

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Dominic Musarra, et al.

Plaintiffs,

vs.

Digital Dish, Inc.,

Defendant.

Case No. C2-05-545

Judge Marbley

Magistrate Judge King

SETTLEMENT AGREEMENT

This Settlement Agreement and Release of Claims (“the Agreement”) is entered into between Plaintiffs Dominic Musarra, Kevin Klug, Charles Everett, Bryan Westfall, Darrell Hall and Michael Nakonechny (“Class Representatives”), representatives of the plaintiff class described herein (for settlement purposes only), all of whom are represented by Barkan, Neff, Handelman, and Meizlish, L.L.P. and Marshall and Morrow, L.L.C., and Defendant Digital Dish, Inc., which is represented by Squire, Sanders, and Dempsey, L.L.P.

I. DEFINITIONS

The terms set forth below shall have the meanings defined in this Section wherever used in this Agreement and in all of its exhibits, including the Notice of Settlement and Claim Form.

1.1 “The Civil Action” means the above-captioned case.

1.2 For purposes of this Agreement, the class is defined as all job-based employees hired by the Defendant between June 2, 2002 and October 12, 2006 (“the Relevant Period”).

Class Representatives and Defendant agree that they will prepare and agree upon a list of all Proposed Class Members. Any dispute as to the context of the list will be resolved by the Court.

1.3 “Charity” shall mean Interfaith Worker Justice, 1020 West Bryn Mawr, 4th Floor Chicago, Illinois 60660-4627 and La Red Business Network, PO Box 315, Berlin, Ohio 44610.

1.4 “Claims Administrator” means The Garden City Group, Inc.

1.5 The “Court” means the United States District Court for the Southern District of Ohio.

1.6 “Class Counsel” means Robert E. DeRose and Robert Handelman of Barkan, Neff, Handelman, Meizlish, L.L.P. and Edward Forman, John Marshall, Stephen Dransfield, and Louis Jacobs of Marshall and Morrow, L.L.C.

1.7 “Defendant” and “the Company” mean Digital Dish, Inc.

1.8 “Effective Date” means the date upon which all of the following have occurred: (1) entry of an Order by the Court certifying the plaintiff class for purposes of this settlement; (2) entry of an Order by the Court granting Plaintiffs’ Motion for Leave to File First Amended Complaint; and (3) entry of an Order or Orders granting final approval to the Agreement, approving the amount of attorneys’ fees and costs and dismissing the minimum wage claims asserted in the First Amended Complaint with prejudice.

1.9 “Class Representatives” means, for purposes of settlement only, Dominic Musarra, Kevin Klug, Charles Everett, Bryan Westfall, Darrell Hall and Michael Nakonechny.

1.10 The “Parties” means the Class Representatives and Defendant.

1.11 “The Preliminary Approval Order” means the Order entered by this Court preliminarily approving the terms of this Agreement, certifying the Settlement Class, approving the payments of attorneys’ fees, attorneys’ costs, claims administration fees, and the Service

Payment as set forth in the Agreement, scheduling a fairness hearing, and directing the mailing to the Settlement Class of the Notices of Settlement and the Claim Form.

1.12 “Released Claims” has the meaning ascribed to it in Section 5.1 of this Agreement.

1.13 “Relevant Period” means June 2, 2002 to October 12, 2006.

1.14 “Released Parties” means Digital Dish, Inc., its owners, stockholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, parent companies, divisions, subsidiaries, affiliates, benefit plans, plan fiduciaries and / or administrators, and all persons acting by, through, under or in concert with any of them, including any party that was or could have been named as a defendant in the Civil Action.

1.15 “Qualified Claimant” means each member of the Settlement Class who is entitled to receive a Settlement Share by virtue of having returned a Claim Form and Release (attached hereto as Exhibit C) within the time prescribed for submission of the Claim Form and Release by this Agreement.

1.16 “Settlement Class” means all job-based technicians hired by Defendant between June 2, 2002 and October 12, 2006 who participated in the Defendant’s training program.

1.17 “Settlement Fund” means the amount of \$64,000. Defendant agrees to pay \$60,000.00 to the Settlement Fund to pay each Qualified Claimant’s Settlement Share, the Qualified Settlement Administrator’s costs and the attorney fees and expenses awarded by the court up to \$14,000.00. The defendant agrees to pay an additional \$4,000 to the Settlement Fund to be used solely for the purpose of defraying the cost of the IVR Call Center as described in Section 12.2. The Parties agree that the \$4,000.00 will not be used for payment of a Qualified

Claimant's Settlement Share or for the payment of attorney fees or expenses awarded by the court.

1.18 "Settlement Share" means each Qualified Claimant's total share of the Settlement Fund, which by agreement of the parties shall equal \$23.10 per Plaintiff who does not opt-out of the settlement.

II. RECITALS

2.1 On June 2, 2005, the Class Representatives filed a lawsuit in the United States District Court for the Southern District of Ohio captioned *Musarra et al. v. Digital Dish, Inc.*, Case No. C2-05-545 ("the Civil Action"), asserting claims, among others, for minimum wages under the Fair Labor Standards Act ("FLSA") on behalf of themselves and Ohio Revised Code Chapter 4111 on behalf of themselves and all other job-based technicians alleged to be similarly situated.

2.2 Class Counsel conducted a thorough investigation into the facts of the action, including an extensive review of numerous documents, and diligently pursued an investigation of the Settlement Class Members' minimum wage claims against Defendant. Based on their investigation and evaluation, the Class Representatives and Class Counsel are of the opinion that the settlement set forth in this Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant and other potential legal issues.

2.3 It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising for or related to minimum wage claims asserted in the Civil Action which exist between them. Nothing in this agreement would operate to compromise

any overtime claims for Job Based technicians employed with Defendant after June 2, 2002 or any workers' compensation claims under Ohio law.

2.4 It is the intention of the Parties that this Agreement shall constitute a full and complete settlement and release of all Released Claims against all Released Parties.

2.5 Defendant denies any liability or wrongdoing of any kind associate with the claims alleged in the Civil Action.

2.6 This Agreement is a compromise and shall not be construed as an admission of liability at any time or for any purpose, under any circumstances, by the Parties or the Released Parties. The Parties further acknowledge and agree that neither this Agreement nor the Settlement shall be used to suggest an admission of liability in any dispute the Parties may have now or in the future with respect to any person or entity. Neither this Agreement nor anything in it, nor any part of the negotiations that occurred in connection with the creation of this Settlement, shall constitute evidence with respect to any issue or dispute in any lawsuit, legal proceeding, or administrative proceeding, except for legal proceedings concerning the enforcement or interpretation of this Agreement.

2.7 Upon final approval of this Settlement (following the Fairness Hearing described herein) the Court shall accept for filing the First Amended Complaint lodged with the court on November 10, 2006. Class Counsel and the Class Representatives agree to file with the Motion for Final Approval of the Settlement a Motion to Dismiss with Prejudice the minimum wage claims contained in the First Amended Complaint. Immediately following its acceptance of the First Amended Complaint, the Court will grant the Motion to Dismiss with Prejudice described in this paragraph. The parties agree that the litigation will go forward on the overtime claims after August 10, 2005 as if those claims were expressly and unambiguously included in a formal

pleading, pursuant to Magistrate Judge King's Order dated February 27, 2007 [Docket No. 65]. In the event that the settlement is not approved (either finally or conditionally), the Parties agree that Digital Dish's pursuit of or acquiescence to discovery with respect to overtime claims after August 10, 2005 will not preclude Digital Dish from contesting the appropriateness of the First Amended Complaint or of filing an opposition to the Motion for Leave to File First Amended Complaint.

III. APPROVAL AND CLASS NOTICE

3.1 On April 20, 2007, Plaintiffs and Defendant will submit this Agreement to the Court, together with a Motion for Order Conditionally Certifying Settlement Class and Preliminarily Approving Class Action Settlement, a proposed Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing in the form attached as Exhibit A, a proposed Opt-Out Statement in the form attached as Exhibit B, a Claim Form and Release in the form attached as Exhibit C, and a proposed Preliminary Approval Order in the form attached as Exhibit D. The Parties will file a Joint Motion (for purposes of this settlement only), for Class Certification under Rule 23 of the Federal Rules of Civil Procedure of individuals hired by Digital Dish, Inc. between June 2, 2002 and October 12, 2006 based solely on a purported failure to pay those individuals minimum wages.

If the Court denies the Motion for Order Conditionally Certifying Settlement Class and Preliminarily Approving Class Action Settlement, then the Civil Action will resume as it existed on October 13, 2006 unless the Parties jointly agree to seek reconsideration of the ruling or seek Court approval of the renegotiated settlement. If a mutually agreed class settlement is not approved, the case will proceed as if no settlement had been attempted, and Defendant retains the right to contest whether this case should be maintained as a collective or class action and to

contest the merits of any claims being asserted by Plaintiffs. In such a case, the Parties will negotiate and submit for Court approval a case schedule which shall, among other things, propose dates for completion of conditional class certification, merits discovery, and the filing of motions, including with respect to certification and decertification of any class. The parties agree that the litigation will go forward on the overtime claims after August 10, 2005 as if those claims were expressly and unambiguously included in a formal pleading, pursuant to Magistrate Judge King's Order dated February 27, 2007 [Docket No. 65]. In the event that the settlement is not approved (either finally or conditionally), the Parties agree that Digital Dish's pursuit of or acquiescence to discovery with respect to overtime claims after August 10, 2005 will not preclude Digital Dish from contesting the appropriateness of the First Amended Complaint or of filing an opposition to the Motion for Leave to File First Amended Complaint.

3.2 Class Notice

(A) Within 10 days of the date of the Preliminary Approval Order, Digital Dish will provide the Claims Administrator with a list, in electronic form, of the names and last known addresses of all Class Members.

(B) Within 15 days after receiving the information described in Section 3.2(A), the Claims Administrator shall mail, via First Class United States mail, the Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing in the form attached as Exhibit A, the Opt-Out Statement in the form attached as Exhibit B, and the Claim Form and Release in the form attached as Exhibit C, to all Class Members using each individual's last known address.

3.3 Any Class Member may request exclusion from the Class by "opting out." Class Members who choose to do so must submit a written and signed request for exclusion to the Claims Administrator, in the form attached as Exhibit B. To be effective, such Opt-Out

Statements must be sent via First Class United States mail and postmarked by a date certain to be specified on the Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing, which will be 60 calendar days after the Claims Administrator makes the initial mailing of the Notice. The end of the “Opt-Out Period” shall be 70 calendar days after the last day on which the Claims Administrator makes the initial mailing under Section 2.3(B). The Claims Administrator shall stamp the postmark date on the original of each Opt-Out Statement that it receives and shall serve copies of each Statement on Class Counsel and Defendant’s counsel not later than 3 calendar days after receipt thereof. The Claims Administrator shall also, within 3 days of the end of the Opt-Out Period, file with the Clerk of Courts, with Social Security Numbers redacted, stamped copies of any Opt-Out Statements. The Claims Administrator shall, within 3 business days of the end of the Opt-Out Period, send a final list of all Opt-Out Statements to Class Counsel and Defendant’s Counsel by e-mail.

3.4 In the event that 500 or more Class Members elect to opt out of the settlement, Defendant shall have the right, in its sole discretion, to void this Agreement, by filing with the Court a Notice of Withdrawal. In no event shall Defendant file such a Notice of Withdrawal later than 30 calendar days after the end of the Opt-In Period. If Defendant files a timely Notice of Withdrawal, then the Civil Action will resume as it existed on October 13, 2006 unless the Parties jointly agree to seek reconsideration of the ruling or seek Court approval of the renegotiated settlement. If a mutually agreed class settlement is not approved, the case will proceed as if no settlement had been attempted, and Defendant retains the right to contest whether this case should be maintained as a collective or class action and to contest the merits of any claims being asserted by Plaintiffs. In such a case, the Parties will negotiate and submit for Court approval a case schedule which shall, among other things, propose dates for completion of

conditional class certification, merits discovery, and the filing of motions, including with respect to certification and decertification of any class. The parties agree that the litigation will go forward on the overtime claims after August 10, 2005 as if those claims were expressly and unambiguously included in a formal pleading, pursuant to Magistrate Judge King's Order dated February 27, 2007 [Docket No. 65]. In the event that the settlement is not approved (either finally or conditionally), the Parties agree that Digital Dish's pursuit of or acquiescence to discovery with respect to overtime claims after August 10, 2005 will not preclude Digital Dish from contesting the appropriateness of the First Amended Complaint or of filing an opposition to the Motion for Leave to File First Amended Complaint.

3.5 A Class Member who does not opt out pursuant to Section 2.4 will be deemed to be eligible for a payment hereunder if and only if he or she timely and fully executes and returns the Claim Form and Release in the form attached as Exhibit C. The oath contained therein must be personally filled out by the current or former employee who seeks to participate in the settlement or someone with a legal right to act on his or her behalf. To be effective, Class Members' Claim Form and Release must be sent to the Claims Administrator via First Class United States mail, and be received by 70 calendar days after the initial mailing of the Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing.

3.6 Class Members who wish to present objections to the proposed settlement at the Fairness Hearing must do so first in writing. To be considered, such statement must be sent to the Claims Administrator via First Class United States mail, and be received by the Claims Administrator by a date certain, to be specified on the Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing, which shall be for each Class Member 60 days after the initial mailing by the Claims Administrator of such Notice. The Claims Administrator shall

stamp the date received on the original and send copies of each objection to the Parties by e-mail and overnight delivery not later than 3 calendar days after receipt thereof. The Claims Administrator shall also file the date-stamped originals of any and all objections with the Clerk of Courts within 3 business days after the end of the Opt-Out Period.

An objector also has the right to appear at the Fairness Hearing either in person or through counsel hired by the objector. An objector who wishes to appear at the Fairness Hearing must state his or her intention to do so at the time he or she submits his or her written objections. An objector may withdraw his or her objections at any time. No Class Member may appear at the Fairness Hearing unless he or she has filed a timely objection that complies with the procedures provided in Section 3.6. Any Class Member who has submitted an Opt-Out form may not submit objections to this settlement.

The Parties may file with the Court written responses to any filed objections not later than 14 calendar days before the Fairness Hearing.

3.7 Not later than 35 calendar days before the Fairness Hearing, Plaintiffs and Defendant will submit a Motion for Judgment and Final Approval. The first draft of the Motion for Judgment and Final Approval will be completed by the Defendant with the approval and contribution of the Plaintiffs. The Fairness Hearing shall be held on [DATE].

3.8 At the Fairness Hearing, the Parties will request that the Court, issue an order containing all of the following, among other things:

- (a) Certifying the Settlement Class;
- (b) Granting Plaintiffs' Motion for Leave to File First Amended Complaint;
- (c) Acknowledging the Plaintiffs' have filed a Motion to Dismiss with Prejudice the Minimum Wage Claims contained in the First Amended Complaint;

(d) Dismissing Plaintiffs' minimum wage claims from June 2, 2002 to the Effective date under the Federal Labor Standards Act and Ohio's wage and hour law on the merits and with prejudice and permanently barring all members of the Settlement Class including the Class Representatives from prosecuting against any Released Parties any of the Released Claims and issuing a judgment entry to that effect (attached as Exhibit F);

(e) Granting final approval to the Agreement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions; and

(f) Retaining jurisdiction to enforce the terms of the settlement.

3.9 In the event that the Court fails to enter Judgment in accordance with this Agreement, the Civil Action will proceed as if no settlement had been attempted. In that event, the Civil Action will resume as it existed on October 13, 2006 unless the Parties jointly agree to seek reconsideration of the ruling or seek Court approval of the renegotiated settlement. If a mutually agreed class settlement is not approved, the case will proceed as if no settlement had been attempted, and Defendant retains the right to contest whether this case should be maintained as a collective or class action and to contest the merits of any claims being asserted by Plaintiffs. In such a case, the Parties will negotiate and submit for Court approval a case schedule which shall, among other things, propose dates for completion of conditional class certification, merits discovery, and the filing of motions, including with respect to certification and decertification of any class. The parties agree that the litigation will go forward on the overtime claims after August 10, 2005 as if those claims were expressly and unambiguously included in a formal pleading, pursuant to Judge King's Order dated February 27, 2007 [Docket No. 65]. The Parties agree that Digital Dish's pursuit of or acquiescence to discovery with respect to overtime claims after August 10, 2005 will not preclude Digital Dish from contesting

the appropriateness of the First Amended Complaint or of filing an opposition to the Motion for Leave to File First Amended Complaint.

IV. THE SETTLEMENT FUND

4.1 Thirty (30) days following the Court's approval of the Motion for Order Conditionally Certifying Settlement Class and Preliminarily Approving Class Action Settlement, Defendant will provide to the Claims Administrator a check in the amount of \$64,000.00.

4.2 Each Qualified Claimant shall be paid the sum of \$23.10, less required tax withholding out of that portion of the payment described in ¶4.1 of this Agreement. This amount is based on the assumption that each Qualified Claimant was paid \$50 per training day, worked an average of 15 training days, and did not receive minimum wage for .3 hours per day. The Claims Administrator shall distribute the payment to the Qualified Claimants no later than forty-five (45) days after the Effective Date.

4.3 The cost of the Qualified Settlement Administrator will be paid out of the \$64,000.00 paid by the Defendant as outlined in Paragraphs, 1.17, 4.2 and 12.2.

4.4 Within twenty-one (21) calendar days of the Effective Date, Plaintiffs' will make application to the Court for attorney fees up to but not exceeding \$14,000.00 to be paid out of the \$64,000.00 paid to the Qualified Settlement Administrator as outlined in Paragraph 4.2, subject to the limitations outlined in Paragraph 1.17. The Court will have sole discretion on the amount of Attorney Fees awarded. Such amount shall constitute all attorneys' fees and administration and other costs associated with the minimum wage portion of this action. At least seven days prior to the date of payment, Class Counsel will provide the Qualified Settlement Coordinator with the tax-payer identification numbers for Class Counsel, an executed W-9 form and wire instructions.

4.5 Defendant will also pay Class Representatives Dominic Musarra, Charles Everett and Kevin Klug the sum of \$500 each and Class Representatives, Brian Westfall, Darrell Hall and Michael Nakonechny the sum of \$250 each for their services on behalf of the class (“the Service Payment”) to be paid out of the \$64,000.00 paid to the Qualified Settlement Administrator as outlined in Paragraph 4.1 and subject to the limitation outlined in Paragraph 1.17, provided the Court approves such payment, and provided they do not opt-out of the Settlement. If the Class Representatives decline to join the Settlement they will not be eligible receive a Service Payment. The Qualified Settlement Administrator will pay the Service Payment to Dominic Musarra, Charles Everett, Kevin Klug, Brian Westfall, Darrell Hall and Michael Nakonechny within five (5) business days after the Effective Date.

4.6 Except as provided in Paragraph 4.2, the Parties shall bear responsibility for their own fees, costs, and expenses incurred by them or arising out of this litigation and will not seek reimbursement thereof from any party to this Agreement or the Released Parties.

4.7 All settlement payments described in ¶4.1–4.2 of this Agreement to Qualified Claimants will be reported as, and are to be withheld upon as, wages for tax purposes.

4.8 Payments made under this Agreement are not intended to and will not: (1) form the basis for additional contributions to, benefits under, or any other monetary entitlement under; (2) count as earnings or compensation with respect to; or (3) be considered to apply to, or be applied for purposes of, Defendant’s bonus, pension, any 401(k) and / or other retirement plans or similar programs.

4.9 The Claims Administrator shall be responsible for remitting to the tax authorities all payroll taxes for payments to Qualified Claimants or Class Representatives out of the Settlement Fund. Defendant shall issue a W-2 in the appropriate amount for each Qualified

Claimant and Class Representative, and a 1099 in the appropriate amount to Class Counsel and the Class Representatives.

4.10 Any amount left unclaimed by the Qualified Claimants shall be donated equally to Charity, as defined by this Agreement.

V. RELEASE

5.1 Release of Claims.

(A) By operation of the entry of the Judgment and Final Approval, and except as to such rights or claims as may be created by this Agreement, the Class Representatives and each Class Member who does not timely opt out pursuant to Section 2.4 forever and fully releases and covenants not to sue Defendant, its owners, stockholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, parent companies, divisions, subsidiaries, affiliates, benefit plans, plan fiduciaries and/or administrators, and all persons acting by, through, under or in concert with any of them, including any party that was or could have been named as a defendant in the Civil Action (collectively, the “Released Parties”) from any and all past and present matters, claims, demands, and causes of action of any kind whatsoever, whether at common law, pursuant to statute, ordinance, or regulation, in equity or otherwise, and whether arising under federal (including but not limited to under 29 U.S.C. §206), state, or other applicable law, which any such Class Member has or might have, known or unknown, of any kind whatsoever, arising out of or connected with the facts alleged in the Complaint or Amended Complaint which were pled or could have been pled in the Civil Action arising from the period of June 2, 2002 to the Effective Date (with the exception of overtime wage claims since June 2, 2002 under the FLSA and/or Ohio Revised Code Chapter 4111 and any workers’ compensation claims under Ohio law) (“Released Claims”).

(B) Each Class Member who does not timely opt out in accordance with the procedures set forth in Section 2.4 is deemed to have acknowledged that this Agreement is intended to include in its effect all claims arising, including both asserted and unasserted claims, and including those claims that each or any Class Member does not know or suspect to exist in his or her favor against Defendant (with the exception of overtime wage claims since June 2, 2002 under the FLSA and/or Ohio Revised Code Chapter 4111 and any workers' compensation claims under Ohio law) ("Released Claims").

5.2 Class Counsel and Class Representatives, on behalf of the Class and each individual Class Member, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against Defendant for attorneys' fees and costs associated with Class Counsel's representation of Plaintiffs and the Class in connection with minimum wage claims. Class Counsel understand and agree that any fee payments approved by the Court will be the full, final, and complete payment of all attorneys' fees and costs associated with Class Counsel's representation of those individuals for the minimum wage claims and excludes the fees and costs associated with any overtime wage claims.

5.3 Class Counsel and Plaintiffs, on behalf of the Class and each individual Class Member, represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Civil Action, or any related action.

VI. PARTIES' AUTHORITY

6.1 The signatories hereby represent that they are fully authorized to enter into this Agreement and to bind the Parties hereto the terms and conditions thereof.

6.2 All of the Parties acknowledge that they have been represented by competent, experienced counsel throughout all negotiations which preceded the execution of this Agreement, and this Agreement is made with the consent and advice of counsel who have jointly prepared this Agreement.

VII. MUTUAL FULL COOPERATION

7.1 The Parties agree to use their best efforts and to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement and effectuate the terms of this Agreement.

XIV. NOTICES

7.2 Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To the Plaintiff Class or to any Settlement Class member:

John S. Marshall
Edward R. Forman
Marshall & Morrow, L.L.C.
111 West Rich Street, Suite 430
Columbus, Ohio 43215-5296

Robert E. DeRose
Robert K. Handelman
Barkan Neff Handelman Meizlish, L.L.P.
360 South Grant Avenue
P.O. Box 1989
Columbus, Ohio 43216

To the Defendant:

Jill S. Kirila
Johnathan E. Sullivan
Squire, Sanders & Dempsey, L.L.P.
41 South High Street
1300 Huntington Center
Columbus, Ohio 43215

VIII. MODIFICATION

8.1 This Agreement and its attachments may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court.

IX. ENTIRE AGREEMENT

9.1 This Agreement and its attachments constitute the entire agreement between the Parties concerning the subject matter hereof. No extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of this Agreement. In the event of any conflict between the Agreement and any other Settlement-related document, the Parties intend that this Agreement shall be controlling.

X. CHOICE OF LAW / JURISDICTION

10.1 This Agreement shall be subject to, governed by, construed, enforced, and administered in accordance with the laws of the State of Ohio, both in its procedural and substantive aspects, and shall be subject to the continuing exclusive jurisdiction of the United States District Court for the Southern District of Ohio, Eastern Division (Marbley, Judge). This Agreement shall be construed as a whole according to its fair meaning and intent, and not strictly for or against any party, regardless of who drafted or who was principally responsible for drafting this Agreement or any specific term or condition thereof.

XI. COUNTERPARTS

11.1 This Agreement may be executed in counterparts, and when each party has signed and delivered at least on such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

XII. MISCELLANEOUS

12.1 The Notice and list of Class Members to receive the Notice will provide confidential contact information to Class Counsel. The Parties and Class Counsel agree that the Notice shall be the exclusive method of mass communications, and that they will not publish or distribute any information in any mass mailings, including electronic mailings, or publish or post any information on the Internet. Class Counsel agrees to use the contact information for Settlement Class Members that is provided the Claims Administrator and to Class Counsel solely for the purposes of communicating regarding this Agreement and implementing this Agreement and for no other purpose, at any time or for any reason.

12.2 In the event that a potential Settlement Class member needs information about the settlement process, the notice will direct the potential Settlement Class member to contact the Qualified Settlement Administrator. Settlement Class contact services will be provided by the Qualified Settlement Administrator in the form of a call center using an Interactive Voice Response [IVR] system. The cost, \$8,000.00 of this IVR Call Center will be split by the parties. Defendant agrees to pay an additional \$4,000 to the Settlement Fund, described in Section 1.17, to be used solely for the purpose of defraying the cost of the IVR Call Center.

XIII. VOIDING THE AGREEMENT

13.1 In the event this Agreement, or any amended version agreed upon by the Parties does not obtain judicial approval for any reason, this Agreement shall be null and void in its entirety, unless expressly agreed in writing by all parties.