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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELSA GULINO, MAYLING RALPH, PETER WILDS, :
and NIA GREENE, on behalf of themselves and all others :
similarly situated, : 96 Civ. 8414 (KMW)

Plaintiffs, :
: :
- against - :
: :
THE BOARD OF EDUCATION OF THE CITY :
SCHOOL DISTRICT OF THE CITY OF NEW YORK, :
Defendant. :

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STIPULATION OF CLASSWIDE FACTS AND PROCEDURES

Defendant, the Board of Education of the City School District of the City of New York (“BOE”), and Plaintiffs (collectively, the “Parties”) stipulate that the following facts should be included in the trial record and accepted into evidence without further proof or testimony:

- A. Hiring Procedure for State Certified Teacher Candidates — Since 1996, teacher candidates who had been convicted of or pleaded guilty to an offense, including felonies, misdemeanors and violations, were not automatically disqualified from becoming New York City Public School teachers.¹
- B. PPT Licensing
 - 1. Preparatory Provisional Teachers (“PPTs”) were full-time classroom teachers who had not fulfilled all of the requirements for New York State Education Department (“SED”) certification. They were hired to fill vacancies in schools where no certified teacher was available. PPTs were required to be nominated by principals and approved by superintendents, receive satisfactory evaluations, and make demonstrated progress toward completion of SED certification requirements to renew their PPT certificates each year. Many PPTs taught the same students as regularly

¹ See Stipulated Exhibit HH, *Gulino v Bd. of Educ. of the City Sch. Dist of the City of N.Y.*, Lawrence E. Becker Deposition Transcript, June 5, 2014, at GULEX 2000.000040.

appointed teachers and the same subjects for years. PPTs earned the same salaries as regularly appointed teachers with the same years of service until they reached salary-step 4A. PPTs could not advance beyond salary-step 4A. PPTs with more than twelve months of BOE teaching experience after achieving salary-step 4A earned lower salaries than regularly appointed teachers with the same years of credited service. PPTs did not receive the same benefits as regularly appointed teachers.²

2. PPT candidates who had been convicted of or pleaded guilty to an offense, including felonies, misdemeanors and violations, were not automatically disqualified from becoming New York City Public School teachers.³
3. Once a teacher was approved for a PPT position, he or she had to submit his or her educational credentials to the SED along with an application for a state temporary license.⁴
4. Once the teacher received a state temporary license, the New York City Department of Education would issue that teacher a Preparatory Provisional Certificate.⁵
5. Each PPT had to have an individual education plan that listed the exams and educational credits needed to become provisionally certified.⁶
6. PPTs received one-year state temporary licenses, which they had to renew annually to continue teaching as PPTs.⁷
 - a) A PPT had to have an individual education plan for each year in order to renew his or her state temporary license for a particular year.⁸
 - b) The BOE would request that the SED renew or extend a PPT's state temporary license.⁹

² By stipulation of the Parties.

³ *Id.*

⁴ *Id.*

⁵ See Stipulated Exhibit KK, *Gulino v. Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, Trial Transcript, Dec. 18, 2002, examination of Gary Barton, at GULEX 2000.000129.

⁶ See Stipulated Exhibit II, *Gulino v. Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, Trial Transcript, Dec. 12, 2002, examination of Marie DeCanio, at GULEX 2000.000100-01.

⁷ *Id.*

⁸ *Id.*

⁹ See Stipulated Exhibit HH, at GULEX 2000.000042.

- c) The BOE was required to recertify to the SED that there were no certified teachers to fill a vacancy each time that a PPT sought to renew his or her state temporary license.¹⁰
 7. The SED permitted PPTs, except for bilingual (Spanish) special education PPTs, to receive up to six temporary license renewals.¹¹
 8. The SED permitted bilingual (Spanish) special education PPTs to receive up to seven temporary license renewals.¹²
 9. State temporary licenses were no longer issued as of September 1, 2003.
 10. If a PPT's state temporary license expired, the PPT could apply to obtain an occasional per diem certificate to work as a substitute teacher.¹³
 11. Teachers with per diem certificates were not guaranteed regular work, were not eligible to work over the summer months, and did not receive any employment-related benefits.¹⁴
- C. Part-time Teachers' Certification
1. From 1996 to 2002, the BOE did not require that part-time teachers be state certified in order to obtain employment at the BOE.¹⁵
 2. From 1996 to 2002, the BOE paid part-time teachers a prorated portion of a full-time teacher's salary.¹⁶
- D. Placement Rights
1. Since 1986, full-time certified teachers have had priority over substitute teachers for placement in BOE schools.¹⁷
 2. Since 1986, a full-time certified teacher has had the right, in accord with seniority and contractual rules, to secure a full-time position in the same or

¹⁰ See Stipulated Exhibit II, at GULEX 2000.000101.

¹¹ Stipulated Exhibit KK, at GULEX 2000.000129-30.

¹² *Id.*

¹³ See Stipulated Exhibit JJ, *Gulino v. Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, Trial Transcript, Dec. 19, 2002, examination of Gary Barton, at GULEX 2000.000112-13.

¹⁴ By stipulation of the Parties.

¹⁵ See Stipulated Exhibit HH, at GULEX 2000.000042-43.

¹⁶ *See id.*

¹⁷ See Stipulated Exhibit KK, at GULEX 2000.000123-24; *see also* New York Education Law § 2588.

another New York City public school if a school eliminated his or her teaching position.¹⁸

3. Since 1986, a full-time substitute teacher has not had the right to secure a full-time position in another New York City public school if a school eliminated his or her teaching position.¹⁹

E. Probationary Period

1. From September 1, 1995 to July 1, 2015, the probationary period for incoming full-time, regularly appointed teachers was three years. The probationary period began when an incoming regular teacher was appointed.²⁰
 - a) From September 1, 1995 to July 1, 2015, newly appointed probationary teachers could have reduced their probationary period by up to two years, based on their years of substitute teaching, by applying for a credit called a Jarema Credit.²¹
 - (1) To receive a Jarema Credit an appointed teacher must have worked satisfactorily as a regular substitute for two years in the same license at the same level (*i.e.* elementary, junior high school, high school).²²
2. From September 1, 1995 to July 1, 2015, newly appointed probationary teachers who received tenure in one license area and were appointed to a new license area, or received tenure in another school district within New York State, could have had a maximum two-year probationary period if they applied for a credit called traveling tenure.²³
3. Since July 1, 2015, the probationary period has been four years from the date of appointment.²⁴
4. Since July 1, 2015, teachers who work as regular substitutes can reduce the four-year probationary period by up to two years by applying for a Jarema Credit.²⁵

¹⁸ See Stipulated Exhibit KK, at GULEX 2000.000123-24; *see also* New York Education Law § 2588.

¹⁹ See Stipulated Exhibit KK, at GULEX 2000.000123-24; *see also* New York Education Law § 2588.3(a).

²⁰ Stipulated Exhibit RR, United Federation of Teachers, Preparing for Tenure Decisions, at GULEX 1700.000004-05.

²¹ See Stipulated Exhibit OO, New York City Department of Education-Division of Human Rights, Application for Reduction of Probationary Service, at GULEX 2200.000001.

²² See New York Education Law § 2509.1(a).

²³ See *id.*

²⁴ Stipulated Exhibit NN, United Federation of Teachers, Tenure, at GULEX 1700.000011-13.

- a) A teacher must have worked as a substitute for a minimum of 80 days within a period of 90 consecutive school days in the same school to receive a one-term credit.²⁶
- b) A teacher must have worked for at least 160 days in a one-year period to obtain a one-year credit.²⁷
5. Since July 1, 2015, newly appointed probationary teachers who received tenure in one license area and were appointed to a new license area, or received tenure in another school district within New York State, could have their probationary period reduced by one year if they applied for a credit called traveling tenure.²⁸
6. Since 1997, district superintendents have had the authority to determine if an incoming regular teacher has satisfactorily completed his or her probationary period.²⁹
7. Since 1997, if an incoming regular teacher satisfactorily completes his or her probationary period, he or she is eligible for tenure.³⁰
8. Since April 13, 2015, if a teacher receives an effective and/or highly effective review in each year of his or her probationary service, except that he or she receives an ineffective review in the final year of his or her probationary period, the BOE, in its discretion, has the authority to extend that teacher's probationary period for an additional year.³¹
9. Since 1995, a teacher on probation who is arrested could, and still can, be paid during the pendency of the investigation.³²

F. LAST Cost and Frequency

1. The cost of taking a single administration of the LAST each school year was as follows:
 - a) 1993-94—\$60³³

²⁵ Stipulated Exhibit SS, United Federation of Teachers, Probationary Period, at GULEX 1700.000003.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Stipulated Exhibit NN, at GULEX 1700.000011-13.

²⁹ See New York Education Law §§ 2573.1, 2573.5.

³⁰ See New York Education Law § 2573.5.

³¹ See *id.* at § 2573.5(b); see also Stipulated Exhibit SS, at GULEX 1700.000003.

³² See New York Education Law § 3020-a(2)(b).

³³ Stipulated Exhibit FF, Pearson LAST Production, at GULEX 1600.000001-03.

- b) 1994-95—\$70³⁴
- c) 1995-96—\$70³⁵
- d) 1996-97—\$70³⁶
- e) 1997-98—\$70³⁷
 - (1) Summer/Supplemental registration – additional \$20
- f) 1998-99—\$70³⁸
 - (1) Summer/Supplemental registration—additional \$20
- g) 1999-2000—\$70³⁹
 - (1) Summer registration—additional \$20
- h) 2000-01—\$70⁴⁰
 - (1) Summer registration—additional \$20
- i) 2001-02—\$70⁴¹
 - (1) Summer registration—additional \$20
- j) 2002-03—\$70⁴²
 - (1) Summer registration—additional \$20
- k) 2003-2004—\$70⁴³
 - (1) Summer registration—additional \$20
- l) 2004-05—\$88⁴⁴
- m) 2005-06—\$88⁴⁵
 - (1) Out of state testing—\$70
- n) 2006-07—\$88⁴⁶

³⁴ *Id.* at GULEX 1600.000004-06.

³⁵ *Id.* at GULEX 1600.000007-09.

³⁶ *Id.* at GULEX 1600.000010-12.

³⁷ *Id.* at GULEX 1600.000013-15.

³⁸ *Id.* at GULEX 1600.000016-18.

³⁹ *Id.* at GULEX 1600.000019-21.

⁴⁰ *Id.* at GULEX 1600.000022-24.

⁴¹ *Id.* at GULEX 1600.000025-27.

⁴² *Id.* at GULEX 1600.000028-30.

⁴³ *Id.* at GULEX 1600.000031-33.

⁴⁴ *Id.* at GULEX 1600.000034-36.

⁴⁵ *Id.* at GULEX 1600.000037-39.

- (1) Out of state testing—\$70
- o) 2007-08—\$88⁴⁷
 - (1) Out of state testing—\$70
- p) 2008-09—\$88⁴⁸
 - (1) Out of state testing—\$70
- q) 2009-10—\$88⁴⁹
 - (1) Out of state testing—\$70
- r) 2010-11—\$79 (paper), \$149 (computer)⁵⁰
- s) 2011-12—\$79 (paper), \$149 (computer)⁵¹
- t) 2012-13—\$79 (paper), \$149 (computer)⁵²
- u) 2013-14—\$119 (computer)⁵³

G. Mitigation

1. The Parties agree to a one-year grace period following a claimant’s displacement or termination from the BOE in which Defendant will not contest mitigation and a claimant will not be required to show reasonable effort to find suitable employment.⁵⁴
2. After the one-year grace period, the Parties agree that a claimant who has earned less than the below listed amounts in the below listed years (the “Stipulated Mitigation Amount”) will submit an affidavit setting forth his/her efforts to find suitable employment.⁵⁵

Year	Stipulated Mitigation Amount ⁵⁶
1994	\$15,000

⁴⁶ *Id.* at GULEX 1600.000040-42.

⁴⁷ *Id.* at GULEX 1600.000043-45.

⁴⁸ *Id.* at GULEX 1600.000046-48.

⁴⁹ *Id.* at GULEX 1600.000049-51.

⁵⁰ *Id.* at GULEX 1600.000052-54.

⁵¹ *Id.* at GULEX 1600.000055-57.

⁵² *Id.* at GULEX 1600.000058-60.

⁵³ *Id.* at GULEX 1600.000061-63.

⁵⁴ *See* February 22, 2017 Special Master Conference Summary, at GULCS 000141-154.

⁵⁵ *See id.*

⁵⁶ *See id.*

Year	Stipulated Mitigation Amount ⁵⁶
1995	\$15,400
1996	\$15,400
1997	\$15,900
1998	\$16,200
1999	\$17,000
2000	\$18,500
2001	\$19,400
2002	\$20,700
2003	\$20,700
2004	\$20,700
2005	\$21,200
2006	\$22,300
2007	\$24,900
2008	\$25,000
2009	\$25,000
2010	\$25,000
2011	\$25,000
2012	\$25,000
2013	\$25,300
2014	\$25,500
2015	\$26,400
2016	\$27,300
2017	\$28,500
2018	\$29,355

3. The Parties agree that in lieu of an affidavit, a claimant may take the Stipulated Mitigation Amount in any month that his or her monthly earnings are below the Stipulated Mitigation Amount.
4. In the event that Defendant determines that it is not satisfied that a claimant made reasonable efforts to find suitable employment, the Parties will undertake appropriate discovery upon a showing of need to the Special Master.⁵⁷

⁵⁷ See *id.*

5. After discovery, the Special Master will determine whether Defendant has sustained its burden of establishing that a claimant has not exercised reasonable effort to find suitable employment.⁵⁸
6. In the event that the Special Master determines that Defendant has sustained its burden that a claimant has not exercised reasonable effort to find suitable employment, the mitigation offset in the amounts set forth above (*see* section G(2)) will be prorated on a monthly basis from the claimant's earnings.⁵⁹
7. Pursuant to the agreement in sections G(1)-G(6) above, Defendant will not object to, or preserve for appeal, any objections to mitigation-related rulings made before February 15, 2017, including the Court's finding that mitigation should be determined on a monthly basis rather than on an annual basis.⁶⁰

H. Teacher Salary Schedule

1. Appointed teachers and PPTs received pay increases based on the salary-steps, on their respective anniversary dates, and on March 1 of each year.⁶¹
2. PPTs did not receive pay increases or citywide seniority after salary-step 4A.⁶²

I. Teacher Retirement System ("TRS")⁶³

1. Tiers
 - a) TRS members who joined TRS between July 27, 1976 and August 31, 1983 belong to Tier III.⁶⁴
 - b) TRS members who joined TRS between September 1, 1983 and March 31, 2012 belong to Tier IV.⁶⁵

⁵⁸ *See id.*

⁵⁹ *See id.*

⁶⁰ *See id.*

⁶¹ Stipulated Exhibit TT, United Federation of Teachers, Salary Steps, at GULEX 1700.000006-07.

⁶² *See* Stipulated Exhibit KK, at GULEX 20000.000123-24.

⁶³ The following information was gathered from Stipulated Exhibit GG, *Gulino v. Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, James Sarker Deposition Transcript, dated November 12, 2014, at GULEX 2000.000001-34. Any additional sources will be footnoted and cited. The following information also relates to Tier III and Tier IV TRS members unless indicated otherwise.

⁶⁴ *See* Stipulated Exhibit W, Teachers' Retirement System of the City of New York, Tiers III/IV Summary Plan Description, at GULEX 1900.000005.

⁶⁵ *See id.*; *see also* Stipulated Exhibit X, TRSNYC, Your TRS Benefits in Brief, at GULEX 1900.000041.

- c) TRS members who joined TRS on or after April 1, 2012 belong to Tier VI.⁶⁶
- d) Members of another City retirement system who transfer their membership to TRS also transfer the tier membership in the other retirement system to TRS.⁶⁷

2. Eligibility for TRS Membership

- a) Per diem substitute teachers are not eligible for TRS membership.
- b) BOE paraprofessionals in the following titles have the option of joining TRS:⁶⁸
 - (1) Auxiliary Teacher
 - (2) Bilingual Professional Assistant
 - (3) Educational Assistant
 - (4) Educational Associate
 - (5) Family Assistant (A & B)
 - (6) Family Associate
 - (7) Family Worker
 - (8) Health Aide
 - (9) Parent Program Assistant
 - (10) Teacher Aide

3. Vesting

- a) Tier IV TRS members who joined the system after December 10, 2009, and are represented by the UFT, vest in their pensions after ten years of credited service.⁶⁹

⁶⁶ Stipulated Exhibit Y, Teachers' Retirement System of the City of New York, Tier VI Benefits in Brief, at GULEX 1900.000045.

⁶⁷ See Stipulated Exhibit W, at GULEX 1900.000005-06.

⁶⁸ See *id.* at GULEX 1900.000003.

⁶⁹ See Stipulated Exhibit GG, *Gulino. v. Bd. of Educ. of the City Sch. Dist. of the City of N.Y.*, James Sarker Deposition Transcript, Nov. 12, 2014, at GULEX 2000.000014.

- b) Tier IV TRS members who joined the system before December 10, 2009, or are not represented by the UFT, vest in their pensions after five years of credited service.⁷⁰
- c) TRS members who leave BOE service before they are vested have seven school years before their TRS membership terminates, assuming the member does not reenter BOE service during that time.⁷¹
- d) Withdrawal by non-vested TRS members
 - (1) TRS members who leave BOE service prior to vesting have the following choices regarding the employee contributions they made to TRS while in BOE service: (i) roll over their employee contributions, and any accrued interest, to an eligible IRA or other qualified retirement plan; (ii) withdraw their employee contributions, and any accrued interest, from their TRS account, subject to IRS rules regarding withdrawals from qualified retirement plans; or (iii) leave their employee contributions deposited with TRS, where they can accrue interest for up to seven years.
 - (2) TRS members who leave their employee contributions deposited with TRS for seven years after leaving BOE service are, at the expiration of the seventh year, required to: (i) roll over their employee contributions, and any accrued interest, to an eligible IRA or other qualified retirement plan, or (ii) withdraw their employee contributions, and any accrued interest, subject to IRS rules regarding withdrawals from qualified retirement plans.⁷²
 - (3) Withdrawals of pre-tax contributions and accrued interest are reported to the IRS as distributions, and are taxable upon receipt.⁷³

4. Annuity Savings Accumulation Fund (“ASAF”)

- a) The BOE contributes \$33.33 every month into an ASAF for permanently appointed teachers at salary-step level 8B and above.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at GULEX 2000.000012.

⁷³ *Id.*

- b) At retirement, the ASAF balance is annuitized and paid in a series of periodic payments as a part of the permanently appointed teacher's monthly retirement allowance.

J. Disability Benefits

1. Cumulative Absence Reserve ("CAR") days

- a) CAR days are sick-leave days that under certain circumstances and subject to contractual limits can be used for other personal reasons.⁷⁴
- b) Full-time teachers receive one CAR day each month for a maximum of ten CAR days per school year.⁷⁵ Teachers who work during the summer can accrue an additional two CAR days each year.⁷⁶
- c) If a teacher does not have any CAR days remaining, he or she can borrow up to twenty CAR days, which must be paid back.⁷⁷
- d) Teachers are permitted to carry over CAR time; however, they are not permitted to exceed 200 CAR days during their BOE career.⁷⁸
- e) Upon resignation and/or retirement, a teacher is entitled to reimbursement of half of his or her accrued and unused CAR days up to 200 days ("CAR payout").
 - (1) The CAR payout will be at the rate of 1/200th of a teacher's yearly salary upon resignation, retirement, or termination.⁷⁹
 - (2) Upon resignation and/or retirement, a teacher has a maximum of six years to request payment for the balance of their CAR days.
 - (3) If the teacher is entitled to more than \$1,500 in CAR days, then the CAR days are paid in three payments.⁸⁰

⁷⁴ By stipulation of the Parties.

⁷⁵ *Id.*

⁷⁶ See Stipulated Exhibit PP, NYC Department of Education, Absence Categories and Usages, at GULEX 2200.000002.

⁷⁷ See Stipulated Exhibit LL, United Federation of Teachers, Cumulative Absence Reserve (CAR), at GULEX 1700.000008.

⁷⁸ By stipulation of the Parties.

⁷⁹ See Stipulated Exhibit LL, at GULEX 1700.000008.

- f) The BOE typically paid a teacher half of his or her CAR days upon the teacher's termination.⁸¹

2. Special Sabbatical Leave for Restoration of Health

- a) To qualify for a special sabbatical leave for restoration of health, a teacher needed at least seven years of appointed time and had to pass a medical review from the medical inspectors.⁸²
- b) If the teacher qualified for a special sabbatical leave for restoration of health, then he or she would receive 60% of his or her salary for a maximum of six months.
- c) While a teacher was out on this leave, he or she would continue to collect service credits for pension purposes.⁸³
- d) If a teacher applied for a special sabbatical leave for restoration of health prior to the beginning of the school year, he or she did not need to exhaust his or her CAR days.⁸⁴
- e) If a teacher applied for a special sabbatical leave for restoration of health after the beginning of the school year, he or she was required to exhaust his or her CAR days prior to receiving the special sabbatical benefits.⁸⁵
- f) A teacher could have requested a second six-month sabbatical if he or she had 14 years of regularly appointed service.⁸⁶

3. Restoration of Health Sabbatical

- a) To qualify for a restoration of health sabbatical, a teacher needed at least fourteen years of appointed time, three of which could have been time served as a per diem substitute teacher for which salary credit was granted. The teacher also had to pass a medical review from the medical inspectors.⁸⁷

⁸⁰ By stipulation of the Parties.

⁸¹ *Id.*

⁸² Exhibit AC, BOE Disability Production, at GULEX 2100.000104-05.

⁸³ By stipulation of the Parties.

⁸⁴ *See id.*

⁸⁵ *See id.*

⁸⁶ *See id.* at GULEX 2100.000225-27.

⁸⁷ *See id.* at GULEX 2100.000104-05.

- b) If the teacher qualified for a restoration of health sabbatical, then he or she would receive 70% of his or her salary for a maximum of one year.⁸⁸
 - c) While a teacher was out on this leave, he or she would continue to collect service credits for pension purposes.⁸⁹
 - d) If a teacher needed longer than a year leave, he or she had the following options:
 - (1) use whatever CAR days he or she had after exhausting sabbatical,⁹⁰
 - (2) obtain another six months leave if he or she had twenty-one years of regularly appointed service,⁹¹ or
 - (3) obtain another year leave if he or she had twenty-eight years of regularly appointed service.⁹²
4. Maternity Leave⁹³
- a) Maternity leave commences upon the birth of the child.
 - b) A teacher can use his or her CAR days, borrow time, or use the thirty-day grace period while on maternity leave.
 - c) A teacher is entitled to six weeks leave if the child is born through a vaginal delivery and eight weeks leave if the birth is via a caesarean.
 - d) No prior years of service are required to obtain maternity leave.

K. UFT Welfare Fund Death Benefits⁹⁴

- 1. If a UFT member dies while still employed with the BOE, the UFT Welfare Fund will provide the following monetary payment to the

⁸⁸ *See id.*

⁸⁹ By stipulation of the Parties.

⁹⁰ *Id.*

⁹¹ Exhibit AC, BOE Disability Production, at GULEX 2100.000225-27.

⁹² *See id.*

⁹³ By stipulation of the Parties.

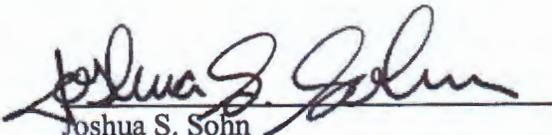
⁹⁴ Stipulated Exhibit MM, United Federation of Teachers, Death Benefits for In-Service Members, at GULEX 1700.000009-10.

member's beneficiary(ies) that was designated when the member enrolled in the Welfare Fund:

Age of UFT Member at Death	Amount Payable to Beneficiary
Under 40	\$30,000
40-44	\$20,000
45-49	\$15,000
50-54	\$9,000
55-59	\$6,000
60-64	\$4,000
65-69	\$2,500
70 and older	\$1,600

- Unless indicated otherwise in the UFT member's Welfare Fund form, the death benefits listed above will be shared equally amongst beneficiaries if the UFT member had more than one beneficiary

DATED: August 28, 2018



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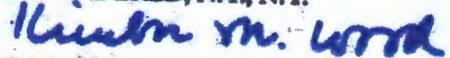
Counsel for Defendant

On the recommendation of the Special Master

So ordered.

12/14/18

SO ORDERED, N.Y., N.Y.



KIMBA M. WOOD
 U.S.D.J.