

# EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
NO. 1984CV03373C

STACY FOSTER, JAMIE KIMBALL, JONATHAN  
RILEY, and NICOLE WESTCOTT, *on behalf of  
themselves and all others similarly situated,*

Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS,

Defendant.

**[PROPOSED] PRELIMINARY APPROVAL ORDER**

The Court, having reviewed the Joint Motion for Entry of Preliminary Approval of the Settlement of this Action, as well as the Stipulation and Settlement Agreement dated June 1, 2022, (the “Settlement Agreement”) between Plaintiffs Stacy Foster, Jamie Kimball, Jonathan Riley, and Nicole Westcott, individually and on behalf of the Settlement Class (“Plaintiffs”), and Defendant Commonwealth of Massachusetts (“Defendant” or “the Commonwealth”), and good cause appearing therefore, IT IS HEREBY ORDERED AS FOLLOWS:

1. For purposes of this Order, the Court adopts all the defined terms that are used in the Settlement Agreement and incorporates those terms by reference in this Order.
2. The Court preliminarily approves the Settlement of this Action that is set forth in the Settlement Agreement. Subject to any further submissions that may be made at or prior to the Final Approval Hearing described below, the Court finds that the Settlement is fair, just, reasonable, and adequate to the certified Classes and its members.

3. The Court hereby approves the form of Notice attached hereto as Exhibit A. The Court finds that the Notice is reasonably and practicably calculated to apprise the Settlement Class of the proposed Settlement, and their rights and obligations thereunder, including, *inter alia*, their rights to object to the Settlement and to attend the Final Approval Hearing.

4. The Court approves the plan of notice set forth in Paragraphs 10.1 and 10.2 of the Settlement Agreement as appropriate and as reasonably and practicably calculated to apprise the Settlement Class of the proposed Settlement, and their rights and obligations thereunder, including, *inter alia*, their rights to object to the Settlement and to attend the Final Approval Hearing.

5. No later than fourteen days after receipt of this Order, the Commonwealth shall provide Class Counsel and the Settlement Administrator (when selected) with the names and available identifying information of all members of the Class identified to date.

6. The Settlement Administrator shall implement the plan of Notice in accordance with Paragraphs 10.1 and 10.2 of the Settlement Agreement. The Court finds that dissemination of the Notice and plan of Notice described in Paragraphs 10.1 and 10.2 of the Settlement Agreement constitutes the best notice practicable, and that it is reasonably calculated, under all the circumstances, to apprise Class Members of the terms of the Settlement and afford them an opportunity to present objections, or otherwise avail themselves of their rights under the Settlement.

7. The Court further finds that the plan of Notice meets the requirements of the Massachusetts Rules of Civil Procedure and the requirements of Due Process of the Constitutions of the United States and the Commonwealth of Massachusetts, as well as

any other applicable law and that such Notice constitutes due and sufficient notice to all persons entitled thereto.

8. No later than five (5) days before the Final Approval Hearing described below, Class Counsel shall file an affidavit or declaration from the Settlement Administrator attesting to compliance with and completion of the plan of Notice set forth in the Settlement Agreement.

9. The Final Approval Hearing shall be held at \_\_ m. on \_\_\_\_, 2022, in Courtroom \_\_\_\_, Suffolk Superior Court, 3 Pemberton Square, Boston, Massachusetts, to determine whether the proposed Settlement of the Action, as set forth in the Settlement Agreement, should be approved as fair, reasonable and adequate to Class members, and whether the Final Order and Judgment approving the Settlement should be entered. At the Final Approval Hearing, the Court also will determine any timely objections to the Settlement Agreement and all responses to said objections by the Parties.

10. Twenty-one (21) days after the Notice is mailed to the Class, Plaintiffs shall file with the Court and serve on Defense Counsel, their motion for final approval of the Settlement and any supporting materials.

11. Any Class Member wishing to object to the approval of this Settlement Agreement shall inform the Court and the Parties in writing of their objection by following the procedures and objection deadlines set forth in the Notice. Any Class member who fails to object to the Settlement in the manner described in the Notice shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement, and shall be foreclosed from seeking any review of

the Settlement by appeal or other means. As set forth in the Notice, any and all objections must be submitted no later than thirty-five (35) days after Notice is mailed to the Class and be sent to Class Counsel, Defense Counsel and the Court. Any Party may file a response to any objection no later than five (5) days prior to the Final Approval Hearing.

12. The Court hereby directs the Parties, Class Counsel and Defense Counsel to proceed in accordance with the terms of the Settlement Agreement, and hereby authorizes them to take all acts reasonably necessary to implement this Preliminary Approval Order.

13. The Court may, for good cause, change the date of the Final Approval Hearing or extend any of the deadlines set forth in this Order without further notice to Class Members.

IT IS HEREBY ORDERED.

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Justice of the Superior Court

Exhibit A  
to Preliminary Approval Order

**If you paid money as a result of criminal convictions that were overturned due to the misconduct of Annie Dookhan or Sonja Farak, a class action lawsuit may affect your rights and you may be entitled to money.**

*A Massachusetts Superior Court Judge authorized this notice.  
This is not a solicitation from a lawyer.  
You are not being sued.*

- You are receiving this letter because records show you had one or more drug cases vacated and dismissed by courts of the Commonwealth of Massachusetts.
- A settlement in a class action lawsuit will provide compensation for certain payments made as a result of vacated drug convictions.

**Your legal rights are affected even if you do nothing. Please read this notice carefully.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>DO NOTHING</b>	Get certain benefits from the Settlement. Give up certain rights to sue.
<b>OBJECT</b>	Write to the Court if you don't like the Settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will only be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

**WHAT THIS NOTICE CONTAINS**

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8. What does the Settlement provide?

**QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.JURLI.COM](http://WWW.JURLI.COM)**

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### **BASIC INFORMATION**

1. Why is there a notice?
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A Court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

Suffolk County Superior Court Judge \_\_\_\_\_ is overseeing this case. It is known as *Stacy Foster et al. v. Commonwealth of Massachusetts*, Docket Number 1984CV03373C. The four people who sued are called the “Plaintiffs.” The Commonwealth of Massachusetts is called the “Defendant.”

The following is only a summary of the Settlement. A full description of the Settlement is contained in the Settlement Agreement. Nothing in this notice alters the terms of the Settlement Agreement. A copy of the Settlement Agreement may be obtained by visiting [www.URL.com](http://www.URL.com) or by writing Settlement Administrator, P.O. Box #####, \_\_\_\_\_-####.

If the Court approves the Settlement, the Defendant will provide the Settlement benefits provided for in the approved Settlement.

**QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.URL.COM](http://WWW.URL.COM)**

2. What is this lawsuit about?

On October 29, 2019, the Plaintiffs filed this lawsuit on behalf of themselves and other former Massachusetts drug defendants whose convictions were vacated and dismissed due to the outrageous misconduct of two former state chemists. The lawsuit contends class members who made various case-related payments as a result of these vacated convictions are entitled to compensation under the due process clauses of our state and federal constitutions. There are ten case-related payments at issue in this lawsuit. Seven are Trial Court case-related payments and three are payments that were made to other government agencies. The seven Trial Court case-related payments are:

- victim-witness fees, M.G.L. c.258, § 8;
- probation fees, M.G.L. c.276, §87A;
- court costs, M.G.L. c.280, § 6;
- Chapter 94C fines and surfines, M.G.L. c.94C, §§ 32(a), 32A(a) & 34; M.G.L. c.280, § 6A;
- drug analysis criminal assessment fees, M.G.L. c.280, § 6B;
- post-conviction GPS monitoring fees, M.G.L. c.127, § 144; and
- restitution, M.G.L. c.258B, § 3(o).

The three non-Trial Court case-related payments are:

- parole fees, § 368 of Ch. 26 of Acts of 2003, § 10 of Ch. 303 of Acts of 2006;
- DNA collection fees, M.G.L. c.22E, §§ 3 & 4(b); DOE 10800, 459 Mass. 603, 615-16 (2011); and
- driver's license reinstatement fees, M.G.L. c.90, § 22(f), deleted by § 1 of Ch. 64 of Acts of 2016.

On May 19, 2020, the Superior Court certified a class consisting of all persons:

(a) who were convicted of state drug offenses under M.G.L. c. 94C; (b) whose convictions of such state drug offenses have, as of the date of class certification, been vacated and dismissed without the prospect of re-prosecution due to the misconduct of former state chemists Annie Dookhan in the Hinton drug lab and Sonja Farak in the Amherst drug lab; and (c) who, as a result of having their c. 94C conviction(s) vacated, could assert claims for monetary relief under *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), and/or *Commonwealth v. Martinez*, 480 Mass. 777 (2018).

3. Why is this a class action?

In a class action, one or more people called “class representatives” sue on behalf of themselves and other people with similar claims. All of these people together are the “class” or “class members.” In this case, the Class Representatives are Stacy Foster, Jamie Kimball, Jonathan Riley, and Nicole Westcott. A single court resolves the issues for all Class members.

QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.JURL.COM](http://WWW.JURL.COM)

4. Why is there a settlement?

The Court has not decided in favor of the Plaintiffs or the Defendant. Instead, both sides have agreed to a Settlement. The Settlement provides a method to resolve the claims made in the lawsuit that takes into consideration the best interest of all involved parties. The Settlement was the result of extensive, arms-length negotiations between Class Counsel and Attorneys for the Commonwealth and is based upon a thorough examination of the facts and the law gained over years of litigation. By agreeing to settle, both sides avoid the cost and risk of a trial and appeal, and the people affected will get a chance to receive compensation.

The Class Representatives and their attorneys believe the Settlement is in the best interests of the Class. The Settlement does not mean that the Defendant has conceded it did anything wrong. If the Settlement is approved by the Court, Class members will be entitled to participate in the Settlement, but they will not be able to sue the Commonwealth or file individual motions for the return of their property.

**WHO IS PART OF THE SETTLEMENT?**

5. Who is included in the Settlement?

The Class includes all persons:

(a) who were convicted of state drug offenses under M.G.L. c. 94C; (b) whose convictions of such state drug offenses have, as of the date of class certification, been vacated and dismissed without the prospect of re-prosecution due to the misconduct of former state chemists Annie Dookhan in the Hinton drug lab and Sonja Farak in the Amherst drug lab; and (c) who, as a result of having their c. 94C conviction(s) vacated, could assert claims for monetary relief under *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), and/or *Commonwealth v. Martinez*, 480 Mass. 777 (2018).

Excluded from the Class are persons who previously filed individual motions for the return of their property and received all the compensation they are due.

6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the Settlement, you may call 1-800-000-0000 with questions or visit [www.\[URL\].com](http://www.[URL].com). You may also write with questions to Settlement Administrator, P.O. Box #####, \_\_\_\_\_-####.

7. What if I do not want to be part of the Class?

Under Massachusetts law, class members do not have the right to exclude themselves from the Settlement Class.

**QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.\[URL\].COM](http://WWW.[URL].COM)**

## THE SETTLEMENT BENEFITS

### 8. What does the Settlement provide?

Each class member will receive a full refund for all non-Trial Court case-related payments (parole fees, DNA collection fees, and driver's license reinstatement fees) associated with a vacated drug conviction.

In cases without any surviving convictions, each class member will also receive a full refund for all Trial Court case-related payments (victim-witness fees, probation fees, court costs, Chapter 94C fines and surfines, drug analysis criminal assessment fees, post-conviction GPS monitoring fees, and restitution) made as a result of a vacated drug conviction. In cases with a surviving conviction, each class member will receive a 50% refund for all Trial Court case-related payments.

In addition to these refunds, each class member will receive a payment of \$150.

The Settlement provides for a dispute resolution process for class members with reasons to believe their refund amounts have been miscalculated.

More details are in a document called the Settlement Agreement, which is available at [www.\[URL\].com](http://www.[URL].com) or by writing to Settlement Administrator, P.O. Box #####, \_\_\_\_\_-###.

### 9. How do I participate in the Settlement? Do I have to make a claim?

Class members do not have to do anything to participate in the Settlement. The Settlement Administrator will calculate the amount that is payable to eligible Class members (see Question 10 below) and will send out the payment. No claims need to be filed.

### 10. Will I receive a payment? How much will my payment be?

Individual payment amounts will vary based on the formula outlined above. The actual payment amount for each class member will not be determined until after [Month 00, 2022] and may not be determined until after the Settlement is final.

**You should consult your own tax advisors regarding the tax consequences of the proposed Settlement, including any payments you may receive and any tax reporting obligations you may have as a result.**

### 11. When will I receive my payment?

Class members will receive their payments after the Court grants final approval to the Settlement and after appeals, if any, are resolved (see "The Fairness Hearing" below). If there are appeals, resolving them can take time.

QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.\[URL\].COM](http://WWW.[URL].COM)

12. What rights must Class Members give up?

If the Settlement becomes final, you will give up your right to sue the Defendant for the claims being resolved by this Settlement. You will be “releasing” the Defendant and all related people as described in Section 5 of the Settlement Agreement.

This release includes all claims that were asserted in the lawsuit, as well as claims that could have been asserted related to the payment of counsel fees, M.G.L. c. 211D, § 2A(f), and default warrant fees, M.G.L. c. 276, § 30, and the value of unpaid community service, M.G.L. c. 211, § 2A(g). This release includes all claims, both in law and in equity, which Class Members or their successors, legal representatives or assigns now have, own or hold, or at any time hereto ever had, owned or held, arising from their state court drug convictions that were vacated and dismissed due to the misconduct of former chemists Dookhan and Farak, to refunds or other financial compensation relating to payments that Class Members made solely as a result of their now-vacated state drug convictions or their associated criminal dockets.

This release does not include any claims related to forfeitures of money or property from Class Members in connection with their now-vacated drug convictions.

Settlement class members expressly waive any and all rights that they may have under any law that would limit the release to claims actually known or suspected to exist at the time of the settlement.

The Settlement Agreement is available at [www.\[URL\].com](http://www.[URL].com) and describes the claims Class members must give up. If you have any questions you can talk to the law firms listed in Question 14 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

### HOW TO RECEIVE A PAYMENT

13. How can I receive a payment?

If you are eligible for a payment under the Settlement, you do not need to do anything. A check will be mailed directly to you at the same address to which this Notice was sent.

### THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in the case?

Yes. The Court appointed the following as “Class Counsel”:

Luke Ryan  
SASSON, TURNBULL, RYAN & HOOSE  
100 Main Street, 3<sup>rd</sup> Floor  
Northampton, MA 01060  
(413) 586-4800  
[info@strhlaw.com](mailto:info@strhlaw.com)

QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.\[URL\].COM](http://WWW.[URL].COM)

William Fick  
Daniel Marx  
FICK & MARX, LLP  
24 Federal Street, 4th floor  
Boston, MA 02110  
(857) 321-8360  
[info@fickmarx.com](mailto:info@fickmarx.com)

You will not be charged for contacting these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will the lawyers be paid?

The Commonwealth has agreed to pay Class Counsel attorneys' fees totaling \$1,408,543.13, and \$10,000 Service Awards to Foster, Kimball, Riley, and Westcott for their efforts in bringing this case and obtaining the Settlement. These fees and service awards will be paid separately by the Commonwealth in addition to the Class recovery. Class members will not be responsible for payment of Class Counsel's fees or the Class Representatives' service awards.

### OBJECTING TO THE SETTLEMENT

16. How do I tell the Court if I do not like the Settlement?

You can object to the Settlement if you don't like some part of it. The Court will consider your views. To do so, you must file written objections in this case, *Stacy Foster et al. v. Commonwealth of Massachusetts*, Docket Number 1984CV03373C. You are required to include:

- Your full name, address, telephone number; your signature;
- The specific reasons why you object to the settlement;
- Whether you plan on appearing at the Fairness Hearing, and
- Any legal support or evidence that supports your objection that you wish to bring to the Court's attention.

Mail your objection to these addresses postmarked no later than Month 00, 2022 to Class Counsel at the following address:

William Fick  
Daniel Marx  
FICK & MARX, LLP  
24 Federal Street, 4th floor  
Boston, MA 02110

17. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you don't like something about the Settlement. Any judgment entered in the Actions will be binding on all Class Members, even if you have objected to the proposed Settlement. Excluding yourself is telling the Court that you don't want to be part of the

QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.JURLI.COM](http://WWW.JURLI.COM)

Class. As previously noted, under Massachusetts law, class members do not have the right to exclude themselves from the Settlement Class.

### THE FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees and expenses. You may attend and you may ask to speak, but you do not have to.

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

The Court will hold a Fairness Hearing at XX:00 x.m. on Month 00, 2022, in Courtroom \_\_\_ at the Suffolk County Courthouse, 3 Pemberton Square, in Boston, Massachusetts. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.\[URL\].com](http://www.[URL].com) or call 1-800-000-0000. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay and reimburse Class Counsel. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.<sup>1</sup>

19. Do I have to attend the hearing?

No. But, you or your own lawyer is welcome to attend at your expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it.

20. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must do two things. First, you must object to the Settlement in accordance with the procedures described above under Question 16. Second, you must send a letter stating that it is your “Notice of Intention to Appear” in *Stacy Foster et al. v. Commonwealth of Massachusetts*, Docket Number 1984CV03373C. Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than Month 00, 202-, and must be sent to the address listed in Question 16.

### GETTING MORE INFORMATION

21. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [www.\[URL\].com](http://www.[URL].com). You also may write with questions to Settlement Administrator, PO Box #####, \_\_\_\_\_ ##### or call the toll-free number, 1-800-000-0000.

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<sup>1</sup> In order to enable broad participation in the fairness hearing, the Parties are amenable to conducting the hearing (or otherwise allow participation in the hearing) by Zoom or other videoconference platform should the Court so order.

QUESTIONS? CALL 1-800-000-0000 OR VISIT [WWW.\[URL\].COM](http://WWW.[URL].COM)