a serious mental illness.
- b. Class Members will receive \$200 for each day that they served Old Time if they were under the age of 18 years old or were classified by the City as having a serious mental illness when they served Old Time.

Based on the City's records, the Parties have calculated the damages that each Class Member is owed. It appears from the City's records that you served a total of ___ days of Old Time during the relevant period. It appears from the City's records that you were not under the age of 18 and were not classified as having a serious mental illness when you served Old Time. Accordingly, it appears from the City's records that you are eligible to receive a total of \$_____.00 of compensation if you participate in the Settlement and comply with all of its terms, including by submitting a Claim Form on time and satisfying the Proof of Identity Requirement.

If you disagree with the calculations set forth above, you can file a Challenge claiming that (a) you served more Old Time than the Parties believe; or (b) you served Old Time while under the age of 18 years old or while you had been classified as having a serious mental illness. You must submit this Challenge by **.

The Settlement also provides: (a) that the named Plaintiffs who brought this case (ROY PARKER, RAJAB ASEP, CHRISTOPHER CHANDLER, JAMAL COLEMAN, ALLANA DIXON, CHAUNCEY MIRANDA, and CESAR RIVERA) will receive an additional \$500 as an incentive payment for their participation in the lawsuit; and (b) that Class Counsel may request an award of reasonable attorneys' fees and costs, to be determined by the Court, after the Settlement is approved. The City has agreed to pay Class Counsel's attorneys' fees and costs, and no Class Member will have to pay any fees and costs as part of the Settlement. Finally, the Settlement provides for certification of the Settlement Class.

8. What do I need to do in order to get payment?

To receive a payment, you need to do three things:

First, you MUST mail in a signed and completed Claim Form postmarked by no later than **. A Claim Form is enclosed with this Notice. You may use the enclosed self-addressed stamped envelope or mail it in your own envelope to **. You can also get a Claim Form by visiting www.**.com; calling ** or **; or writing to the above address.

Second, you MUST satisfy the Proof of Identity requirement.

You can do this either by submitting a Claim Form that has been notarized by a notary public. If you submit a notarized Claim Form, you do not need to submit any identification.

If you are incarcerated when you complete your Claim Form, you must have it notarized at the prison or jail law library (or by some other available licensed Notary Public), in which case you will not be required to submit additional identification in order to be eligible for payment.

If you submit a Claim Form that has not been notarized, then you must satisfy the Proof of Identification requirement. In order to satisfy the Proof of Identification requirement, you must submit (either with your Claim Form or separately at a later time) a copy of any of the following: (a) electric, gas, water, telephone, cable, or other utility bill/s in your name; (b) a lease in your name; (c) a driver's license or other government-issued identification (such as a IDNYC card); (d) a passport or visa; (e) a green card or other identification issued by the Immigration and Naturalization Service or the United States Immigration and Customs Enforcement; or (f) other documentation that reliably establishes your identity. If the documents you submit to prove identity are not deemed sufficient, you may be determined not to qualify for the damages payment, in which case you will be notified of that determination and given an opportunity to submit further proof of identity before the deadline expires.

Proof of Identity is not due until 180 days after the Court approves the Settlement, but you should submit it as soon as possible because your check will not be mailed to you until you have satisfied this requirement.

Third, you must fill out and submit a W-9 form no later than **. Even if you have filed a Claim Form and satisfied the Proof of Identity Requirement, the City of New York will not issue a payment to you unless you have filled out and submitted this form. You may submit your W-9 Form with your Claim Form or at a later date, but if you submit it after **, you will lose any rights to receive payment.

If possible, you should keep copies or photos of anything you send and proof of when you sent it.

Please note that you should inform Class Counsel or the Administrator if your address changes so that your check is mailed to the right address.

No payments will be sent until the Court approves the Settlement. Even then, there may be appeals. It is uncertain how many appeals there may be, if any, and how long it may take to resolve them. Please be patient.

If you have any questions regarding completing the Claim Form, providing Proof of Identity, or completing the w-9 form, you may contact Class Counsel at ** or the Administrator at **.

9. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself from this Settlement (see Question 10 below), you cannot sue the City or be part of any other lawsuit against the City, NYCDOC, or their employees relating to serving Old Time. Unless you exclude yourself, it also means that all of the decisions by the Court will bind you. But you are *not* giving up your right to sue the City for things that are *not* related to the “old” or “owed” or “historic” time practice that is covered by *this* Settlement.

10. How do I get out of the Settlement?

If you don't want a payment from the Settlement, and you want to keep the right to sue or continue to sue the City, DOC, or their employees on your own about the legal issues in this case, then you must take steps to get out. This is called “excluding yourself,” or is sometimes referred to as “opting out” of the Class. To exclude yourself, you must send a letter that includes the following: (a) your name, date of birth, address and telephone number (if any); (b) a statement saying that you want to be excluded from the Settlement; and (c) your signature. You must mail your exclusion request, postmarked no later than **, to **. You will get no payments from the Settlement if you exclude yourself. If possible, you should keep copies or photos of anything you send and proof of when you sent it.

If you do not exclude yourself (“opt out”) and you also fail to submit a Claim Form, a W-9 Form, and satisfy the Proof of Identity requirement, then you will not receive any payment under this Settlement, nor will you be able to file your own lawsuit relating to the issues covered by the Settlement.

11. Do I have a lawyer in this case? How will the lawyers be paid?

The Court has designated Cuti Hecker Wang LLP and Alexander A. Reinert, Esq. as Class Counsel in this case. Class Counsel will represent you and other Class Members. You will not be required to pay anything to these lawyers. Class Counsel will ask the Court to award them reasonable attorneys' fees and costs, which will be paid to them by the City, after the Settlement has been approved. The amount that you are entitled to receive under this Settlement will not be affected by the amount that the City is ordered to pay Class Counsel.

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

12. How do I tell the Court that I don't like the Settlement?

If you are a Class Member and do not exclude yourself from the Settlement, you can object to the Settlement if you do not like any part of it. You can tell the Court why you think the Settlement should not be approved. To object, you must send a letter that includes the following: (a) your name, date of birth, address, and telephone number (if any); (b) a statement saying you object to the Settlement in *Parker v. The City of New York*, 15 Civ. 6733; (c) the reasons you object; (d) whether you want to speak at the fairness hearing (see Question 13 below); and (e) your signature. You must mail your objection, postmarked no later than **, to (a) the Clerk of Court, United States District Court, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201; and (b) **[ADMINISTRATOR]**. If possible, you should keep copies or photos of anything you send and proof of when you sent it.

13. When and where will the Court decide whether to approve the Settlement?

The Court will have a fairness hearing to decide whether to approve the Settlement on ** at** p.m. before Hon. Cheryl L. Pollak at the United States District Court for the Eastern District of New York, located at 225 Cadman Plaza East, Brooklyn, New York 11201 in Courtroom **. The hearing may be moved to a different date or time without additional notice, so it is a good idea to regularly check www.***.com. You do not have to come to the hearing. If you want to speak at the hearing, you must request to do so when you file an objection (see Question 10 above). At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long this decision will take.

14. What happens if I do nothing at all?

If you do nothing, you will not get any payment. Unless you exclude yourself ("opt out"), you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the City, DOC, or their employees or any other person or entity relating to Old Time.

15. How do I get more information?

You can call ** or **; write to **[ADMINISTRATOR]**; or visit www.****.com, where you will find copies of the Settlement papers, Claim Forms, and answers to common questions. You can obtain detailed information about the case by examining the court file located at the address listed in Question 13.

EXHIBIT D

IF YOU WERE A PRE-TRIAL DETAINEE IN THE CUSTODY OF THE NEW YORK CITY DEPARTMENT OF CORRECTION AND SERVED “OLD TIME” IN PUNITIVE SEGREGATION (THE “BING”) BETWEEN 11/23/12 AND 9/16/15, YOU MAY BE ENTITLED TO MONEY

What is this lawsuit about? Am I included?

- This is a proposed Settlement of a class action lawsuit. It is called *Parker et al. v. City of New York*, 15 Civ. 06733 (CPL).
- To settle this lawsuit, the City of New York (“City”) has agreed to pay money damages to current or former Department of Corrections (“DOC”) **pre-trial detainees** who served so-called “Old Time” between November 23, 2012 and September 16, 2015.
- “Old Time” refers to the former DOC practice of placing an inmate in Punitive Segregation (also known as the “bing”) to finish a disciplinary sentence imposed for an infraction committed by the inmate during a prior DOC incarceration.
- If you served Old Time during this period, you may be entitled to a payment, but you are only eligible to receive money if you were a **pre-trial detainee** when you served Old Time. You are not eligible if you were a state prisoner temporarily in DOC custody, if you were serving a sentence but remained in DOC custody, if you were in custody pursuant to a warrant relating to a prior conviction or for a parole violation, or if you were otherwise serving a sentence as a result of any conviction.

What does the Settlement provide?

- Most Class Members are eligible to receive \$175 for each day that they served Old Time.
- Class Members who were classified as having a Serious Mental Illness or who were under the age of 18 when they served Old Time are eligible to receive \$200 per day.

How do I get money from the Settlement? You must do three things:

1. You must **submit a Claim Form postmarked by no later than ******.
 - Claim Forms were mailed to all known Class Members at their last known addresses. It is possible that you are a Class Member even if you did not receive a Claim Form. To obtain a Claim Form, go to **** or contact the Administrator at the address or phone # below. Include your name, date of birth, address, NYSID # (if known), phone # (if any), the dates you believe you served Old Time and the DOC facilities in which you served it.
2. **You must satisfy the Proof of Identity Requirement.**
 - You can do this either (a) by submitting a Claim Form that has been notarized by a notary public; or (b) by submitting (either with your Claim Form or separately at a later time) a copy of one of various forms of acceptable identification, such as a government-issued identification card, a utility bill, a lease, etc.
 - If you are incarcerated when you complete your Claim Form, you should have it notarized at the prison or jail law library, in which case you will not be required to submit additional identification in order to be eligible for payment.
3. **You must fill out and submit a W-9 Form.**
 - You may submit your W-9 Form with your Claim Form or at a later date, but if you submit it more than 180 days after the Court approves the Settlement, you will lose any rights to receive payment.
4. **You must inform Class Counsel or the Administrator if your address changes at any time prior to receiving payment.**

What are my options?

- Your legal right to receive money damages will be affected whether you act or do not act.
- **To Remain in the Settlement:** If you are eligible and wish to be part of the Settlement, you must give up your legal right to bring any further claims regarding the Old Time you served. You will be bound by the federal Court’s orders. If you remain in the Settlement, you also may object in writing to or comment on the Settlement, and you have a right to appear in Court. All objections must be filed by ****.
- **To Exclude Yourself from the Settlement:** If you do not wish to participate in the Settlement, then in order to keep any right you may have to sue the City about the Old Time you served, you must submit a request for exclusion (otherwise known as an “opt-out form”) which must be postmarked by ***.

The Court will determine whether to approve the Settlement at a fairness hearing on **** at *** p.m. at the United States District Court for the Eastern District of New York, located at 225 Cadman Plaza, Brooklyn NY 11201, in Courtroom 13d before Judge Pollak. The Court has appointed Class Counsel to represent everyone entitled to file a claim. Class Counsel will be paid by the City; there is no cost to you. You can also hire your own attorney at your own cost.

This is only a Summary of the proposed Settlement. For more information: call Class Counsel at (212) 620-2600 or the Administrator at (800) _____ or visit www._____.com

or write _____

EXHIBIT E

Parker et al. v. City of New York
United States District Court for the Eastern District of New York
Case No. 15 Civ. 06733 (JBW) (CPL)

**Must be E-mailed or
Postmarked No Later
Than ******

CLAIM FORM

If you want to be INCLUDED in the Class, you MUST complete this form in its entirety, and email it to ** or mail it to:**

GARDEN CITY GROUP

THIS DOCUMENT MUST BE E-MAILED OR POSTMARKED NO LATER THAN *.**

Please read the enclosed Notice before filling out this claim form. You do NOT need the assistance of a third-party agent to file this claim. You do NOT need to pay anyone to assist you. You may contact the Administrator for assistance (see below).

The information given here is private, and will be used only for the purposes of verifying your claim.

According to the City of New York's records, your name and address are as follows: Name 1 Name 2 Add1 Add2 City, State Zip	<input type="checkbox"/> Please check this box if the information on the left is incorrect or if you want the check sent to a different address. Correct the information on the lines below. _____ _____ _____
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According to the Parties' records, you are entitled to receive \$___ as part of the settlement, based on serving ___ days of Old Time. During that time, according to the Parties' records, you served ___ days of old time while under the age of 18 and/or while diagnosed with a Serious Mental Illness.	<input type="checkbox"/> Please check this box if you wish to challenge this amount and claim that you served more old time as a pretrial detainee or that you served more old time while under the age of 18 and/or while you were diagnosed with a Serious Mental Illness. If you wish to file such a challenge, please submit this Claim Form and contact either the Administrator (see above) or Class Counsel at (212) 620-2600.
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If you wish to be a part of this Class Action Settlement, please check the box below, sign and date this form. By checking the box and signing below, you confirm that you have received, read, and understood the notice of a class action settlement and that you wish to be included in the Class.

By checking this box and signing below, I affirm that I wish to be included in the Class-Action Settlement described in the class notice.

In consideration for the payment of the sum set forth above, you release defendant City of New York and any present or former employees and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims or rights of action alleging a violation of my civil rights and any and all related state law claims arising out of the Old PSEG time referenced in this form. If your claim is denied, this release will become null and void.

You declare under penalty of perjury under the laws of the United States that the information on this form is true and correct to the best of your knowledge, belief and recollection.

Type or Print Name

Phone Number (optional)

Signature

Date

Notary Public (optional)

Date

NOTE: In order to receive your check, you must either (1) have your signature on this form notarized before a notary public, or (2)(i) send in this completed form immediately, and (ii) either now or before the _____, 2017 deadline submit acceptable identification to the Administrator. If you have this form notarized, you are not required to submit identification to the Administrator.

EXHIBIT F

DO NOT SUBMIT FORM TO IRS - SUBMIT FORM TO REQUESTING AGENCY

9/07 Revision

CITY OF NEW YORK

SUBSTITUTE FORM W-9:

REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION

TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.

Part I: Vendor Information

1. Legal Business Name:(As it appears on IRS EIN records, CP575, 147C - or - Social Security Admin records, Social Security Card, certified Form SSA7028)

2. If you use DBA, please list below:

- 3. Entity Type (Check one only):
Church or Church-Controlled Organization
Personal Service Corporation
Non-Profit Corporation
Corporation/ LLC
Government
City of New York Employee
Individual / Sole Proprietor
Trust
Joint Venture
Partnership/ LLC
Single Member LLC (Individual)
Resident/Non-Resident Alien
Non-United States Business Entity
Estate

Part II: Taxpayer Identification Number (TIN) & Taxpayer Identification Type

1. Enter your TIN here: (DO NOT USE DASHES)

TIN input fields

2. Taxpayer Identification Type (check appropriate box):

- Employer ID No. (EIN)
Social Security No. (SSN)
Individual Taxpayer ID No. (ITIN)
N/A (Non-United States Business Entity)

Part III: Primary 1099 Vendor & Remittance Address

1. Primary 1099 Vendor Address:

Number, Street, and Apartment or Suite Number

City, State, and Nine Digit Zip Code or Country

2. Remittance Address:

Number, Street, and Apartment or Suite Number

City, State, and Nine Digit Zip Code or Country

Part IV: Exemption from Backup Withholding

For payees exempt from Backup Withholding, check the box below. Valid explanation required for exemption. See instructions.

Exempt from Backup Withholding checkbox

Part V: Certification

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Under penalties of perjury, I certify that the number shown on this form is my correct Taxpayer Identification Number (TIN).

Sign Here:

Signature, Phone Number, Date

Print Preparer's Name, Phone Number

Contact's E-Mail Address:

FOR SUBMITTING AGENCY USE ONLY

Submitting Agency Code, Contact Person

Contact's E-Mail Address, Telephone Number

Payee/Vendor Code

DO NOT FORWARD W-9 TO COMPTROLLER'S OFFICE. AGENCIES MUST FAX COMPLETED W-9 FORMS TO THE VALIDATION UNIT.

EXHIBIT G

Parker et al. v. City of New York
United States District Court for the Eastern District of New York
Case No. 15 Civ. 06733 (JBW) (CPL)

**Must be E-mailed or
Postmarked No Later
Than ******

OPT-OUT FORM

This is NOT a Claim Form. This form EXCLUDES you from this Class Action. DO NOT use this form if you wish to be included in the Class for the above-titled action.

If you **DO NOT** want to be included in the Class, complete this form in its entirety, and email it to **** or mail it to:

GARDEN CITY GROUP

THIS DOCUMENT MUST BE E-MAILED OR POSTMARKED NO LATER THAN *.**

The Court will exclude you from the class if you request to be excluded by *.**

If you wish to opt out of this Class Action, please check the box below, sign and date this form, and provide the requested information. By checking the box and signing below, you confirm that you have received, read, and understood the notice of a class action settlement and that you have decided to exclude yourself from the Class. You understand that you will NOT receive any money or benefits received by the Class in this class action lawsuit if you complete and sign this form.

- By checking this box and signing below, I affirm that I wish to be excluded from the Class-Action Settlement described in the class notice and I DO NOT want to participate in any settlement of this case.

Signature

Date

Type or Print Name

Street Address

City

State

ZIP Code

EXHIBIT H

Parker et al. v. The City of New York, 15 Civ. 6733 (E.D.N.Y.)

WARNING REGARDING APPROACHING DEADLINE FOR PARTICIPATING IN CLASS ACTION SETTLEMENT

Dear Mr./Ms. _____:

You appear to be a Class Member in *Parker et al. v. The City of New York*, 15 Civ. 6733 (E.D.N.Y.), which is a class action challenging New York City Department of Correction's ("NYCDOC") former practice of placing pre-trial detainees in punitive segregation (the "bing") to serve "old" or "owed" or "historic" "bing" sentences in Punitive Segregation ("PSEG") for a disciplinary violation committed during a prior detention in NYCDOC custody. We first sent you notice of this class action settlement on _____, 2017, and we included copies of the Claim Form, W-9 Form and Opt-Out Form.

The City has agreed to pay all eligible class members either \$175.00 or \$200.00 for every day of "old" or "owed" "bing" time that they served in PSEG between November 23, 2012 and September 16, 2015.

Based on our records, it appears that you served ___ days of "old" or "owed" "bing" time in PSEG during this period, and that **you therefore are eligible to receive a payment of \$_____ if you participate in this Settlement.**

To date, we have not received a completed Claim Form from you. **YOU WILL RECEIVE NOTHING FROM THIS SETTLEMENT unless you (1) submit a completed Claim Form by _____, (2) submit a completed W-9 Form, and (3) submit sufficient proof of identity (or have your Claim Form notarized before a notary public, which satisfies the proof of identity requirement).**

Enclosed are a Claim Form, a W-9 Form, and an Opt-Out Form.

If you do not wish to participate in this settlement and instead wish to preserve your right to bring your own lawsuit, then you must fill out, sign, and submit the Opt-Out Form no later than _____.

You can mail the Claim Form, W-9 Form, documents establishing your identity, or Opt-Out Form to _____, or email it/them to _____, or fax it/them to _____. If possible, you should keep copies or photos of everything you send, and if possible, keep proof of mailing.

If you have questions, you should call Class Counsel at (212) 620-2600 or the Administrator at (800) _____, or visit www._____.com, or write to _____.

EXHIBIT I

Parker et al. v. The City of New York, 15 Civ. 6733 (E.D.N.Y.)

WARNING ABOUT PROOF OF IDENTIFICATION REQUIREMENT

Dear Mr./Ms. _____:

We recently received your Claim Form. We are pleased that you are participating in the class action Settlement in *Parker et al. v. The City of New York*, 15 Civ. 6733 (E.D.N.Y.), relating to the “old” or “owed” or “historic” “bing” sentences you served in Punitive Segregation (“PSEG”) between November 23, 2012 and September 16, 2015.

Based on our records, it appears that you served ___ days of “old” or “owed” “bing” time in PSEG during this period, and that you therefore are eligible to receive a payment of \$_____ if you satisfy all of the requirements of this Settlement.

You are being sent this follow-up letter because we have not yet received from you documents that satisfy the Proof of Identity requirement. Unless we receive sufficient proof of your identity, you are not eligible to receive a payment in connection with this Settlement.

Enclosed is a postage-prepaid envelope. Please send us a copy of a document that proves your identity such as (i) any available electric, gas, water, telephone, cable, or other utility bills in your name; (ii) a lease in your name; (iii) a driver’s license or other government-issued identification, such as a passport or visa or green card.

You can mail the Proof of Identity document to _____.
You can email it to _____. You can fax it to _____.
You should, if possible, keep copies or photos of anything you submit, and if possible, keep proof of mailing.

If you have questions, call Class Counsel at (212) 620-2600 or the Administrator at (800) _____, or visit www._____.com, or write to _____.

EXHIBIT J

Parker et al. v. The City of New York, 15 Civ. 6733 (E.D.N.Y.)

WARNING ABOUT W-9 FORM REQUIREMENT

Dear Mr./Ms. _____:

We recently received your Claim Form. We are pleased that you are participating in the class action Settlement in *Parker et al. v. The City of New York*, 15 Civ. 6733 (E.D.N.Y.), relating to the “old” or “owed” or “historic” “bing” sentences you served in Punitive Segregation (“PSEG”) between November 23, 2012 and September 16, 2015.

Based on our records, it appears that you served ___ days of “old” or “owed” “bing” time in PSEG during this period, and that you therefore are eligible to receive a payment of \$_____ if you satisfy all of the requirements of this Settlement.

You are being sent this follow-up letter because we have not yet received from you a completed W-9 Form. Unless we receive a completed W-9 Form from you, you are not eligible to receive a payment in connection with this Settlement.

Enclosed is a postage-prepaid envelope and a W-9 Form. Please complete this form and submit it as soon as possible.

You can mail the W-9 Form to _____. You can email it to _____. You can fax it to _____. You should, if possible, keep copies or photos of anything you submit, and if possible, keep proof of mailing.

If you have questions, call Class Counsel at (212) 620-2600 or the Administrator at (800) _____, or visit www._____.com, or write to _____.

EXHIBIT K

Parker et al. v. The City of New York, 15 Civ. 6733 (E.D.N.Y.)

**WARNING ABOUT W-9 FORM AND
PROOF OF IDENTIFICATION REQUIREMENTS**

Dear Mr./Ms. _____:

We recently received your Claim Form. We are pleased that you are participating in the class action Settlement in *Parker et al. v. The City of New York*, 15 Civ. 6733 (E.D.N.Y.), relating to the “old” or “owed” or “historic” “bing” sentences you served in Punitive Segregation (“PSEG”) between November 23, 2012 and September 16, 2015.

Based on our records, it appears that you served ___ days of “old” or “owed” “bing” time in PSEG during this period, and that you therefore are eligible to receive a payment of \$_____ if you satisfy all of the requirements of this Settlement.

You are being sent this follow-up letter because we have not yet received from you either (1) a completed W-9 Form or (2) documents that satisfy the Proof of Identity requirement.

Unless we receive both a completed W-9 Form and sufficient proof of your identity, you are not eligible to receive a payment in connection with this Settlement.

Enclosed is a postage-prepaid envelope and a W-9 Form. Please complete this form and submit it as soon as possible.

In the same envelope, please also include a copy of a document that proves your identity such as (i) any available electric, gas, water, telephone, cable, or other utility bills in your name; (ii) a lease in your name; (iii) a driver’s license or other government-issued identification, such as a passport or visa or green card.

You can mail the W-9 Form and Proof of Identity document to _____. You can email them to _____. You can fax them to _____. You should, if possible, keep copies or photos of anything you submit, and if possible, keep proof of mailing.

If you have questions, call Class Counsel at (212) 620-2600 or the Administrator at (800) _____, or visit www._____.com, or write to _____.

EXHIBIT L

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

ROY PARKER; RAJAB ASEP,
CHRISTOPHER CHANDLER, JAMAL
COLEMAN; ALLANA DIXON; CHAUNCEY
MIRANDA; and CESAR RIVERA, on behalf
of themselves and all others similarly situated,

15 Civ. 06733 (JBW) (CPL)

Plaintiffs,

-against-

THE CITY OF NEW YORK,

Defendant.

-----x

ORDER OF ADMINISTRATION

WHEREAS, the Court has conditionally approved the settlement memorialized in the parties' Stipulation dated August 11, 2017 (the "Stipulation"); and

WHEREAS, the Stipulation provides that the Claims Administrator shall be bound by and adhere to the terms thereof and that the City of New York shall ensure that the Claims Administrator complies with the terms thereof;

WHEREAS, the parties believe that the services of a claims administrator are required to efficiently and effectively manage communications with the plaintiff class in regards to both class notice and the individual claims process; and

WHEREAS, the parties have jointly requested that the Court issue an Order appointing The Garden City Group, Inc. ("GCG") to serve as the Claims Administrator in this case;

IT IS HEREBY ORDERED THAT:

1. GCG shall serve as the Claims Administrator in the remedial phase of this litigation.

2. GCG shall perform duties including:
 - a. Sending, receiving, and distributing correspondence and documents between and among counsel for the parties and actual and/or putative class members;
 - b. Maintaining an internet website, a toll-free telephone number, a fax number, and an e-mail address to receive and provide information to such actual and/or putative class members; and
 - c. Receiving documents from the parties and Claimants and uploading them on to a secure, online database accessible to counsel for the parties.
3. GCG will submit itemized statements of fees and expenses to counsel for the parties. Counsel for the parties review each statement from GCG and inspect it for regularity and reasonableness. After review, counsel for the Parties will submit GCG's statement to the Court within 14 days of receipt, noting any area of unresolved dispute. If the Court determines GCG's statement is regular and reasonable, the Court may sign it and transmit it to the counsel for the parties. Such transmittal shall constitute a direction to the City of New York to pay the amount set forth in GCG's statement. The City of New York shall then remit to GCG any Court-approved amount in the regular manner in which it pays bills, but not later than 30 calendar days following Court approval.
4. The City of New York shall ensure that CGC complies with the terms of the Stipulation.
5. The parties shall update the Court on GCG's efforts in its periodic updates to the Court, as required by the Court.

6. The City of New York shall be responsible for paying all costs of GCG's work. GCG has agreed that it will be paid at the rates listed in GCG's pricing proposal dated June 27, 2017, annexed hereto as Exhibit A, and the parties have no objection.

7. If the parties deem it necessary, the parties shall recommend that the Court amend the Claims Administrator's duties to more effectively assist in the administration of individual relief.

SO ORDERED:

**EXHIBIT A to
Order of Administration**



**PARKER V. CITY OF NEW YORK
PRICING PROPOSAL
JUNE 27, 2017**

CATEGORY	UNIT PRICE/HOURLY ¹	ESTIMATE
I. NOTICING:		
A. Printing of Notice Packet	Discounted Hourly Rates	
B. Printing of Claim Form Deadline Warning Packet	Discounted Hourly Rates	
C. Printing of Notice Packet/Rejection Letter to Challenges	Discounted Hourly Rates	
D. Printing of Final Individual Payment Amount Letters	Discounted Hourly Rates	
E. Printing of Notice to Class Members with Uncashed Checks	Discounted Hourly Rates	
F. Remails	Discounted Hourly Rates	
G. Advanced Address Searches (if requested)	\$0.35 per search	
	Estimated Subtotal:	\$1,630-\$2,130
II. IMAGING, DOCUMENT MANAGEMENT & STORAGE:		
A. Sort, Prep and Scan Mail	Discounted Hourly Rates	
B. Process Undeliverables	Discounted Hourly Rates	
C. Document Storage-Box Storage	Discounted Hourly Rates	
	Estimated Subtotal:	\$2,375-\$2,925
III. CLAIM VALIDATION:		
A. Process Claims	Discounted Hourly Rates	
B. Printing of Identification Warning Letters	Discounted Hourly Rates	
C. Printing of W-9 Form Warning Letters	Discounted Hourly Rates	
D. Process Responses to Identification & Warning Letters	Discounted Hourly Rates	
E. Handle & Process Exclusions/Opt-Outs	Discounted Hourly Rates	
	Estimated Subtotal:	\$10,995-\$12,350
IV. CONTACT SERVICES:		
A. IVR Setup	\$2,500	
B. IVR Minutes	\$0.39 per minute	
C. CSR/Live Operator Minutes	\$0.95 per minute	
D. Monthly Maintenance Charge	\$100 per month	
E. Management of Call Center	Discounted Hourly Rates	
F. Handling of Class Member Communications	Discounted Hourly Rates	
	Estimated Subtotal:	\$9,500-\$11,100

¹ Our schedule of fees is exclusive of expenses, including but not limited to, postage, P.O. box rental, translation services, overnight mail, messenger service, NCOA searches (\$0.01 per record) and travel (if applicable). Photocopies, postcards and faxes are charged at \$0.10 each. GCG reserves the right to modify this pricing to reflect changes in terms. Please note that providing estimates requires us to rely on certain information provided by the client as well as making a number of significant assumptions. Accordingly, these estimates are not intended to limit GCG's actual fees and expenses, which due to the scope of actual services or changes to the underlying facts or assumptions, may be less or more than estimated.



**PARKER V. CITY OF NEW YORK
PRICING PROPOSAL
JUNE 27, 2017**

CATEGORY	UNIT PRICE/HOURLY	ESTIMATE
V. WEBSITE SERVICES:		
A. Website Setup	\$3,500	
B. Monthly Maintenance Charge	\$200 per month	
C. Website Updates	Discounted Hourly Rates	
	Estimated Subtotal:	\$6,125
VI. PROJECT MANAGEMENT:		
	Discounted Hourly Rates	\$32,400-\$35,775
Including but not limited to overall project management, formatting of Notice Packet, coordinating translations, oversight of claims processing, preparation of bi-weekly reports to the Parties, communications with the Parties		
VII. QUALITY ASSURANCE:		
	Discounted Hourly Rates	\$9,450-\$11,475
Including but not limited to overall quality assurance, review of bi-weekly reporting, auditing of claims processing, review of outgoing letters		
VIII. SYSTEMS SUPPORT:		
	Discounted Hourly Rates	\$5,400-\$8,100
Including but not limited to overall systems support, database setup and design, transfer of data between GCG and client, perform National Change of Address ("NCOA") search on all addresses prior to mailing, conduct Advanced Address Searches on undeliverables, programming of letters		
TOTAL ESTIMATED FEES:		\$77,875-\$90,000
TOTAL ESTIMATED EXPENSES:		\$5,000-\$7,500
TOTAL ESTIMATE FEES & EXPENSES:		\$82,875-\$97,500



GCG-Hourly Billing Rates²

Administrative	\$45-\$70
Mailroom and Claims Control	\$55
Customer Service Representatives	\$57
Project Administrators	\$70-\$85
Quality Assurance Staff	\$80-\$125
Project Supervisors	\$95-\$110
Systems & Technology Staff (including Graphic Support)	\$100-\$200
Project/Department Managers	\$125-\$150
Directors and Assistant Vice Presidents	\$175-\$250
Senior Management	\$250-\$395

² GCG will provide a 10% discount on hourly rates for this matter.

TERMS & CONDITIONS

These Terms & Conditions apply to all administration services provided by Garden City Group, L.L.C. ("GCG") to its Client(s) (the "Client"):

1. SERVICES. Subject to the terms hereof, GCG agrees to provide the services necessary to perform the tasks specified in the Pricing Proposal that has been supplied to the Client and which has been attached hereto (the "Proposal"). Such services are hereinafter referred to as "Services." The parties agree and understand that none of the Services constitute legal advice.

2. PAYMENT FOR SERVICES; EXPENSES.

2.1 COMPENSATION. As full compensation for the Services to be provided by GCG, the Client agrees to pay GCG its fees as outlined in the Proposal. Fees may include commissions and or mark ups. The Client acknowledges that the prices (both unit prices and hourly rates) contained therein were negotiated at arm's length and may vary depending on the circumstances of each case. The Client acknowledges that the fees quoted therein (and any fees quoted in any proposal for additional services that may be from time to time executed by the parties) are estimates, based on information provided to GCG by the Client, and no representation is hereby or thereby made by GCG that the fees estimated in any proposal shall equal the actual fees charged by GCG to the Client, which fees may be greater or less than estimated. Hourly rates may be adjusted from time to time by GCG in its reasonable discretion, although hourly rates generally are changed on an annual basis.

2.2 EXPENSES; ACCOUNT INFORMATION. In addition to the compensation set forth in Section 2.1, the Client shall pay GCG for expenses reasonably incurred by GCG in connection with the performance of the Services. These will be listed on the expense (non-fee) side of GCG's invoices to the Client and may include, but are not limited to, postage, PO Box rental, brokerage fees, costs of messenger and delivery service, travel, filing fees, and other similar expenses. In some cases, GCG may derive financial benefits from financial institutions resulting from settlement funds and other moneys on deposit or invested with them. These benefits may allow GCG to provide discounts on certain banking services and service fees. In some cases, GCG may also receive a rebate (or credit) from a publication vendor.

2.3 BILLING AND PAYMENT. GCG shall bill the Client for its fees and expenses on a regular basis, and the Client shall pay GCG within thirty (30) days of its receipt of each such bill, through wire transfer or other payment method approved in writing in advance by GCG. Unless otherwise agreed to in writing, the fees for print notice and fees for media publication (including any mark ups and/or commissions charged by GCG and included in these fees) must be paid within 10 days of GCG's invoice. Postage expenses must also be paid within 10 days of GCG's invoice.

3. TERMINATION.

(a) Either party may terminate this Agreement upon written notice to the other party in the event of any material breach of this Agreement by either party hereto, if the party receiving such notice (i) fails to cure such breach within thirty (30) days after notice by the non-breaching party or (ii) in the case of any breach which requires more than thirty (30) days to effect a cure, fails to commence and continue in good faith efforts to cure such breach, provided that such cure shall be effected no later than ninety (90) days after receipt of such notice of such breach. Any such termination shall be effective at the end of such thirty (30) days or ninety (90) days, as the case may be. Waiver of any such material breach by either party hereto shall not be construed as limiting any right of termination for a subsequent default or material breach.

(b) Termination of this Agreement shall in no event relieve the Client of its obligation to make any payments due and payable to GCG in respect of Services rendered prior to termination.

4. INDEPENDENT CONTRACTOR. It is understood and agreed that GCG, through itself or any of its agents, shall perform the Services as an independent contractor. Neither GCG nor any of its employees shall be deemed to be an employee of the Client. Neither GCG nor any of its employees shall be entitled to any benefits provided by the Client to its employees, and the Client will make no deductions from any of the payments due to GCG hereunder for state or federal tax purposes. GCG agrees that GCG shall be responsible for any and all taxes and other payments due on payments received hereunder by GCG from the Client.

5. CONFIDENTIAL INFORMATION.

5.1 CONFIDENTIALITY. In connection with this Agreement, each of the Client and GCG (as the case may be, the "Disclosing Party") may disclose to GCG or the Client (as the case may be, the "Receiving Party") certain information (a) that is marked or otherwise identified in writing as confidential or proprietary information of the Disclosing Party prior to or upon receipt by the Receiving Party; or (b) which the Receiving Party reasonably should recognize from the circumstances surrounding the disclosure to be confidential or proprietary (collectively, "Confidential Information"). The Receiving Party (x) shall hold all Confidential Information in confidence and will use such information only for the purposes of fulfilling the Receiving Party's obligations hereunder and for no other purpose, and (y) shall not disclose, provide, disseminate or otherwise make available any Confidential Information to any third party other than for the purposes of fulfilling the Receiving Party's obligations hereunder.

5.2 PROTECTION OF INTELLECTUAL PROPERTY. The Client and GCG each acknowledges that the other's intellectual property, including, without limitation, inventions (whether or not patentable), processes, trade secrets and know how are of ultimate importance to each. Accordingly, each of the Client and GCG agree to use best efforts to protect such intellectual property, and shall not, either during the term of this Agreement or subsequent to its termination, utilize, reveal or disclose any of such intellectual property. The

Client and GCG each understands that the software programs and other materials furnished by GCG pursuant to this Agreement and/or developed during the course of this Agreement by GCG are the sole property of GCG. The term "program" shall include, without limitation, data processing programs, check printing programs, specifications, applications, routines, sub-routines, procedural manuals, and documentation. The Client further agrees that any ideas, concepts, know-how or techniques relating to the claims management software used or developed by GCG during the course this Agreement shall be the exclusive property of GCG.

5.3 SCOPE. The foregoing obligations in Sections 5.1 and 5.2 shall not apply to (a) information that is or becomes generally known or available by publication, commercial use or otherwise through no fault of the Receiving Party; (b) information that is known by the Receiving Party prior to the time of disclosure by the Disclosing Party to the Receiving Party; (c) information that is obtained from a third party who, to the Receiving Party's knowledge, has the right to make such disclosure without restriction; (d) any disclosure required by applicable law; or (e) information that is released for publication by the Disclosing Party in writing. The Client and GCG recognize and acknowledge that in the event of any request to disclose Confidential Information in connection with a legal or administrative proceeding or otherwise to comply with a requirement under the law, prompt notice of such request must be given to the other party so that party may seek an appropriate protective order or other remedy, or waive compliance with the relevant provisions of this Agreement. If the Client seeks a protective order or other remedy, GCG, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of this Agreement, GCG will disclose only that portion of the material that its legal counsel determines it is required to disclose.

6. LIMITATION ON DAMAGES. Under no circumstances will GCG be liable to the Client for any special, consequential or incidental damages incurred by the Client relating to this Agreement or the performance of Services hereunder, regardless of whether the Client's claim is for breach of warranty, contract, tort (including negligence), strict liability or otherwise. In no event shall GCG's liability to the Client for any claims, losses, costs, fines, penalties or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of or in connection with or related to this Agreement, exceed the total amount billed or billable to the Client for the portion of the particular Services which gave rise to the Losses.

7. INDEMNIFICATION. Client shall indemnify and hold harmless GCG and its directors, officers, employees, affiliates and agents against any Losses incurred by GCG arising out of or in connection with or related to (a) any gross negligence or willful misconduct by the Client, its employees, agents or representatives, or any misrepresentations made by such persons to third parties in connection with this Agreement; (b) any breach of the terms of this Agreement by the Client; (c) the handling of any payment by GCG in accordance with the Client's instructions, including, without limitation, the imposition of any stop or void payment on any check or the wrongful dishonor of any check by GCG at the Client's instruction; or (d) any instructions or information provided to GCG by the Client for use in providing the Services.

8. FORCE MAJEURE. To the extent performance by GCG of any of its obligations hereunder is substantially prevented by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, terrorism, war or war conditions, or by reason of any other matter beyond GCG's reasonable control, then such performance shall be excused and this Agreement shall, at GCG's option, be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

9. NOTICE. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier. Any such notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in the United States mail, or, if sent by overnight courier, one business day after delivery to such courier. Notice should be provided to a responsible officer or principal of the Client and GCG, as the case may be.

10. GOVERNING LAW. This contract will be governed by and construed in accordance with the laws of the State of New York (without reference to its conflict of laws provisions). The state and Federal courts located in the County of Nassau, State of New York, have exclusive jurisdiction with respect to any proceedings which may arise in connection with this Agreement, which courts have personal jurisdiction and venue over the Client and GCG for purposes thereof.

11. SEVERABILITY. All clauses and covenants contained in this Agreement are severable and, in the event any or any part of them are held to be invalid or unenforceable by any court, such clause or covenant shall be valid and enforced to the maximum extent as to which it may be valid and enforceable, and this Agreement will be interpreted as if such invalid or unenforceable clauses or covenants were not contained herein.

12. ASSIGNMENT. This Agreement and the rights and obligations of GCG and the Client hereunder shall bind and inure to the benefit of their respective successors and assigns.

13. GENERAL. This Agreement and the Proposal supersede and replace any existing agreement entered into by GCG and the Client relating generally to the subject matter hereof or thereof, and may be modified only in a writing signed by GCG and the Client. The paragraph headings in this Agreement are included only for convenience, do not in any manner modify or limit any of the provisions of this Agreement and may not be used in the interpretation of this Agreement. This Agreement and the Proposal contain the entire agreement between the parties with respect to the subject matter hereof and thereof.