



**JOINT MOTION FOR TENTATIVE APPROVAL OF SETTLEMENT AGREEMENT**

The 119 plaintiffs in this action, who are employees of the Fire Department of the Town of Brookline, Massachusetts, and the Defendants, Town of Brookline and Brookline Fire Department, after factual and legal investigation, negotiations, and compromise, have reached a Settlement Agreement of their dispute regarding the Fair Labor Standards Act. The parties believe that the settlement is a fair and reasonable resolution of their dispute, and they now ask this Court to tentatively approve the Settlement Agreement they have reached resolving the above-captioned lawsuit.

Should this Court grant its tentative approval, the parties will satisfy the remaining contingencies, including obtaining releases and funding approvals. The parties will then return to this Court for final approval and seek dismissal of this action with prejudice.

**I. STATEMENT OF FACTS<sup>2</sup>**

The Plaintiffs are full-time or retired firefighters, fire lieutenants, fire captains and deputy fire chiefs employed by the Town of Brookline. (Affidavit of John M. Becker, ¶ 7, hereinafter “Becker Aff. ¶ 7.”) The Plaintiffs are part of a bargaining unit that is represented by Local 950, International Association of Firefighters (“Union”). (Becker Aff. ¶ 8.)

The Union and the Town are parties to a collective bargaining agreement (“CBA”) that provides, *inter alia*, that firefighters, fire lieutenants, fire captains, and deputy fire chiefs are entitled to contractual overtime for all hours worked outside their regular shifts, excluding shift swaps. (Becker Aff. ¶ 10.)

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<sup>2</sup> The facts are taken from the pleadings, the settlement agreement and associated documents, and the Affidavit of John M. Becker, plaintiffs’ counsel.

The Town has adopted a partial public safety overtime exemption under Section 7(k) of the FLSA according to which non-exempt fire department employees are entitled to FLSA overtime after 212 hours in a 28-day period. (Becker Aff. ¶ 11.)

The Plaintiffs regularly work both contractual and FLSA overtime. (Becker Aff. ¶ 12.)

During the first months of the COVID-19 pandemic in 2020, many of the Plaintiffs worked unusually large amounts of overtime. (Becker Aff. ¶ 13.)

Despite past efforts on the part of the Town to comply with the FLSA, the Plaintiffs discovered during the period of 2020-2023 through investigation that the Town was failing to comply fully with the law. (Becker Aff. ¶ 14.) Specifically, the Plaintiffs learned that the Town:

- (1) Failed to include the ASHER stipend in the regular rate for purposes of calculating FLSA overtime;
- (2) Consistently undercounted hours worked per shift as 21 instead of 24 hours;
- (3) Failed to properly count hours of employees who swap shifts;
- (4) Failed to include all types of overtime in hours worked;
- (5) Failed to count hours worked “out of class” in hours worked; and
- (6) Failed to count the day’s hours toward FLSA totals on at least one occasion.

(Becker Aff. ¶ 15.)

The plaintiffs, acting through their Union, brought these issues to the attention of the Town in April 2023, and the parties immediately began discussions in an attempt to resolve the dispute.

(Becker Aff. ¶ 16.) When the parties were unable to resolve the dispute, a complaint was filed on December 1, 2023 on behalf of named plaintiffs Brian Bergeron and Paul Trahon, on their own behalf and on behalf of all those similarly situated. (Becker Aff. ¶ 17.) The initial complaint contained seven counts:

Violations of 29 U.S.C. § 207:

- (1) Failure to include ASHER stipend in the regular rate
- (2) Undercounting hours worked per shift as 21 instead of 24 hours
- (3) Failing to properly count hours of employees who swap shifts
  - (4a) Failing to include all types of overtime in hours worked
  - (4b) Failing to certify the day's hours on one or more occasions

Violation of 29 U.S.C. § 213:

- (5) Misclassification of deputy fire chiefs as exempt employees

Violation of 29 U.S.C. § 211:

- (6) Failure to keep records as required by the FLSA

Violation of Mass. Gen. Laws ch. 149, §§ 148, 150:

- (7) Failure to make timely payment of wages owed under the FLSA

Plaintiffs alleged that all the violations were willful and not in good faith. (Becker Aff. ¶ 19.) Plaintiffs sought all unpaid overtime pay owed to them, an equivalent amount of liquidated damages, for a three-year period preceding the filing of the complaint (12/1/20-12/1/23), and attorney's fees. (Becker Aff. ¶ 20.)

Plaintiffs filed their first amended complaint filed on December 8, 2023. (Becker Aff. ¶ 21.) The first amended complaint added 106 named plaintiffs to the lawsuit. (Becker Aff. ¶ 22.) Plaintiffs filed a second amended complaint on February 28, 2024. (Becker Aff. ¶ 23.) The second amended complaint added 16 named Plaintiffs to the lawsuit. (Becker Aff. ¶ 24.) Plaintiffs filed their third amended complaint on April 29, 2024. (Becker Aff. ¶ 25.) The third amended complaint added one new count and divided Count IV into two separate counts, as follows:

Violations of 29 U.S.C. § 207:

- (1) Failure to include ASHER stipend in the regular rate
- (2) Undercounting hours worked per shift as 21 instead of 24 hours
- (3) Failing to properly count hours of employees who swap shifts
- (4) Failing to include all types of overtime in hours worked
- (5) Failing to include “out of class” hours in hours worked
- (6) Failing to certify the day’s hours on one or more occasions

Violation of 29 U.S.C. § 213:

- (7) Misclassification of deputy fire chiefs as exempt employees

Violation of 29 U.S.C. § 211:

- (8) Failure to keep records as required by the FLSA

Violation of Mass. Gen. Laws ch. 149, § 148, 150:

- (9) Failure to make timely payment of wages owed under the FLSA

(Becker Aff. ¶ 26.)

The Town of Brookline filed an answer to the third amended complaint on May 13, 2024, denying liability on all counts and raising several affirmative defenses. (Becker Aff. ¶ 27.)

The parties engaged in fruitful settlement discussions from the very start of the litigation. (Becker Aff. ¶ 28.) By April 2024, the parties had reached an agreement in principle with the following elements:

- (1) The Town would include the ASHER stipend in the FLSA regular rate
- (2) The Town would count each shift as 24 hours instead of 21 hours as FLSA hours worked
- (3) The Town would properly count the hours of employees who swap shifts

- (4) The Town would include all types of overtime as FLSA hours worked
- (5) The Town would include “out of class hours” as FLSA hours worked
- (6) The Town would count the hours for all days worked, including those days they failed to previously certify.
- (7) The Town would not count deputy fire chiefs as FLSA non-exempt employees, but they would count all fire lieutenants and fire captains as FLSA non-exempt employees.
- (8) The Plaintiffs would waive liquidated/double damages.
- (9) The Plaintiffs would waive attorney’s fees.
- (10) The Town would pay back pay for a period beginning in late March 2020 and continuing until the date the new protocols (items 1-7 above) were put in place going forward.
- (11) The Town would calculate the damages and representatives of the Plaintiff class would check the calculations before a final settlement agreement was prepared.
- (12) The settlement would require each plaintiff to sign a release of FLSA and other wage claims against the Town.

(Becker Aff. ¶ 29.)

During the settlement discussions, the parties agreed that the back pay period would exceed three years from the filing of the lawsuit on December 1, 2023. (Becker Aff. ¶ 30.) They also determined that, due to the large amount of overtime hours worked in 2020 by plaintiffs during the COVID-19 pandemic, the total additional amounts obtained under the settlement would not be significantly less than the amount that the Plaintiffs would receive if they had

obtained three years of back pay plus liquidated damages. (Becker Aff. ¶ 32.) Furthermore, Plaintiffs have determined that inclusion of the COVID-19 pandemic period in the settlement calculations increases the number of Plaintiffs who receive significant settlement amounts. (Becker Aff. ¶ 33.)

The Town began paying overtime to the plaintiffs and other fire department employees under the new protocols (see Becker Aff. ¶ 29) on June 16, 2024, thereby establishing the damages period as March 29, 2020 through June 15, 2024. (Becker Aff. ¶ 31.)

In November 2024, the parties reached agreement on the language of a Settlement Agreement and Mutual Release; the Release Document, a list of named Plaintiffs, and a spreadsheet containing the Distribution of Settlement Amount. (Becker Aff. ¶ 31, and attached exhibits 1-4.)

The final settlement agreement and mutual release contains the following elements, *inter alia*:

- (1) The Town does not admit liability or make any concession about the merits.
- (2) The Settlement Agreement is conditioned on: funding approval from the Town's Select Board and Advisory Committee; Plaintiffs' signing of the release of claims; and final approval by the Court;
- (3) The Town will pay the Plaintiffs the amount of \$101,604.22 to resolve all claims as allocated in an attachment to the Settlement Agreement.
- (4) The Settlement amount reflects, for purposes of overtime under the FLSA, for all firefighters, lieutenants, and captains, regardless of assignment, the inclusion of the ASHER stipend in the calculation of the regular rate (Count 1); 24 hours instead of 21 hours per shift (Count 2); swaps scheduled instead of swaps worked

(Count 3); all types of overtime, e.g. COVID overtime (Count 4); and hours worked “out of class” (Count 5).

(5) The Settlement Amount is calculated for the time period between on or around March 29, 2020, and June 15, 2024.

(6) Plaintiffs waive their claims with respect to Counts 6, 7, 8, and 9.

(7) Plaintiffs waive their claims to interest, liquidated, treble, punitive, multiple damages, attorneys’ fees and costs of litigation, and all other sums sought or potentially recoverable in the lawsuit.

(Becker Aff. ¶ 35.)

#### **Counsel for the Parties**

John Becker, lead counsel for the plaintiffs, is an experienced labor attorney who has litigated FLSA claims in the past. Becker has been a member in good standing of the Massachusetts bar since 1994. He has practiced labor and employment law on behalf of unions and employees at the law firm of Sandulli Grace, P.C. since 1996. In particular, Becker was co-lead counsel in *O’Hara v. Menino*, an FLSA lawsuit on behalf of several hundred Boston police officers that resulted in a multi-million dollar damages award. *O’Hara v. Menino*, 312 F. Supp. 2d 99, 2004 U.S. Dist. LEXIS 5888, 150 Lab. Cas. (CCH) P34,878, 9 Wage & Hour Cas. 2d (BNA) 1097 (D. Mass. 2004). See also *O’Hara v. Menino*, 253 F. Supp. 2d 147, 2003 U.S. Dist. LEXIS 4992 (D. Mass., 2003). Becker has also negotiated settlement agreements over FLSA claims in a variety of public employment settings. In this case, Becker’s attorney’s fees are being paid by Local 950, I.A.F.F., the labor union to which all the plaintiffs belong. Accordingly, the plaintiffs have agreed to waive any payment of attorney’s fees from the Town of Brookline in this settlement agreement.



Joe Callanan, Town Counsel for the Town of Brookline, is an experienced government attorney who has litigated a variety of claims against government entities. He has been Brookline's Town Counsel since March 2022 after having served as the Town of Weymouth's Town Solicitor from January 2016 to March 2022. Before this nearly nine-years' experience as a municipal attorney, Attorney Callanan served eleven years in the Attorney General's Trial Division, including the last two years as Supervising Assistant Attorney General. Attorney Callanan has been a member in good standing of the Massachusetts bar since 2001.

Susan Harris, Associate Town Counsel for Brookline, has been Brookline's Associate Town Counsel since December 2023. Previously, she served seven years at the Massachusetts Department of Elementary and Secondary Education, including liaising with the Attorney General's Trial Division regarding litigation, and four years at the Middlesex District Attorney's Office, including as a Supervising Assistant District Attorney. She has been a member in good standing of the Massachusetts bar since 2012.

Attorneys Callanan and Harris have negotiated more than a hundred settlement agreements in a variety of public settings, including labor, employment, and claims of discrimination and retaliation, but also in other areas of the law including tort, contract, civil rights, and real estate. These disputes have been litigated and resolved in Federal and state courts, Federal and state administrative agencies, and arbitrations. The Office of Town Counsel for the Town of Brookline also has experience in FLSA litigation. See, e.g., *Canney v. Town of Brookline*, 2000 U.S. Dist. LEXIS 16279, 142 Lab. Cas. (CCH) ¶ 34,169 (D. Mass. 2000).

## II. ARGUMENT

### **THE PARTIES' SETTLEMENT AGREEMENT OF THEIR FLSA DISPUTE IS FAIR AND REASONABLE**

"The private settlement of FLSA claims requires the approval of either the Department of Labor or the district court." *Harris v. Wheatleigh Corp.*, No. 3:18-cv-30114-KAR, 2024 U.S. Dist. LEXIS 69924, at \*2 (D. Mass. Apr. 16, 2024), quoting *Singleton v. AT&T Mobility Servs., LLC*, 146 F. Supp 3d 258, 260 (D. Mass. 2015) (citing *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199, 206 (2d Cir. 2015) and *Lynn's Food Stores, Inc. v. U.S. By & Through U.S. Dep't of Labor, Empl. Standards Admin., Wage & Hour Div.*, 679 F.2d 1350, 1353 (11th Cir. 1982)). Courts will approve an FLSA settlement if the parties agreed to it and "it represents a 'fair and reasonable resolution of a bona fide dispute over FLSA provisions.'" *Drexler v. Tell Next, Inc.*, No. 13-cv-13009-ADB, 2019 U.S. Dist. LEXIS 141642, 2019 WL 3947206, at \*1 (D. Mass. Aug. 21, 2019) (quoting *Lynn's Food Stores, Inc. v. U.S. By & Through U.S. Dep't of Labor, Emp. Standards Admin., Wage & Hour Div.*, 679 F.2d 1350, 1355 (11th Cir. 1982)). See generally *Herb v. Homesite Group Inc.*, No. 1:22-cv-11416-JEK, 2024 U.S. Dist. LEXIS 135170 (D. Mass. July 31, 2024).

While the First Circuit has not articulated a test for making such a determination, courts generally "consider the 'totality of the circumstances,'" including "(1) the plaintiff's range of possible recovery; (2) the extent to which the settlement will enable the parties to avoid anticipated burdens and expenses in establishing their respective claims and defenses; (3) the seriousness of the litigation risks faced by the parties; (4) whether the settlement agreement is the product of arm's-length bargaining between experienced counsel; and (5) the possibility of fraud or collusion." *Drexler v. Tell Nexx, Inc.*, at \*2 (quoting *Singleton v. AT&T Mobility Servs., LLC*, 146 F. Supp. 3d 258, 260-261 (D. Mass. 2015)). "The court's role is to ensure that the settlement

'reflect[s] a reasonable compromise over issues . . . that are actually in dispute,' rather than a pure discount on clearly-owed wages." *Curtis v. Scholarship Storage Inc.*, No. 2:14-cv-303-NT, 2016 WL 3072247, at \*2 (D. Me. May 31, 2016) (quoting *Lynn's Food*, 679 F.2d at 1354). In making such determinations, courts are mindful of the strong presumption in favor of finding a settlement fair. See *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977). See generally *Herb v. Homesite Group Inc.*, No. 1:22-cv-11416-JEK, 2024 U.S. Dist. LEXIS 135170 (D. Mass. July 31, 2024); *Hamel v. Wheatleigh Corp.*, No. 3:18-cv-30113-KAR, 2024 U.S. Dist. LEXIS 69933 (D. Mass. April 16, 2024); *Drexler v. Tell Nexx, Inc.*, No. 13-cv-13009-ADB, 2019 U.S. Dist. LEXIS 141642 (D. Mass. Aug. 21, 2019); *Singleton v. AT&T Mobility Servs., LLC*, 146 F. Supp. 3d 258, 260 (D. Mass. 2015); *Wolfson v. Caregroup, Inc.*, No. 1:09-cv-11464, 2010 U.S. Dist. LEXIS 145990 (D. Mass. Sept. 13, 2010).

Applying this framework to the parties' Settlement Agreement, the parties' proposed settlement is fair and reasonable.

First, the parties have a bona fide dispute over both liability and damages regarding statutory coverage and wages owed under the Fair Labor Standards Act, implicating the Plaintiff's range of possible recovery. The gross settlement amount of \$101,604.22 distributed among the 119 plaintiffs is a substantial sum that affords meaningful relief to the plaintiffs. That sum is based on actual calculations of overtime based on the inclusion of certain additional payments in the overtime, the recalculation of hours worked to include 24 hours per shift instead of 21, shift swap hours scheduled instead shift swap hours worked, all types of overtime, including COVID overtime, and hours worked "out of class." The amounts were calculated by the Town based on the actual hours worked by each plaintiff and was reviewed by a representative of the plaintiffs.

Because the settlement represents nearly all of what plaintiffs sought in overtime pay, it constitutes a reasonable amount.<sup>3</sup> This amount is far in excess of the compromise amounts approved by other courts, which are based on a percentage of the damages sought in the complaint. *See, e.g., Rotuna v. W. Customer Mgmt. Grp., LLC*, No. 4:09-cv-1608, 2010 U.S. Dist. LEXIS 58912, 2010 WL 2490989, at \*3, \*8 (N.D. Ohio June 15, 2010) (approving "exceptional" settlement concerning "compensation for time booting up [the] computers prior to clocking in" where members were paid "between 75% (based on five minutes) to 25% (based on 8 minutes) of claimed unpaid wages" and noting that this "allocation is well above the 7% to 11% average result achieved for class members"); *Bradford v. Naples Causeway Dev., LLC*, No. 2:21-cv-00015-NT, 2022 U.S. Dist. LEXIS 140157, at \*2 (D. Me. Aug. 8, 2022) (characterizing FLSA settlement of "approximately 20.8% of the best-case-scenario maximum [plaintiff] could recover after success at trial and any appeals" as "a reasonable compromise"). Here, all the plaintiffs (excluding the deputy fire chiefs) are receiving 100% of the damages sought. Furthermore, no attorney's fees will be deducted from the plaintiffs' damages.

While the Settlement Agreement does not include any amounts for liquidated damages, as permitted by the FLSA in the absence of a showing of good faith, the parties have compensated for that missing element by expanding the period of time covered by the settlement. The FLSA provides for a two-year lookback period, except where the violations are shown to be willful, in which case the period is expanded to three years. The statute provides for liquidated damages equal to the amount of damages except where the defendant can show it acted in good faith.

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<sup>3</sup> Pursuant to this Settlement Agreement, the parties will agree that deputy fire chiefs were exempt employees under the FLSA and were not entitled to additional overtime payments. The parties will also agree that all fire lieutenants and captains were non-exempt employees.

Here, the parties dispute whether: a two-year or three-year lookback period is appropriate; the Defendants also allege that they acted in good faith. Therefore, assuming Plaintiffs were to succeed on the merits of their claims that the Town violated the FLSA, their damages awards could realistically range from: two years lookback with no liquidated damages, at the low end, to three years lookback with liquidated damages, at the high end.

A two-year lookback in this case would be December 1, 2021 through December 1, 2023. A three-year lookback would bring the starting date back to December 1, 2020. In the Settlement Agreement, the Town and the Plaintiffs have agreed to calculate settlement amounts beginning in late March 2020. Expanding the period in this way is significant because it now includes the worst months at the beginning of the COVID-19 pandemic. During those months, many of the Plaintiffs worked more overtime hours than usual. In addition, expanding the lookback period to March 2020, and including lieutenants and captains by agreement, results in more Plaintiffs being entitled to settlement amounts. Thus, the parties have reached a fair and reasonable compromise approach to paying settlement amounts to the Plaintiffs.

Second, the settlement permits the parties to avoid the burden and expense of establishing their respective claims and defenses. As noted, the Defendants have denied liability on the Plaintiffs' claims and have raised affirmative defenses. In addition, the Defendants allege that any FLSA violations were not willful and that they acted in good faith. Given the disputed factual and legal issues in this case, and the risk to the Plaintiffs of proceeding, the settlement is fair and reasonable.

Third, the settlement avoids the costs, risks, uncertainties, and delays associated with continued litigation. Advancing the parties' respective arguments through discovery and trial could be costly and time consuming. Plaintiffs risk losing at summary judgment or trial,

precluding any recovery. Given these risks, the Settlement Agreement is a practical and reasonable compromise that achieves the goals of both parties to resolve their dispute and continue working together.

Fourth, the settlement was the product of arm's-length negotiations between experienced counsel after extensive factual and legal investigation both before and after filing suit. *See Woolfson v. Caregroup, Inc.*, No. 1:09-cv-11464, 2010 WL 10063268, at \*2 (D. Mass. Sept. 13, 2010) (approving settlement in part on similar grounds). Both counsel for the Plaintiffs and Defendants are experienced in FLSA litigation and acted in good faith to resolve this dispute.

Finally, there is no reason to suspect, nor does either party assert, that fraud or collusion played any role in achieving the settlement.

The proposed settlement is, therefore, a fair and reasonable resolution of the Plaintiffs' overtime claims and this Court should approve it.

### III. CONCLUSION

For all the above reasons, the parties jointly request that this Court tentatively approve the Settlement Agreement of this FLSA lawsuit. When all contingencies specified in the Settlement Agreement have been satisfied, the parties will jointly seek this Court's final approval and request dismissal of this action with prejudice.

Respectfully submitted,

BRIAN BERGERON, PAUL TRAHON, et al.,  
Plaintiffs,  
on their own behalf and on behalf  
of all those similarly situated,

By their attorney,

/s/ John Becker  
John M. Becker, BBO # 566769  
SANDULLI GRACE, P.C.

TOWN OF BROOKLINE and  
BROOKLINE FIRE DEPT.,  
Defendants,

By their attorneys,

/s/ Joe Callanan  
Joe Callanan, BBO # 648397  
Town Counsel

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/s/ Susan Harris  
Susan Harris, BBO # 684700  
Associate Town Counsel  
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Office: 617-730-2193  
Cell: 617-821-3785  
[slharris@brooklinema.gov](mailto:slharris@brooklinema.gov)

Dated: November 20, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the Joint Motion to Approve Settlement Agreement and the Affidavit of John M. Becker with attachments on counsel for the Defendants by sending copies by electronic mail to Susan L. Harris, Esq., Town of Brookline, [slharris@brooklinema.gov](mailto:slharris@brooklinema.gov), on this the 20th day of November, 2024.

/s/ John Becker  
John M. Becker

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

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<b>BRIAN BERGERON and PAUL TRAHON,</b>	)	
<b>On their Own Behalf, and on Behalf of All</b>	)	
<b>Those Similarly Situated,<sup>1</sup></b>	)	
<b>Plaintiffs</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 1:23-cv-12934</b>
	)	
<b>TOWN OF BROOKLINE and</b>	)	
<b>BROOKLINE FIRE DEPARTMENT,</b>	)	
<b>Defendants</b>	)	
<hr/>	)	

<sup>1</sup> The following is a list of all Plaintiffs who have submitted consent forms: Brian Bergeron, Paul Trahon, Alexander Loden, David Monahan, Scott Greider, Kyle Ward, Sam Kaplan, Michael Harrington, Bruce Phok, Tyler Chu, Paul Dubrow, Thomas Harrington, Kenneth George Labonte, Brendan O'Connor, Paul Buckley, Matthew McMahon, Brian Pender, Robert W. Nelson, John O'Leary, Robert J. McGregor, John McCarthy, Patty Cripe, Scott Hogan, Thomas Franus, Thomas Manning, Alan Huite, Christopher Marshall, Peter Z. Moyer, Brendan Sullivan, Francis Mulkern, Nasir Khan, Olivia Gail Mosquesa, Ethan Henderson Smith, Nicholas Feeney, Dennis McMahon, Thomas Joseph Harrington, James Kirby, Jr., Karl Knaut, David A. Randolph, Robert Amendola, Thomas Joy, Eric Dumas, Todd Canzor, Matthew Shatton, Craig Campagna, Paul Canney, Brendan Mulkern, Stephen O'Connor, Devin Ream, Ryan Buckley, Timothy Avestes, Xavier Petter, Roy Hopkins, William Smith, Sean Fields, Keith Harrington, Justin Aufiero, William Spinale, Jr., Andy Carvalho, Grayson Russell, Boliere Junior Camille, Brian Keeley, Spencer MacWilliams, Andrew Bluestein, Ryan Monahan, Aaron Cecil, Joshua J. Delvecchio, Justin Robinson, David K. McCann, Joseph Mandra, Francis Mahoney, Frederick Johnston, Francis M. Differ, David Munoz, Kevin J. Francis, Ned Stevens, Glenn Vitorino, Edward D. Gilbert, Jr., Frank Bowen, David McAndi, Conor Monahan, James F. Clinton, Stephen Hutzelofteridis, Robert J. Padrus, Scott M. Eachern, Gary Chin, Jerry Jetal, Marcus Paes, Linda Wilkins, Christopher Wagner, Daniel P. Teahan, Michael Commander, James Joseph Ward, Brendan Fields, Jonathan Ross, David Nelson, John D. Bianchi, Jr., Peter Jason Gould, David P. Moror, Jr., Francis J. Tarastive, Jr., David Luengon-Ondayder, Marcos Antonio Renderos, Brendan Ward, Joseph Strosαιο, Walter G. Francis, Thomas Teixeira, Grainne Maunsell, Kevin Mahoney, James Goff, Lee Gill, Daniel Carroll, Patrick Canney, Curtis Stafford, Christopher Mitchell, Leah Shatkin, Matthew Coleman, Michael Kelleher, Keith Inchierca, William Johnson, and Kevin Camille.



**AFFIDAVIT OF JOHN M. BECKER**

I, John M. Becker, do hereby state as follows:

- (1) I have been a member in good standing of the Massachusetts bar since 1994.
- (2) I have practiced labor and employment law on behalf of unions and employees at the law firm of Sandulli Grace, P.C. since 1996.
- (3) I was co-lead counsel in *O'Hara v. Menino*, an FLSA lawsuit on behalf of several hundred Boston police officers that resulted in a multi-million-dollar damages award. *O'Hara v. Menino*, 312 F. Supp. 2d 99, 2004 U.S. Dist. LEXIS 5888, 150 Lab. Cas. (CCH) P34,878, 9 Wage & Hour Cas. 2d (BNA) 1097 (D. Mass. 2004). See also *O'Hara v. Menino*, 253 F. Supp. 2d 147, 2003 U.S. Dist. LEXIS 4992 (D. Mass., 2003).
- (4) I have also negotiated settlement agreements over FLSA claims in a variety of public employment settings.
- (5) I am lead counsel for the Plaintiffs in this action.
- (6) Upon information and belief, the Town of Brookline and its counsel are experienced in FLSA litigation. See, e.g., *Canney v. Town of Brookline*, 2000 U.S. Dist. LEXIS 16279, 142 Lab. Cas. (CCH) ¶ 34,169 (D. Mass. 2000).
- (7) The Plaintiffs are full-time or retired firefighters, fire lieutenants, fire captains and deputy fire chiefs employed by the Town of Brookline.
- (8) The Plaintiffs are part of a bargaining unit that is represented by Local 950, International Association of Firefighters ("Union").
- (9) My attorney's fees in this matter are being paid by the Union.
- (10) The Union and the Town are parties to a collective bargaining agreement ("CBA") that provides, inter alia, that firefighters, fire lieutenants, fire captains, and deputy fire

chiefs are entitled to contractual overtime for all hours worked outside their regular shifts, excluding shift swaps.

(11) The Town has adopted a partial public safety overtime exemption under Section 7(k) of the FLSA according to which non-exempt fire department employees are entitled to FLSA overtime after 212 hours in a 28-day period.

(12) The Plaintiffs regularly work both contractual and FLSA overtime.

(13) During the first months of the COVID-19 pandemic in 2020, many of the Plaintiffs worked unusually large amounts of overtime.

(14) Despite past efforts on the part of the Town to comply with the FLSA, the Plaintiffs discovered during the period of 2020-2023 through investigation that the Town was failing to comply fully with the law.

(15) Specifically, the Plaintiffs learned that the Town:

- (a) Failed to include the ASHER stipend in the regular rate for purposes of calculating FLSA overtime;
- (b) Consistently undercounted hours worked per shift as 21 instead of 24 hours;
- (c) Failed to properly count hours of employees who swap shifts;
- (d) Failed to include all types of overtime in hours worked;
- (e) Failed to count hours worked “out of class” in hours worked; and
- (f) Failed to count the day’s hours toward FLSA totals on at least one occasion.

(16) The Plaintiffs, acting through their Union, brought these issues to the attention of the Town in early 2023, and the parties immediately began discussions in an attempt to resolve the dispute.

(17) When the parties were unable to resolve the dispute, a complaint was filed on December 1, 2023 on behalf of named plaintiffs Brian Bergeron and Paul Trahon, on their own behalf and on behalf of all those similarly situated.

(18) The initial complaint contained seven counts:

Violations of 29 U.S.C. § 207:

(I) Failure to include ASHER stipend in the regular rate

(II) Undercounting hours worked per shift as 21 instead of 24 hours

(III) Failing to properly count hours of employees who swap shifts

(IV) (i) Failing to include all types of overtime in hours worked

(ii) Failing to certify the day's hours on one or more occasions

Violation of 29 U.S.C. § 213:

(V) Misclassification of deputy fire chiefs as exempt employees

Violation of 29 U.S.C. § 211:

(VI) Failure to keep records as required by the FLSA

Violation of Mass. Gen. Laws ch. 149, §§ 148, 150:

(VII) Failure to make timely payment of wages owed under the FLSA

(19) Plaintiffs alleged that all the violations were willful and not in good faith.

(20) Plaintiffs sought all unpaid overtime pay owed to them, an equivalent amount of liquidated damages, for a three-year period preceding the filing of the complaint (12/1/20-12/1/23), and attorney's fees.

(21) Plaintiffs filed their first amended complaint filed on December 8, 2023.

(22) The first amended complaint added 106 named Plaintiffs to the lawsuit.

(23) Plaintiffs filed a second amended complaint on February 28, 2024.

- (24) The second amended complaint added 16 named Plaintiffs to the lawsuit.
- (25) Plaintiffs filed their third amended complaint on April 29, 2024.
- (26) The third amended complaint added one new count and divided Count IV into

two separate counts, as follows:

Violations of 29 U.S.C. § 207:

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- (V) Failing to include “out of class” hours in hours worked
- (VI) Failing to certify the day’s hours on one or more occasions

Violation of 29 U.S.C. § 213:

- (VII) Misclassification of deputy fire chiefs as exempt employees

Violation of 29 U.S.C. § 211

- (VIII) Failure to keep records as required by the FLSA

Violation of Mass. Gen. Laws ch. 149, § 148, 150

- (IX) Failure to make timely payment of wages owed under the FLSA

- (27) The Defendants filed an answer to the third amended complaint on May 13, 2024, denying liability on all counts and raising several affirmative defenses.
- (28) The parties engaged in fruitful settlement discussions from the very start of the litigation.
- (29) By April 2024, the parties had reached an agreement in principle with the following elements:

- (a) The Town would include the ASHER stipend in the FLSA regular rate
- (b) The Town would count each shift as 24 hours instead of 21 hours as FLSA hours worked
- (c) The Town would properly count the hours of employees who swap shifts
- (d) The Town would include all types of overtime as FLSA hours worked
- (e) The Town would include “out of class” hours as FLSA hours worked
- (f) The Town would count the hours for all days worked, including those days they failed to previously certify
- (g) The Town would not count deputy fire chiefs as FLSA non-exempt employees, but they would count all fire lieutenants and fire captains as FLSA non-exempt employees.
- (h) The Plaintiffs would waive liquidated/double damages.
- (i) The Plaintiffs would waive attorney’s fees.
- (j) The Town would pay settlement amounts for a period beginning in late March 2020 and continuing until the date the new protocols (items a-g above) were put in place going forward.
- (k) The Town would calculate the settlement amounts and representatives of the Plaintiff class would check the calculations before a final settlement agreement was prepared.
- (l) The settlement would require each Plaintiff to sign a waiver and release of FLSA and other wage claims against the Defendants.

- (30) During the settlement discussions, the parties agreed that the period for calculating the settlement amounts would exceed three years from the filing of the lawsuit on December 1, 2023.
- (31) The Town began paying overtime to the plaintiffs and other fire department employees under the new protocols (see paragraph 29 above) on June 16, 2024, thereby establishing the settlement amount period as March 29, 2020 through June 15, 2024.
- (32) The parties agreed that, due to the large amount of overtime hours worked in 2020 by Plaintiffs during the COVID-19 pandemic, the total amount of additional back pay obtained under the settlement would not be significantly less than the amount that the Plaintiffs would receive if they had received three years of damages, plus an equal amount of liquidated damages.
- (33) Furthermore, the Plaintiffs determined that including the COVID-19 pandemic period in the backpay calculations increased the number of Plaintiffs who receive significant settlement amounts.
- (34) In November 2024, the parties reached agreement on the language of a Settlement Agreement and Mutual Release; the Release Document, a list of named Plaintiffs, and a spreadsheet containing the Distribution of Settlement Amount. (Copies of these documents are attached to this Affidavit as Exhibits 1, 2, 3, and 4.)
- (35) The final settlement agreement and mutual release contains the following elements, *inter alia*:
- (a) The Town does not admit liability or make any concession about the merits.

- (b) The Settlement Agreement is conditioned on: funding approval from the Town's Select Board and Advisory Committee; Plaintiffs' signing of the release of claims; and final approval by the Court;
  - (c) The Town will pay the Plaintiffs the amount of \$101,604.22 to resolve all claims as allocated in an attachment to the Settlement Agreement.
  - (d) The settlement amount reflects, for purposes of overtime under the FLSA, for all firefighters, lieutenants, and captains, regardless of assignment, the inclusion of the ASHER stipend in the calculation of the regular rate (Count 1); 24 hours instead of 21 hours per shift (Count 2); swaps scheduled instead of swaps worked (Count 3); all types of overtime, e.g. COVID overtime (Count 4); and hours worked "out of class" (Count 5).
  - (e) The settlement amount is calculated for the time period between on or around March 29, 2020, and June 15, 2024.
  - (f) Plaintiffs waive their claims with respect to Counts 6, 7, 8, and 9.
  - (g) Plaintiffs waive their claims to interest, liquidated, treble, punitive, multiple damages, attorneys' fees and costs of litigation, and all other sums sought or potentially recoverable in the lawsuit.
- (36) The above information is true to the best of my knowledge.

Signed under the pains and penalties of perjury,

*/s/ John Becker*

*11/18/24*

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John M. Becker

Date

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement, Release, and Waiver (hereinafter, “Settlement Agreement”) is entered into in the lawsuit styled *Bergeron, et al. v. Town of Brookline* (D. Mass. 1:23-cv-12934-JEK) (the “Lawsuit”), by, between, and among Brian Bergeron and Paul Trahon, the remaining plaintiffs (collectively, “Plaintiffs”)<sup>1</sup> and Defendant, the Town of Brookline (the “Town”), and is subject to the approval of the Court and the other contingencies noted herein. In connection with this Settlement Agreement, Plaintiffs are represented by John Becker of Sandulli Grace P.C. (collectively, “Plaintiffs’ Counsel), and the Town is represented by Town Counsel. Collectively, Plaintiffs and the Town are referred to in this Agreement as “the Parties.”

**Recitals**

WHEREAS, on December 1, 2023, Plaintiffs Brian Bergeron, Paul Trahon, and other then-current and former firefighters for the Town filed the original Complaint in the Lawsuit, asserting purported violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”) and the Massachusetts Wage Act, G.L. c. 149, §§ 148, 150;

WHEREAS, on February 28, 2024, Plaintiffs Brian Bergeron, Paul Trahon, and other then-current and former firefighters for the Town filed the Second Amended Complaint in the Lawsuit, adding additional plaintiffs and continuing to assert purported violations of the FLSA and the Massachusetts Wage Act, G.L. c. 149, §§ 148, 150;

WHEREAS, on April 12, 2024, with leave of the Court, Plaintiffs Brian Bergeron, Paul Trahon, and other then-current and former firefighters for the Town, filed the Third Amended Complaint in the Lawsuit, adding one additional claim asserting a purported violation of the FLSA;

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<sup>1</sup> Exhibit A contains a list of all 119 plaintiffs subject to this Settlement Agreement.



WHEREAS, on May 13, 2024, the Town filed its Answer to the Third Amended Complaint in the Lawsuit;

WHEREAS, in order to avoid the expense and burden of further litigation, the Parties desire to resolve any and all causes of action, claims, or demands based on purported violations of the FLSA and the Massachusetts Wage Act, including without limitation all claims that were asserted or that could have been asserted in the Lawsuit;

WHEREAS, the Parties have conducted a thorough investigation into the facts and claims alleged in the Lawsuit and are of the opinion and belief that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of all, in light of all known facts and circumstances, including the considerable expense of motion practice and trial, the affirmative and other defenses asserted by the Town, the uncertainty and risks of continued litigation, and the risks of delay and an adverse judgment;

WHEREAS, the Parties' efforts and substantial arm's-length settlement conversations have resulted in a settlement in principle reached on or about July 2, 2024, that is subject to the terms of this definitive Settlement Agreement and the provisions for approval and other contingencies noted herein; and

WHEREAS, in light of reaching a settlement in principal and in anticipation of this Settlement Agreement, on or about July 14, 2024, the Town implemented updated FLSA protocols retroactive to the work period beginning June 16, 2024;

NOW, THEREFORE, for and in consideration of the foregoing promises and the terms and conditions set forth herein, the sufficiency of which is acknowledged, the Parties hereby agree and covenant, subject to the Court's approval, as follows:

## TERMS OF SETTLEMENT

### 1. No Admission of Liability and No Concession Regarding the Merits.

The Town denies that it violated the law in any manner, specifically denies that it violated any statutory, regulatory, or common law as alleged in the Lawsuit, and asserts that it has defenses to all claims that were brought or could have been brought in the Lawsuit. Nothing contained herein, including the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of the Town, including all of its departments, past and present elected and appointed officials, officers, employees, attorneys, representatives, agents, insurers, and all others working in concert with the Town (together, the “Released Parties”), for any of the claims which were or may have been asserted. This Settlement Agreement is not a concession by Plaintiffs concerning the merits of their alleged claims in the Third Amended Complaint. The Parties have entered into this Agreement with the intention of avoiding the inconvenience, costs, and uncertainty of litigation.

The Parties further agree that this Settlement Agreement is a settlement communication and is, pursuant to Federal Rules of Evidence 408, inadmissible as evidence in any lawsuit or proceeding for any purpose, except an action or proceeding to approve, interpret, or enforce this Settlement Agreement.

### 2. Pre-Conditions to Consummation.

In order to consummate this Settlement Agreement, the following pre-conditions must be met:

2.1. This Settlement Agreement is contingent upon funding approval from the Town’s Select Board and Advisory Committee. Town Counsel will seek any necessary funding approval at the next reasonably available Select Board meeting, Advisory Committee meeting, or both, following the execution of a final form of this Agreement set forth in Paragraph 2.2.

2.2. This Settlement Agreement is also contingent upon each of the Plaintiffs signing a release of claims, in the form attached hereto as Exhibit B. In the event that one or more of the Plaintiffs fails to execute the release as contemplated in this Paragraph within 14 calendar days of the Parties’ execution of a final form of this Agreement, the Town may, at its sole option, rescind this Settlement Agreement in its entirety.

2.3. This Settlement Agreement is also contingent upon the final approval, in all respects, by the United States District Court, District of Massachusetts. The Parties shall jointly seek such final approval, following the satisfaction of the remaining contingencies noted above in this Paragraph 2.

2.4. If this Settlement Agreement is not approved by the Court or if it is approved only subject to conditions constituting a material modification of the Parties’ Settlement Agreement, the Parties agree that they will endeavor to modify the Settlement Agreement to obtain the Court’s approval. If this endeavor is unsuccessful, this Settlement Agreement shall be void ab initio. If any of the foregoing contingencies is not timely satisfied or the Town exercises its right to revoke this Settlement Agreement for any reason provided above, the Parties shall be returned to the positions they held on July 2, 2024, the date on which the Parties reached an agreement in principle.

### 3. Settlement Payment

In exchange for the consideration extended by the Plaintiffs in this Settlement Agreement, including the Release as set forth in Paragraph 7 and the attached Exhibit B, the Town shall cause to be paid to the Plaintiffs the amount of **\$101,604.22** to resolve the claims of all Plaintiffs (Settlement Amount). The Settlement Amount will be allocated to the Plaintiffs in accordance with the calculations completed by the Town and reviewed by Plaintiffs.

The Settlement Amount reflects, for purposes of overtime under the FLSA, for all firefighters, lieutenants, and captains, regardless of assignment, the inclusion of the ASHER stipend in the calculation of the regular rate (Count 1); 24 hours instead of 21 hours per shift (Count 2); swaps scheduled instead of swaps worked (Count 3); all types of overtime, e.g. COVID overtime (Count 4); and hours worked “out of class” (Count 5). The Settlement Amount is calculated for the time period between on or around March 29, 2020, and June 15, 2024. Plaintiffs waive their claims with respect to Counts 6, 7, 8, and 9. Plaintiffs waive their claims to interest, liquidated, treble, punitive, multiple damages, attorneys’ fees and costs of litigation, and all other sums sought or potentially recoverable in the Lawsuit.

The Town shall have no obligation to pay or provide any further consideration to any Plaintiff by reason of this Settlement Agreement or because of the foregoing payments, including but not limited to contributions to any retirement or employee benefit plan, vacation or sick pay, or similar benefits based on or as a result of this Settlement Agreement. Any payments made pursuant to this Settlement Agreement will not trigger any obligation of the Town to make any withholding, crediting, or other accounting for retirement contributions or any other employee benefit offering.

### 4. Court Approval of Settlement Agreement

4.1. All terms of this Settlement Agreement are contingent upon the achievement of Final Approval as set forth in Paragraph 4.5.

4.2. The Parties agree to cooperate and take reasonable steps to obtain Final Approval of this Settlement Agreement, to effectuate this Settlement Agreement, and to dismiss the Lawsuit with prejudice.

4.3. The Parties agree that the Town and other Released Parties shall have no obligation to make any payments as specified in this Settlement Agreement if Final Approval does not occur for any reason.

4.4. After, and only after, satisfaction of the other contingencies set forth in Paragraph 2, the Parties shall prepare and file a joint motion for approval of the Settlement, which shall include as exhibits this fully executed Settlement Agreement (and all exhibits hereto), the executed releases of claims obtained in conjunction therewith, a proposed Approval Order, and a proposed Joint Stipulation of Dismissal (collectively, the “Approval Papers”).

4.5. If the Court enters an order (i) finally and unconditionally approving this Settlement Agreement; and (ii) fully and finally extinguishing claims against the Released Parties as specified in Paragraph 8 and Exhibit B to this Agreement, (“Approval Order”), then Final Approval shall be deemed to occur at the later of: (i) a date of the Approval Order, if no appeal of such order is timely filed; or (ii) if an appeal of such order is timely filed, final disposition of any appeal of the Court’s order on the Parties’ motion for approval that has the same effect.

4.6. As used in this Settlement Agreement, “Effective Date” shall mean 14 days after Final Approval.

5. Settlement Formula and Allocation

5.1. The Settlement Amount will be allocated to Plaintiffs, in accordance with the allocations of settlement as provided by the Town, which are set forth in Exhibit C to this Settlement Agreement.

5.2. The Settlement Amount will be paid in one installment per Plaintiff. The payment shall be made within 60 days after the Effective Date.

5.3. The Town shall issue payment to each Plaintiff for their settlement allocation, subject to tax withholdings set forth in Paragraph 7 (the "Settlement Payments"). The Town shall issue Settlement Payments to Plaintiffs for whom the Town has received an executed copy of the Release described in Paragraph 8, herein, and accordance with the timing established in Paragraph 5.2, as follows:

5.3.a. For Plaintiffs who are no longer employed by the Town, the Town shall mail Settlement Payments to such Plaintiffs at each Plaintiffs' last reported address on record with the Town.

5.3.b. For Plaintiffs who are currently employed by the Town as of the date each Settlement Payment is made, the Town shall issue the Settlement Payments, as defined in Paragraph 5.1, in the manner by which any such Plaintiff currently receives his or her wages from the Town.

5.4. If Plaintiff's Counsel informs the Town in good faith that a check for any Plaintiff was lost or misplaced, the Town will cancel such check and reissue payment to that Plaintiff by check mailed to such Plaintiff's home address. The Town shall not be responsible for issuing a replacement check if the original check was cashed.

5.5. The Settlement Payments shall expire one hundred twenty (120) calendar days after they are initially mailed by the Town to the Plaintiffs (the "Check Cashing Period"). Any portion of the Settlement Amount allocated to a Plaintiff for whom the Town has not received an executed copy of the release described in Paragraph 8, or is not claimed as a result of failure to cash a Settlement Payment after the conclusion of the Check Cashing Period, shall remain the property of the Town.

6. Tax Allocation of Settlement Payments

6.1. Each Settlement Payment will be considered wages subject to the withholding by the Town of all applicable local, state, and federal taxes. The Town shall report the Settlement Payments to each Plaintiff on IRS Form W-2.

6.2. The Parties agree that nothing contained herein constitutes legal advice regarding the taxability of any amount paid under this Settlement Agreement, and no person shall rely on anything contained in this Settlement Agreement or conveyed by the Town, Town Counsel, or both, as such advice. Each Plaintiff shall be individually, wholly, and exclusively responsible for any tax obligations or penalties arising from payments made to them pursuant to this Settlement Agreement.

7. Release

7.1. In further consideration of the promises made in this Settlement Agreement, each Plaintiff hereby forever discharges, releases, and covenants not to sue the Town, including all of its departments, past and present elected and appointed officials, officers, employees, attorneys, representatives, agents, insurers and all others working in concert with the Town (together, the "Released Parties") from any and all suits, actions, causes of action, claims, demands, grievances, or charges of prohibited practice, whether in an action brought individually by any

Plaintiff, brought on their behalf, or on behalf of any group of which any Plaintiff may be a member, for wages, damages, reimbursements, unpaid advances, civil and/or statutory penalties, liquidated damages, punitive damages, treble damages, multiple damages, interest, attorneys' fees, litigation costs, restitution, and/or equitable relief in any way relating to any and all claims that were or could have been asserted in the Lawsuit or that are based on or arise out of facts alleged in any version of the complaints filed in the Lawsuit, from the beginning of time through June 15, 2024, including without limitation any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* or the Massachusetts Wage Act, G.L. c. 149, §§ 148, 150 (collectively, the "Released Claims"). Notwithstanding the foregoing, nothing in this Release releases any claim that cannot be released as a matter of law.

7.2. In order to grant a full and complete release of the Released Claims in favor of the Released Parties, each of the Plaintiffs shall execute a standalone version of the Release in the form attached hereto as Exhibit B (together with Paragraph 7.1 herein, the "Release"). In executing the Release, the Plaintiffs acknowledge the Release is intended to include all Released Claims regardless of whether they know, are aware of, or suspect the potential existence of claims or potential claims being released.

7.3. Execution of Exhibit B by each of the Plaintiffs, is a condition precedent to their receipt of a Settlement Payment. Execution of Exhibit B by each of the Plaintiffs may be accomplished through DocuSign, another application capable of providing verified electronic signatures, and/or ink signature.

7.4. Plaintiffs' Counsel shall provide the originals of all executed Releases, with all associated authentication in the case of electronic signatures, to the Town promptly after their receipt thereof, and in any event prior to the Parties' submission of a motion seeking approval of the Settlement Agreement from the Court.

7.5. This Release will be binding on, and have a preclusive effect in, the Lawsuit, and any and all other pending and future lawsuits or other proceedings brought by Plaintiffs or any Plaintiff's behalf that seek any claims encompassed by this Release.

7.6. Plaintiffs further acknowledge and agree that the Release is a material term of this Settlement Agreement and that no settlement could have been reached without it. Plaintiffs affirm that they understand and acknowledge the significance and consequence of their release of claims pursuant to this Settlement Agreement.

7.7. Each Plaintiff hereby represents, covenants, and warrants that they own and have not directly or indirectly assigned, sold, transferred, hypothecated, encumbered, or purported to assign, sell, transfer, hypothecate, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged.

7.8. If a Plaintiff declines to sign the release and the Town does not invoke its rescission rights in Paragraph 2.2, that Plaintiff's pro rata share of the Settlement Amount shall be subtracted from the Settlement Amount. Further, a Plaintiff that declines to sign the release may proceed on any claim without involvement of Plaintiff's Counsel.

## 8. Covenant Not to Sue

8.1. Each Plaintiff agrees that they will not file a lawsuit or initiate any legal proceeding asserting any of the Released Claims in any federal, state, or local court, administrative agency, tribunal, arbitration proceeding, or any other legal forum, against any of the Released Parties for or relating to any Released Claims.

8.2. Each Plaintiff further agrees that they will not join, participate in, or consent to become a plaintiff, class member, or opt-in plaintiff in any lawsuit or legal proceeding asserting any Released Claims, nor will any Plaintiff permit or consent to any lawsuit or legal proceeding brought on their behalf or on the behalf of any group of which such Plaintiff may be a member. Plaintiffs agree to take all available steps to opt out of any such lawsuit or legal proceeding asserting any Released Claims, in the event that any of them are included as a participant or potential participant in such litigation (except that “participant” as used in this sentence does not apply to or include serving as a witness in a lawsuit or legal proceeding if subject to a legal obligation to do so).

8.3. If, notwithstanding the above two paragraphs, any Plaintiff is included in any class, collective, or government enforcement action alleging or involving any Released Claims, he or she agrees not to receive or accept any further compensation of any kind for such Released Claims and to promptly return any such sums awarded to the Town.

8.4. If any Plaintiff violates any terms of the Covenant Not to Sue set forth in this paragraph and in Exhibit B, they shall be responsible to pay the Released Parties the reasonable attorneys’ fees and costs incurred in defending against the claims brought in violation of the Covenant Not to Sue set forth above.

8.5. The parties mutually acknowledge that this Covenant Not to Sue does not apply to any claims which may accrue after June 15, 2024.

#### INTERPRETATION AND ADMINISTRATION OF THIS AGREEMENT

##### 9. Advice of Counsel

The Parties are represented by counsel of their choosing, and they have had an opportunity to consult and have consulted with counsel prior to executing this Settlement Agreement.

##### 10. Mutual Full Cooperation

The Parties and their counsel shall cooperate with each other in good faith to accomplish the terms and all obligations of this Settlement Agreement, including executing and filing such documents and taking any actions reasonably necessary to implement the terms of this Settlement Agreement; to obtain the Court’s Approval Order; in the event of an appeal, to ensure a complete affirmance of the Approval Order with all rights of appeal exhausted; and to fulfill all obligations subsequent to the Effective Date that are required by this Settlement Agreement and the Approval Order.

Nothing in this Settlement Agreement is intended to be, nor is it, a representation or commitment as to any actions to be undertaken by the Town’s Select Board or Advisory Committee. The Town’s signatories hereto make no assurances in this Settlement Agreement regarding the actions of the Select Board or Advisory Committee, and neither a decision by the Select Board or Advisory Committee to decline approval and funding of the proposed settlement nor any delay in the Select Board or Advisory Committee’s approval of the settlement shall be a breach of this Settlement Agreement by the Town.

##### 11. Notices

Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder will be in writing and will be deemed to have been duly given upon sending if by email, or as of the third calendar day after mailing by U.S. Postal Service certified mail with



return receipt requested or by another trackable delivery method (such as Federal Express or United Parcel Service), addressed as follows:

To Plaintiffs:  
John M. Becker  
Sandulli Grace P.C.  
44 School Street, 11<sup>th</sup> Floor  
Boston, MA 02108  
[jbecker@sandulligrace.com](mailto:jbecker@sandulligrace.com)

To the Town:  
Office of Town Counsel  
333 Washington St.  
Brookline, MA 02445  
[towncounseloffice@brooklinema.gov](mailto:towncounseloffice@brooklinema.gov)

## 12. Construction and Governing Law

12.1. This Settlement Agreement is the result of lengthy, intensive, arm's-length negotiations between the Parties and their counsel. The Parties have each had a full and fair opportunity to propose changes to the terms and language of this Settlement Agreement, which was drafted cooperatively among counsel for the Parties. As such, this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or their counsel participated in its drafting.

12.2. To the extent state law governs interpretation of this Settlement Agreement, it will be interpreted and governed under the laws of the Commonwealth of Massachusetts.

12.3. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and do not define, limit, extend or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

12.4. The language used in this Settlement Agreement will be deemed to be the language chosen by the Parties to express their mutual intent and no rule of construction will be applied against any party.

## 13. Modification

13.1. This Settlement Agreement may not be changed, altered, modified, or otherwise amended, except in writing and signed by all Parties hereto the rights of whom or which are affected by such change, alternation, modification or amendment.

13.2. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto. No right hereunder shall be waived by inaction, and no waiver of any right or obligation under this Agreement in a given instance shall be deemed or construed as a waiver of future rights or as affecting any Party's rights with respect to any other similar or dissimilar set of circumstances.

## 14. Integration

This Settlement Agreement and its Exhibits contain the entire agreement among the Parties relating to the Settlement and transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein.

15. Severability

If any portion or portions of this Settlement Agreement may be held by a court of competent jurisdiction to conflict with any federal, state, or local law, and as a result such portion or portions are declared to be invalid and of no force or effect in such jurisdiction, all remaining provisions of this Settlement Agreement shall otherwise remain in full force and effect and be construed as if such invalid portion or portions had not been included herein.

16. Remedies for Breach of this Settlement Agreement

The only remedies for any breach of this Settlement Agreement shall be termination or an action for specific performance. No Plaintiff shall be entitled to any lost profits, damages, interest, attorneys' fees, costs, or expenses.

17. Signatories

17.1. Because the Plaintiffs are numerous, it is impractical to have each Plaintiff execute this Settlement Agreement. The Release described herein will advise all Plaintiffs of the binding nature of the Release and Covenant Not to Sue, and such will have the same force and effect, to the extent permitted by law, as if this Settlement Agreement were executed by each Plaintiff. Plaintiffs' Counsel shall inform each Plaintiff of the existence and nature of this Settlement Agreement, including its binding effect on each Plaintiff and make the Settlement Agreement available to any Plaintiff who may request it.

17.2. Any person executing this Agreement or any such related document on behalf of a municipality warrants and promises for the benefit of the Parties that they have been duly authorized by such municipality to execute this Settlement Agreement or any such related document.

17.3. The signatories hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to the terms and conditions thereof, and that no additional approvals or ratifications are required for the provisions of this Settlement Agreement to take effect.

17.4. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective spouses, heirs, trustees, and executors, administrators, successors, and assigns, including the Released Parties. No Party may assign any rights or obligations hereunder to any other Party or any third-party without the written consent of all Parties affected by such assignment.

17.5. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart will be deemed an original, and, when taken together with other signed counterparts, will constitute one Settlement Agreement, which will be binding upon and effective as to the Parties and their counsel as set forth herein. A PDF of an executed counterpart will be deemed an original.

*Signature Page Follows*



**AGREED AND ENTERED INTO BY THE PARTIES ON THE DATES SET FORTH BELOW:**

**Dated:** \_\_\_\_\_, 2024

**By:** \_\_\_\_\_  
**Brian Bergeron**

**Dated:** \_\_\_\_\_, 2024

**By:** \_\_\_\_\_  
**Paul Trahon**

**TOWN OF BROOKLINE**

**Dated:** \_\_\_\_\_, 2024

**By:** \_\_\_\_\_  
**Charles Carey, Town Administrator**  
**On behalf of the Town of Brookline**