

# EXHIBIT 2

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.

**STIPULATION AND SETTLEMENT AGREEMENT**

**1. RECITALS**

WHEREAS, on October 29, 2019, Plaintiffs Stacy Foster, Jamie Kimball, Jonathan Riley, and Nicole Westcott (collectively, “Plaintiffs” or “Class Representatives”) – individuals whose Massachusetts state court drug convictions were vacated and dismissed due to the misconduct of former chemists Annie Dookhan (“Dookhan”) and Sonja Farak (“Farak”) – commenced this class action litigation (“this Action”), challenging the constitutionality of specific policies and practices of the Defendant Commonwealth of Massachusetts (“Commonwealth”) relating to the refund of fines and fees that Plaintiffs and other Class Members paid solely as a result of their now-vacated convictions;

WHEREAS, the Court certified the Class by Order dated May 19, 2020, and appointed Attorneys William Fick and Daniel Marx, of Fick & Marx LLP, 24 Federal Street, 4th Floor, Boston, MA 02110, and Luke Ryan, of Sasson, Turnbull, Ryan & Hoose, 100 Main Street, Third Floor, Northampton, MA 01060, as Class Counsel by Order dated July 7, 2020;

WHEREAS, the Trial Court, the Massachusetts State Police, the Parole Board, and the Registry of Motor Vehicles have made diligent and good faith efforts to search for, locate and aggregate payment records that may be relevant to the claims for relief that Plaintiffs have asserted in this Action;

WHEREAS, through their counsel, Plaintiffs and the Commonwealth (collectively, “Parties”) have engaged in extensive, good faith, and arm’s length negotiations, beginning in February 2018, when Foster, Kimball, and Riley filed a putative class action in federal court seeking a refund of fines, fees, and forfeitures, *see Foster et al. v. Commonwealth of Massachusetts et al.*, Civil Action No. 1:18-CV-10354-IT (D. Mass.) (“Federal Action”);

WHEREAS, the Parties now desire to settle in a mutually agreeable manner the claims for relief set forth in this Action;

WHEREAS, the Parties have concluded that the Settlement Agreement is desirable in order to avoid the time, expense, and inherent uncertainties of protracted litigation; and

WHEREAS, based upon the Parties’ factual investigation and legal evaluation, and taking into account the contested legal and factual issues involved, the Parties have each concluded that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Parties and all Class Members;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in the Settlement Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of this Action on the following terms and conditions.

## **2. DEFINITIONS**

As used in the Settlement Agreement and the related documents attached hereto as exhibits, the following terms shall have the meanings set forth below:

2.1. “Administrator Claim Approval Letter” shall mean the letter by which the Settlement Administrator communicates an approval of a Refund Amount Claim after review by the Settlement Administrator, a template of which is set forth at Exhibit A.

2.2. “Administrator Claim Denial Letter” shall mean the letter by which the Settlement Administrator communicates a denial of a Refund Amount Claim after review by the Settlement Administrator, a template of which is set forth at Exhibit B.

2.3. “Administrator Claim Partial Denial Letter” shall mean the letter by which the Settlement Administrator communicates a partial denial of a Refund Amount Claim after review by the Settlement Administrator, a template of which is set forth at Exhibit C.

2.4. “Arbiter” shall mean the individual or firm selected, upon agreement of the Parties, to resolve those Refund Amount Claims that the Settlement Administrator is unable to resolve.

2.5. “Arbiter Claim Approval Letter” shall mean the letter by which the Settlement Administrator communicates an approval of a Refund Amount Claim after review by the Arbiter, a template of which is set forth at Exhibit D.

2.6. “Arbiter Claim Denial Letter” shall mean the letter by which the Settlement Administrator communicates the denial of a Refund Amount Claim after review by the Arbiter, a template of which is set forth at Exhibit E.

2.7. “Arbiter Claim Partial Denial Letter” shall mean the letter by which the Settlement Administrator communicates a partial denial of a Refund Amount Claim after review by the Arbiter, a template of which is set forth at Exhibit F.

2.8. “Attorneys’ Fees” shall mean compensation for the legal services provided by Class Counsel in connection with the prosecution of this litigation as set forth in Section 7.1.

2.9. “Claim Referral Letter” shall mean the letter by which the Settlement Administrator communicates that the Refund Amount Claim has been referred to the Arbiter for resolution, a template of which is set forth at Exhibit G.

2.10. “Class Docket” shall mean a docket number in which an individual was charged with and convicted of any state drug offense(s) under M.G.L. c. 94C and whose conviction(s) of such state drug offense(s) was, as of May 19, 2020, vacated and dismissed without the prospect of re-prosecution due to the misconduct of former state chemists Dookhan in the Hinton drug lab and/or Farak in the Amherst drug lab.

2.11. “Class Members” shall mean all persons (a) who were convicted of state drug offenses under M.G.L. c. 94C; (b) whose convictions of such state drug offenses were, as of May 19, 2020, vacated and dismissed without the prospect of re-prosecution due to the misconduct of former state chemists Dookhan in the Hinton drug lab and/or Farak in the Amherst drug lab; and (c) who, as a result of having their c. 94C conviction(s) vacated, could assert claims for relief under *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), and/or *Commonwealth v. Martinez*, 480 Mass. 777 (2018).

2.12. “Class Notice” shall mean the notice of (a) the settlement in this Action and (b) the fairness hearing to be set by this Court which is to be sent to Class Members pursuant to the notice procedures set forth below. The form and content of the Class Notice shall be agreed upon by the Parties and approved by this Court. A proposed Class Notice is attached hereto at Exhibit H.

2.13. “Class Representatives” (or “Plaintiffs”) shall mean Stacy Foster, Jamie Kimball, Jonathan Riley, and Nicole Westcott.

2.14. “Complaint” shall mean the complaint filed on or about October 29, 2019 in this Action.

2.15. “Effective Date” shall mean the date on which this Court issues a Final Approval Order approving the Settlement Agreement.

2.16. “Estate Claim Form” shall mean the form by which a Personal Representative of the estate of a deceased Class Member contends that the Class Member is deceased, and that the estate of the Class Member is entitled to receive a Settlement Award payable to a deceased Class Member, a template of which is set forth at Exhibit I.

2.17. “Final Approval Order” shall mean an Order by the Court, after a fairness hearing, approving the Settlement Agreement, Service Awards, Class Counsel’s Attorneys’ Fees, and also dismissing this Action with prejudice.

2.18. “Final Refund Amount” shall mean the payment that each Class Member shall be entitled to receive after either (a) the conclusion of the resolution of the Refund Amount Claim, or (b) the Refund Dispute Deadline if no such Refund Amount Claim is timely submitted.

2.19. “Membership Claim” shall mean a claim asserted by a Membership Claimant that an individual is a Class Member but was erroneously excluded from the list of Class Members that have been identified as of the time at which Presumptive Refund Amounts are distributed.

2.20. “Membership Claim Approval Letter” shall mean the letter by which the Settlement Administrator communicates an approval of a Membership Claim after review by the Settlement Administrator, a template of which is set forth at Exhibit J.

2.21. “Membership Claim Denial Letter” shall mean the letter by which the Settlement Administrator communicates a denial of a Membership Claim after review by the Settlement Administrator, a template of which is set forth at Exhibit K.

2.22. “Membership Claim Form” shall mean the form by which a Membership Claimant may assert a claim that they are a Class Member but were erroneously excluded from the list of Class Members, a template of which is set forth at Exhibit L.

2.23. “Membership Claimant” shall mean an individual who claims that they are a Class Member and that they were erroneously excluded from the list of Class Members.

2.24. “Personal Representative” shall mean a person appointed by a court to collect, manage, and transfer estate property to the devisees or heirs of a deceased Class Member.

2.25. “Preliminary Approval Order” shall mean the Order that may be entered by this Court preliminarily approving the Settlement Agreement, scheduling a fairness hearing, and approving a plan for Class Notice.

2.26. “Presumptive Refund Amount” shall mean the payment that each Class Member shall be entitled to receive as set forth in Section 8.1 and Exhibit M.

2.27. “Recorded Payments” shall mean those records of payments, if any, made by the Class Members in the Recoverable Categories that have been located after a diligent and good faith search by the Trial Court, the Massachusetts State Police, the Parole Board, and the Registry of Motor Vehicles, and as aggregated and maintained by the Commonwealth’s data analysis vendor, Analysis Group.

2.28. “Recoverable Categories” shall mean:

- 2.28.1. victim-witness fees, M.G.L. c. 258, § 8;
- 2.28.2. probation fees, M.G.L. c. 276, § 87A;
- 2.28.3. post-conviction GPS monitoring fees, M.G.L. c. 127, § 144;
- 2.28.4. restitution, M.G.L. c. 258B, § 3(o);
- 2.28.5. court costs, M.G.L. c. 280, § 6;

- 2.28.6. Chapter 94C fines and surcharges, M.G.L. c. 94C, §§ 32(a), 32A(a) & 34; M.G.L. c. 280, § 6A;
- 2.28.7. drug analysis criminal assessment fees, M.G.L. c. 280, § 6B;
- 2.28.8. DNA collection fees, M.G.L. c. 22E, §§ 3 & 4(b); *DOE 10800 v. Sex Offender Reg. Bd.*, 459 Mass. 603, 615-16 (2011);
- 2.28.9. parole fees, § 368 of Ch. 26 of Acts of 2003, § 10 of Ch. 303 of Acts of 2006; and
- 2.28.10. driver's license reinstatement fees, M.G.L. c. 90, § 22(f), deleted by § 1 of Ch. 64 of Acts of 2016.

2.29. "Refund Account" shall mean an account funded by the Commonwealth and maintained by the Settlement Administrator from which the Presumptive Refund Amounts and Final Refund Amounts shall be paid.

2.30. "Refund Amount Claim" shall mean a claim to an additional refund amount asserted by a Refund Amount Claimant.

2.31. "Refund Amount Claim Form" shall mean a form by which a Refund Amount Claimant asserts a Refund Amount Claim, a template of which is set forth at Exhibit N.

2.32. "Refund Amount Claimant" shall mean a Class Member who claims that their Presumptive Refund Amount is less than what they would have received had they filed an individual refund motion pursuant to *Commonwealth v. Martinez*, 480 Mass. 777 (2018).

2.33. "Refund Dispute Deadline" shall mean the deadline by which Class Members may file Refund Amount Claims, which shall be forty (40) days from the issuance of the Presumptive Refund Amount checks.

2.34. "Released Claims" shall mean 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, including payments in the following categories:

- 2.34.1. victim-witness fees, M.G.L. c.258, § 8;
- 2.34.2. probation fees, M.G.L. c. 276, § 87A;
- 2.34.3. GPS monitoring fees, M.G.L. c. 127, § 144;
- 2.34.4. restitution, M.G.L. c. 258B, § 3(o);
- 2.34.5. court costs, M.G.L. c. 280, § 6;
- 2.34.6. Chapter 94C fines and surfines, M.G.L. c. 94C, §§ 32(a), 32A(a) & 34; M.G.L. c. 280, § 6A;
- 2.34.7. drug analysis criminal assessment fees, M.G.L. c. 280, § 6B;
- 2.34.8. DNA collection fees, M.G.L. c. 22E, §§ 3 & 4(b); *DOE 10800 v. Sex Offender Reg. Bd.*, 459 Mass. 603, 615-16 (2011);
- 2.34.9. parole fees, § 368 of Ch. 26 of Acts of 2003, § 10 of Ch. 303 of Acts of 2006;
- 2.34.10. driver's license reinstatement fees, M.G.L. c. 90, § 22(f), deleted by § 1 of Ch. 64 of Acts of 2016;
- 2.34.11. counsel fees, M.G.L. c. 211D, § 2A(f);
- 2.34.12. value of unpaid community service, M.G.L. c. 211, § 2A(g); and
- 2.34.13. default warrant fees, M.G.L. c. 276, § 30.

It shall not mean, however, any claims related to forfeitures of money or property from Class Members in connection with their now-vacated drug convictions.

2.35. "Released Parties" shall mean the Commonwealth of Massachusetts and any of its departments, agencies, divisions, executive offices, counties, cities, towns, districts, representatives, officers, directors, attorneys, agents, employees, privies, and insurers.

2.36. “Service Award” shall mean remuneration to the Class Representatives for the time, effort, expense, and service that they personally invested in this Action. It shall not mean or signify monetary damages or other compensation for the harm they allegedly suffered as a result of the actions alleged in the Complaint.

2.37. “Settlement Administrator” shall mean the individual or entity jointly selected by the Parties to perform the services described in the Settlement Agreement.

2.38. “Settlement Agreement” shall mean this Stipulation and Settlement Agreement and its exhibits.

2.39. “Settlement Call Center” shall mean a telephone service provided by the Settlement Administrator through which information about the Settlement Agreement will be available to Class Members and through which Class Members can ask, and receive responses to, questions about this Action.

2.40. “Settlement Website” shall mean a website created and maintained by the Settlement Administrator through which information about the Settlement Agreement will be available to Class Members and through which Class Members can ask, and receive responses to, questions about this Action.

2.41. “Surviving Conviction” shall mean a conviction on one or more charges in a Class Docket which has not been vacated and dismissed as of May 19, 2020.

2.42. “Vacated Conviction” shall mean a conviction on one or more charges in the Class Docket which has been vacated and dismissed as of May 19, 2020.

### **3. JURISDICTION AND VENUE**

3.1. Pursuant to M.G.L. c. 212, § 4, this Court has subject matter jurisdiction over this Action.

3.2. Pursuant to M.G.L. c. 223, § 1, venue is proper in Suffolk County.

3.3. Pursuant to M.G.L. c. 223A, § 3, this Court has personal jurisdiction over the Parties in this Action.

**4. MUTUAL FULL COOPERATION**

4.1. The Parties agree to use their best efforts to effectuate and implement all terms and conditions of the Settlement Agreement.

4.2. The Parties further agree that they will cooperate in good faith with each other to effectuate and implement all terms and conditions of the Settlement Agreement.

4.3. The Parties further agree to use their best efforts to resolve informally any differences regarding interpretation of and compliance with the Settlement Agreement prior to bringing such matters to the Court for resolution.

4.4. At least thirty (30) days prior to filing any motion regarding alleged noncompliance with the Settlement Agreement, the moving Party will notify the other Parties of the alleged substantial noncompliance with the Settlement Agreement and request a meeting for the purpose of attempting to resolve the dispute. The Parties shall make good faith efforts to meet within fourteen (14) days of such request. Such meetings may occur telephonically or by video conference.

4.5. Should the Parties fail to resolve a dispute regarding alleged substantial noncompliance, the Parties shall engage in mediation. The Parties will make good faith efforts to initiate a mediation request within fourteen (14) days from the date that the Parties are unable to resolve a dispute regarding alleged substantial noncompliance.

4.6. Should the Parties fail to resolve, through mediation, any dispute regarding alleged substantial noncompliance, the Parties may file a motion with the Court seeking a

judicial resolution of the dispute. If the Court finds that any Party has not complied with the Settlement Agreement, it shall enter an order, but not an order of contempt, that is designed to achieve compliance and provide appropriate relief.

4.7. If a Party contends that another Party has not complied with an order entered by the Court upon a motion filed pursuant to the preceding Paragraph, the Party may, after reasonable notice to the other Party, move for further relief, but not an order of contempt, from the Court to obtain compliance with the Court's prior order.

## **5. RELEASES**

5.1. Upon the Effective Date of the Settlement Agreement, in consideration for the agreements by the Parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, all Class Representatives and Class Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, and assigns, shall hereby release and forever discharge all Released Parties from all Released Claims, and shall forever be barred and enjoined from initiating, continuing, filing, or otherwise prosecuting any Released Claim against any Released Party.

5.2. This Release shall apply whether or not any Class Member actively participated in the negotiation or execution of the Settlement Agreement.

5.3. Every Class Member shall be deemed to have knowingly and voluntarily waived, released, discharged, and dismissed the Released Claims.

5.4. The Parties acknowledge that the covenants and promises made by the Commonwealth constitute adequate consideration in exchange for this Release by the Class Representatives and Class Members.

5.5. Other than the Released Claims as defined herein, nothing in the Settlement Agreement shall be construed to bar any other claims by Class Representatives or Class Members, including but not limited to potential claims based on or arising out of events occurring after the date of class certification or claims of actual innocence.

5.6. No later than forty-five (45) days after the Effective Date, Class Counsel agree to file an amended complaint in the Federal Action voluntarily dismissing with prejudice all claims for relief, except any claims that relate to forfeitures of money or property from Class Members.

## **6. SETTLEMENT BENEFITS**

6.1. The Commonwealth shall cause to be deposited in the Refund Account amounts sufficient for the payment of the Presumptive Refund Amounts to all Class Members, as set forth in Section 8.1, and Final Refund Amounts to all Refund Amount Claimants, as set forth in Section 9.2.12.

6.2. The Refund Account shall be an interest-bearing bank account managed by the Settlement Administrator under the supervision of counsel for the Parties.

6.3. The Parties shall each identify an attorney representative to be provided monthly status reports from the Settlement Administrator, which shall include but not necessarily be limited to information regarding checks issued, amounts disbursed, Membership Claim Forms submitted, Membership Claims resolved, Refund Amount Claim Forms submitted, and Refund Amount Claims resolved.

6.4. The Settlement Administrator shall distribute the Presumptive Refund Amounts pursuant to the provisions below and any orders of this Court.

7. **ATTORNEYS' FEES, ADMINISTRATIVE EXPENSES, AND SERVICE AWARD PAYMENTS**

7.1. Attorneys' Fees

7.1.1. After an agreement was reached among the Parties as to all principal terms and conditions of the Settlement Agreement, the Parties entered arm's length discussions regarding Class Counsel's Attorneys' Fees.

7.1.2. The Commonwealth shall pay to Plaintiff's Counsel the aggregate sum of \$1,408,543.13 in full satisfaction of all claims against the Commonwealth for attorneys' fees and expenses for any legal services rendered in this Action. This fee award will be separately paid by the Commonwealth in addition to the Class Recovery.

7.1.3. This Agreement constitutes the full compromise and settlement of all claims that the Plaintiffs might now or in the future have against the Commonwealth for attorneys' fees and/or litigation costs related to this Lawsuit, including, without limitation, claims the Plaintiffs might have made for attorneys' fees or costs for activity occurring after the date of this Agreement to obtain court approval of this Agreement or to monitor the implementation of, and the Commonwealth's compliance with, this Agreement. This Agreement is not an admission or evidence that the Commonwealth is liable to the Plaintiffs for payment of attorneys' fees, costs or other expenses in, or related to, this Lawsuit, but rather represents only the settlement by the Parties of a disputed claim.

7.1.4. The Commonwealth will pay to Class Counsel the Attorneys' Fees identified in Paragraph 7.1.2. Prior to the payment of Attorneys' Fees, Class Counsel will provide the Commonwealth with Taxpayer Identification Numbers for Class Counsel and

executed Form W-9s. The Commonwealth shall provide Form 1099s to Class Counsel for the payments made to Class Counsel.

7.1.5. Class Counsel shall be solely responsible for each of their respective federal, state, or local tax liabilities and/or consequences of any payments made under this Agreement.

7.2. Administrative Expenses

7.2.1. The Commonwealth shall compensate the Settlement Administrator in accordance with a contract to be entered into between the Commonwealth and the Settlement Administrator. Such payments will be separately made by the Commonwealth in addition to the Class Recovery.

7.2.2. The Settlement Administrator will submit monthly invoices to the Parties, and the Commonwealth shall pay the invoices as provided by a contract to be entered into between the Commonwealth and the Settlement Administrator.

7.3. Service Awards

7.3.1. Through Class Counsel, each Class Representative has requested a Service Award of \$10,000 for their time, effort, expense, and service that they personally invested in this Action, to which the Commonwealth does not object. This Service Award shall be in addition to the Final Settlement Award each Class Representative shall receive as a Class Member.

7.3.2. The Commonwealth will pay to the Class Representatives all Service Awards, as approved by the Court. Prior to the payment of Service Awards, through Class Counsel, the Class Representatives will provide the Commonwealth with their Taxpayer Identification Numbers and executed Form W-9s. The Commonwealth shall

provide Form 1099s, through Class Counsel, to the Class Representatives for the Service Awards paid.

7.3.3. Class Representatives shall be solely responsible for each of their respective federal, state, or local tax liabilities and/or consequences of any payments made under this Settlement Agreement.

## **8. REFUND AMOUNTS TO CLASS MEMBERS**

### 8.1. Refund Amounts

8.1.1. A Class Member's Presumptive Refund Amount shall be the sum of three categories of data, as further set forth in Exhibit M:

8.1.1.1. the Class Member's Recorded Payments;

8.1.1.2. a reduction of 50% of the Class Member's Recorded Payments to the Trial Court (but not to the Massachusetts State Police, Parole Board, or Registry of Motor Vehicles), if the Class Member has a Surviving Conviction, which is intended by the Parties to represent those payments that could not form the basis for relief under *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), and/or *Commonwealth v. Martinez*, 480 Mass. 777 (2018); and

8.1.1.3. an addition of \$150, which is an amount intended by the Parties to represent payments that may not have been identified in the Recorded Payments.

8.1.2. Notwithstanding Paragraph 8.1.1 and the formula set forth at Exhibit M, if a Class Member asserted an individual motion or request for a refund to the Trial Court, the Massachusetts State Police, the Parole Board, or the Registry of Motor Vehicles for a payment in one or more of the Recoverable Categories set forth in Paragraph 2.28, such Class Member's Presumptive Refund Amount shall not include refunds of any payments

made by the Class Member to such department or the additional \$150 set forth in Paragraph 8.1.1.3.

8.1.3. Endorsement of the check by which the Presumptive Refund Amount is delivered to a Class Member will effect a waiver of further claims by such Class Member, as set forth in Paragraph 10.3.3 of this Settlement Agreement.

8.2. Deceased Class Members

8.2.1. If the Settlement Administrator is notified, through submission of the Estate Claim Form, a template of which is attached hereto at Exhibit I, within forty (40) days of the date of issue of a check for a Presumptive Refund Amount that a Class Member is deceased, the Settlement Administrator is authorized to reissue the check to the Class Member's estate if it receives the following within twelve (12) months of submission of the Estate Claim Form: (a) proof of the appointment of the Personal Representative of the estate of the deceased Class Member; and (b) proof of the identity of such Personal Representative.

9. **DISPUTE RESOLUTION FOR MEMBERSHIP CLAIMS AND REFUND AMOUNT CLAIMS**

9.1. Disputes as to Class Membership

9.1.1. A Membership Claimant may assert a claim that they should be included in the list of Class Members and be subject to the provisions of this Settlement Agreement.

9.1.2. The Membership Claim Form will be available on the Settlement Website and by calling the Settlement Call Center.

9.1.3. A Membership Claimant must submit a completed Membership Claim Form to the Settlement Administrator within six (6) months of the Court's final approval of this Settlement Agreement.

9.1.4. The Membership Claimant must submit the Membership Claim Form online through the Settlement Website, by email to the Settlement Administrator, or by mail to the Settlement Administrator.

9.1.5. Within fourteen (14) days of receiving a Membership Claim Form, the Settlement Administrator shall provide a copy of such Membership Claim Form to Class Counsel and Counsel for the Commonwealth, and shall request a statement from Counsel for the Commonwealth regarding the Commonwealth's position on the Membership Claim and, if the Commonwealth opposes the claim, any documentation supporting that opposition.

9.1.6. Within fourteen (14) days of receiving the Settlement Administrator's request for a statement pursuant to Paragraph 9.1.5, Counsel for the Commonwealth shall provide such statement and any documentation supporting any opposition to the Membership Claim. Within the same time period, Class Counsel may also make a submission to the Settlement Administrator regarding such Membership Claim.

9.1.7. Within twenty-one (21) days of receiving the Commonwealth's statement and Class Counsel's submission, if any, pursuant to Paragraph 9.1.6, the Settlement Administrator shall (a) resolve the Membership Claim by either (i) approving the Membership Claim if the Commonwealth does not oppose it, or (ii) determining the merits of the Membership Claim if the Commonwealth opposes it; and (b) notify the Membership Claimant, Counsel for the Commonwealth, and Class Counsel as to whether

or not class membership has been confirmed. Templates of such notices are attached hereto at Exhibits K and L.

9.1.8. Within thirty (30) days of approval of a Membership Claim, the Commonwealth shall identify the Presumptive Refund Amount due to such Class Member and transfer such amount to the Refund Account, and within fourteen (14) days, the Settlement Administrator shall disburse the Presumptive Refund Amount to such Class Member.

9.2. Disputes as to Refund Amounts

9.2.1. A Refund Amount Claimant may file a claim that their Presumptive Refund Amount is less than what they would have received had they filed an individual refund motion pursuant to *Commonwealth v. Martinez*, 480 Mass. 777 (2018).

9.2.2. The Refund Amount Claim Form will be available on the Settlement Website and by calling the Settlement Call Center.

9.2.3. In order to be eligible for the review of a Refund Amount Claim, a Refund Amount Claimant must: (a) refrain from depositing or cashing the check with the Presumptive Refund Amount; and (b) submit a completed Refund Amount Claim Form to the Settlement Administrator within forty (40) days of the mailing date of their Presumptive Refund Amount.

9.2.4. The Refund Amount Claimant must submit the Refund Amount Claim Form online through the Settlement Website, by email to the Settlement Administrator, or by mail to the Settlement Administrator.

9.2.5. Within thirty (30) days of receiving a Refund Amount Claim Form, the Settlement Administrator shall cancel issuance of the check to the Refund Amount

Claimant for the Presumptive Refund Amount and shall provide a copy of such Refund Amount Claim Form to Class Counsel and Counsel for the Commonwealth. Within the same time period, the Settlement Administrator shall also process the Refund Amount Claim by either: (a) reviewing and deciding the merits of the Refund Amount Claim, factoring in all available payment evidence; (b) referring the Refund Amount Claim for final resolution by the Arbiter and sending the Refund Amount Claim Form, with additional comment explaining the reason for the referral, and all available payment evidence to the Arbiter; or (c) requesting additional documentation from Counsel for the Commonwealth relating to the Refund Amount Claimant, the disposition of their criminal charges, and any Payment Records for the Refund Amount Claimant in the Recoverable Categories.

9.2.6. Within twenty-one (21) days of receiving a request from the Settlement Administrator for additional documentation pursuant to Paragraph 9.2.5(c), the Commonwealth shall either provide such documentation to the Settlement Administrator or inform the Settlement Administrator that it does not dispute the Refund Amount Claim. Within the same time period, Class Counsel may also make a submission to the Settlement Administrator regarding such Refund Amount Claim.

9.2.7. Within thirty (30) days of receiving the requested response from the Commonwealth pursuant to Paragraph 9.2.6, the Settlement Administrator shall either: (a) review and decide the merits of the Refund Amount Claim, factoring in all available payment evidence; or (b) refer the Refund Amount Claim for final resolution by the Arbiter and send the Refund Amount Claim Form and all available payment evidence to the Arbiter.

9.2.8. Should the Settlement Administrator review and decide the merits of a Refund Amount Claim without referral to the Arbiter, pursuant to Paragraph 9.2.5(a) or Paragraph 9.2.7(a), the Settlement Administrator shall send a letter informing the Refund Amount Claimant of the final decision. If the Refund Claim is approved, the Settlement Administrator shall send an Administrator Claim Approval Letter; if the Claim is denied, the Settlement Administrator shall send an Administrator Claim Denial Letter; and if it is denied in part, the Settlement Administrator shall send an Administrator Claim Partial Denial Letter, templates of which are set forth at Exhibits A, B, and C, respectively.

9.2.9. Should the Settlement Administrator refer the Refund Amount Claim for final resolution by the Arbiter, pursuant to Paragraph 9.2.5(b) or Paragraph 9.2.7(b), the Settlement Administrator shall send to the Refund Amount Claimant a Claim Referral Letter, a template of which is set forth at Exhibit G.

9.2.10. Within thirty (30) days of receiving a Refund Amount Claim Form from the Settlement Administrator, the Arbiter shall review and decide the merits of the Refund Amount Claim, based on all available payment evidence, and notify the Settlement Administrator of that decision.

9.2.11. Within fourteen (14) days of receiving a final decision by the Arbiter, the Settlement Administrator shall send a letter informing the Refund Amount Claimant of the final decision. If the Refund Amount Claim is approved, the Settlement Administrator shall send an Arbiter Claim Approval Letter; if the Claim is denied, the Settlement Administrator shall send an Arbiter Claim Denial Letter; and if it is denied in part, the Settlement Administrator shall send an Arbiter Claim Partial Denial Letter, templates of which are set forth at Exhibits D, E, and F, respectively.

9.2.12. Review of Refund Amount Claims shall be conducted and limited as follows:

9.2.12.1. The Settlement Administrator and/or Arbiter shall determine the amount that the Refund Amount Claimant would have received had the individual filed a refund motion or other request pursuant to *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), *Commonwealth v. Martinez*, 480 Mass. 777 (2018), and/or *Commonwealth v. Nieves*, 486 Mass. 1006 (2020) (authorizing refund of parole fees).

9.2.12.2. The amount described in Paragraph 9.2.12.1 shall be calculated as follows:

9.2.12.2.1. The Settlement Administrator and/or Arbiter shall only consider claims to refunds for and determine the amounts that constitute: (a) amounts paid by a Class Member; (b) upon and as a consequence of a Vacated Conviction; and (c) within the Recoverable Categories.

9.2.12.2.2. The Settlement Administrator and/or Arbiter shall only consider the Payment Records, the submissions of the Refund Amount Claimant, Counsel for the Commonwealth, and Class Counsel, as well as any assessments of the credibility of such submissions.

9.2.12.2.3. Neither the Settlement Administrator nor the Arbiter shall assess punitive fines or penalties against the Commonwealth, nor shall they award interest, costs, or fees that the Refund Amount Claimant incurred in connection with the Refund Amount Claim.

9.2.12.2.4. To the extent a Refund Amount Claimant asserted an individual refund claim prior to May 19, 2020 for a refund related to payments made in a Recoverable Category upon a Vacated Conviction, the Settlement Administrator and/or Arbiter shall make the following considerations:

9.2.12.2.4.1. If the Refund Amount Claimant submitted such motion or request with respect to the Trial Court, the Settlement Administrator and/or Arbiter may not consider claims to the refund of those Recoverable Categories set forth at Paragraphs 2.28.1 through 2.28.7;

9.2.12.2.4.2. If the Refund Amount Claimant submitted such motion or request with respect to the Massachusetts State Police, the Settlement Administrator and/or Arbiter may not consider claims to the refund of those Recoverable Categories set forth at Paragraph 2.28.8;

9.2.12.2.4.3. If the Refund Amount Claimant submitted such motion or request with respect to the Parole Board, the Settlement Administrator and/or Arbiter may not consider claims to the refund of those Recoverable Categories set forth at Paragraph 2.28.9; and

9.2.12.2.4.4. If the Refund Amount Claimant submitted such motion or request with respect to the Registry of Motor Vehicles, the Settlement Administrator and/or Arbiter may not

consider claims to the refund of those Recoverable Categories set forth at Paragraph 2.28.10.

9.2.13. If the amount set forth in Paragraph 9.2.12.2 is more than the Refund Amount Claimant's Presumptive Refund Amount, the amount set forth in Paragraph 9.2.12.2 shall constitute the Final Refund Amount, to which the Refund Amount Claimant shall be entitled.

9.2.14. If the amount set forth in Paragraph 9.2.12.2 is equal to or less than the Refund Amount Claimant's Presumptive Refund Amount, the Presumptive Refund Amount shall be deemed to be the Final Refund Amount, to which the Refund Amount Claimant shall be entitled.

9.2.15. All decisions of the Settlement Administrator and Arbiter are final, and no review of such decisions, including but not limited to judicial review, is available.

9.2.16. All Membership Claim Forms, all Refund Amount Claim Forms and supporting documentation, and all communications between the Settlement Administrator, Refund Amount Claimants and/or the Arbiter shall be copied to or otherwise made available to Class Counsel and Counsel for the Commonwealth.

## **10. SETTLEMENT ADMINISTRATOR'S DUTIES**

10.1. The Settlement Administrator shall:

10.1.1. transmit the Class Notice, by the means approved by the Court, to the Class Members;

10.1.2. establish the Settlement Website and Settlement Call Center;

10.1.3. publish notice in the media and manner as directed by the Parties;

10.1.4. arrange for and distribute Presumptive Refund Amounts to Class Members;

10.1.5. arrange for and distribute Final Refund Amounts to Class Members;

10.1.6. arrange for and distribute amounts from the Refund Account as set forth in Section 10.5.2;

10.1.7. maintain a list of Class Members who submitted individual motions or requests prior to May 19, 2020, with the Trial Court, the Massachusetts Parole Board, the Massachusetts Registry of Motor Vehicles, or the Massachusetts State Police, for the refunds of paid fees or exactions in a Recoverable Category;

10.1.8. provide the Parties, through their counsel, with monthly bills concerning and a final accounting of the Refund Account and all distributions therefrom;

10.1.9. maintain all records relating to the submission, processing, and final resolution of Membership Claims and Refund Amount Claims;

10.1.10. facilitate the resolution of Membership Claims and Refund Amount Claims; and

10.1.11. perform any other duties necessary to fulfill the foregoing responsibilities and any other responsibilities set forth in the Settlement Agreement.

## 10.2. Notice

10.2.1. The Parties intend to provide the Class Notice to each Class Member to the extent practicable.

10.2.2. In order to provide the best notice practicable, before any mailing of Class Notice, the Settlement Administrator shall:

10.2.2.1. run the list of all Class Members through the United States Postal Service's National Change of Address database ("NCOA"); and

10.2.2.2. perform address searches using public and proprietary electronic resources which collect their data from various sources such as utility records, property tax records, motor vehicle registration records (where allowed), and credit bureaus.

10.2.3. If any Class Notice is returned with a forwarding address, the Settlement Administrator will re-mail the Class Notice to the new address within two weeks of receiving the returned envelope. If any Class Notice is returned because the address of the recipient is no longer valid, i.e., the envelope is marked "Return to Sender," the Settlement Administrator shall perform a standard skip trace in an effort to ascertain the current address of the particular Class Member in question and, if such an address is ascertained, the Settlement Administrator shall re-send the Class Notice within two weeks of receiving the newly ascertained address; if no updated address is obtained for that Class Member, the Settlement Administrator shall send the Class Notice again to that Class Member's last known address. With respect to any envelope marked "Return to Sender," the Settlement Administrator shall also call any identified last known telephone numbers (and telephone numbers updated through public and proprietary databases) of the Class Member for the purpose of attempting to obtain the Class Member's current address.

10.2.4. At the conclusion of the process described in Paragraphs 10.2.2 and 10.2.3, the Settlement Administrator shall compile a list of Class Members with unknown addresses and provide this list to Class Counsel and Counsel for the Commonwealth.

10.2.5. Upon receipt of the list of Class Members with unknown addresses, Counsel for the Commonwealth shall request disclosure of the identities and mailing addresses of such individuals from the following:

10.2.5.1. each county House of Correction (“HOC”) and the Department of Correction (“DOC”), to the extent any such Class Members are currently housed in their custody;

10.2.5.2. the Massachusetts Department of Mental Health (“DMH”) to extent such Class Members are admitted to a DMH facility; and

10.2.5.3. MassHealth to the extent such Class Members are receiving MassHealth services.

10.2.6. Counsel for the Commonwealth shall provide information received pursuant to Paragraph 10.2.5 to the Settlement Administrator upon receipt.

10.2.7. At least ten (10) days prior to the fairness hearing, the Settlement Administrator shall provide the Parties, through their counsel, with a list of all Class Members for whom notices were returned as undeliverable and for whom efforts to obtain valid, current addresses failed.

10.2.8. At least five (5) days prior to the fairness hearing, Class Counsel shall provide to this Court a declaration by the Settlement Administrator of due diligence and proof of transmission, by whatever means have been approved by the Court, of the Class Notice.

10.3. Procedure for Distribution of Presumptive Refund Amounts

10.3.1. Class Counsel and Counsel for the Commonwealth shall provide the Settlement Administrator with a list of Class Members and the Presumptive Refund Amounts to be paid to each Class Member.

10.3.2. No later than thirty (30) days after the Commonwealth deposits funds into the Refund Account, the Settlement Administrator shall mail checks with the Presumptive Refund Amounts to the Class Members to whom such payments are due.

10.3.3. All checks distributed by the Settlement Administrator for Presumptive Refund Amounts to Class Members must indicate, in bold, words to the effect that “the check must be cashed within one (1) year or it will become void.” The back of each check will contain a legend stating: “By endorsing this check and accepting payment, I agree that I have waived any right to contest the Presumptive Refund Amount due to me under the Final Approval Order.”

10.4. Procedure for Distribution of Final Refund Amounts

10.4.1. Every 15th day of the month, the Settlement Administrator shall notify Counsel for the Commonwealth of the Final Refund Amounts that were determined in the previous calendar month pursuant to Section 9.2, and shall identify the difference between the Final Refund Amounts and the Presumptive Refund Amounts.

10.4.2. Within thirty (30) days of the notification set forth in the preceding Paragraph, the Commonwealth shall cause to be deposited in the Refund Account funds sufficient for the payment of the Final Refund Amounts to the Class Members.

10.4.3. Within thirty (30) days of the deposit into the Refund Account of the funds identified in the preceding Paragraph, the Settlement Administrator shall issue

checks for the Final Refund Amounts to those Refund Amount Claimants previously identified pursuant to Section 9.2. All checks distributed by the Settlement Administrator for Final Refund Amounts to Class Members must indicate, in bold, words to the effect that “the check must be cashed within ninety (90) days or it will become void.”

10.5. Cy Pres

10.5.1. The Parties recognize that there likely will be some checks issued by the Settlement Administrator that will not be delivered successfully, or that will not be cashed within one year, and therefore will become void as set forth in Paragraph 10.4.3 of this Agreement.

10.5.2. The Parties agree that the amounts remaining in the Refund Account as a result of such undelivered and uncashed checks shall be distributed to the following organizations as Cy Pres recipients at the following proportional distribution: Community Legal Aid, Inc. (forty-five (45) percent); the Transformational Prison Project (thirty-five (35) percent); and the Tufts Education Reentry Network program (“MyTern”) (twenty (20) percent).

10.5.3. The distribution of funds to the Cy Pres recipients pursuant to Paragraph 10.5.2 shall be conditioned upon the recipients using such funds only to support the organizations identified in Paragraph 10.5.2 and only for charitable purposes, and may be conditioned upon compliance with any additional terms as may be set forth by the Parties prior to such distribution that further the purpose of the Cy Pres distribution. If it becomes improper or impossible for a Cy Pres recipient to comply with these conditions, the Cy Pres recipient must inform Class Counsel and Counsel for the

Commonwealth of this development and return any unspent funds to the Settlement Administrator so that the funds may be reallocated to other Cy Pres recipients.

10.5.4. If the amount of the distribution to a Cy Pres recipient exceeds the amount that can be used by the Cy Pres recipient in conformity with the conditions set forth in Paragraph 10.5.3, the Parties may reallocate such excess amounts to other Cy Pres recipients.

## 11. **CLASS COUNSEL'S DUTIES**

11.1. Promptly upon execution of the Settlement Agreement by Class Counsel and Counsel for the Commonwealth, the Parties shall move this Court for a Preliminary Approval Order:

11.1.1. granting preliminary approval of the Settlement Agreement;

11.1.2. approving as to form and content the proposed Class Notice;

11.1.3. directing the mailing of the Class Notice by first-class U.S. mail to the Class Members;

11.1.4. setting deadlines for objecting to the Settlement Agreement; and

11.1.5. scheduling a fairness hearing as soon as practicable to determine whether the Settlement Agreement, including the procedure for payment of Presumptive Refund Amounts and Final Refund Amounts, the payment of Service Awards, and the payment of Attorneys' Fees, should be finally approved as fair, reasonable, and adequate.

11.2. Following the Preliminary Approval Order, and no later than fourteen (14) days prior to the date set by the Court for the fairness hearing, Class Counsel shall move this Court for a Final Approval Order:

11.2.1. granting final approval to the Settlement Agreement, and adjudging its terms to be fair, reasonable, and adequate;

11.2.2. granting final approval for the process for payment of Presumptive Refund Amounts and Final Refund Amounts, the payment of Service Awards, and the payment of Attorneys' Fees; and

11.2.3. dismissing this Action with prejudice.

## **12. OBJECTIONS**

12.1. Any Class Member who objects to the Settlement Agreement must submit their objection in writing, including a detailed description of the basis of the objection(s), by U.S. mail to Class Counsel at Fick & Marx LLP, 24 Federal Street, 4th Floor, Boston, MA 02110.

12.2. Any objection must be postmarked within thirty (30) days of the mailing of the Class Notice by the Settlement Administrator, or within such other time period, or pursuant to such other procedures, as may be set by the Court.

12.3. Class Counsel shall compile all timely objections and, within forty-five (45) days of the mailing of the Class Notice by the Settlement Administrator, submit those objections to the Court, with copies served on the Settlement Administrator and Counsel for the Commonwealth.

12.4. Class Members who fail to make objections in the manner specified above shall be deemed to have waived, and shall be foreclosed from making, any objections to the Settlement Agreement.

12.5. Class Members who have not timely filed and served written objections in the manner specified above may not appear at the fairness hearing for the purpose of objecting to the Settlement Agreement.

12.6. Any lawyer who intends to appear for a Class Member for the purpose of making objections must also file a Notice of Appearance with the Court by the objection deadline, with copies served on the Settlement Administrator, Class Counsel, and Counsel for the Commonwealth.

12.7. Class Members who submit objections may withdraw their objections by notifying Class Counsel in writing.

**13. PARTIES' AUTHORITY**

13.1. The Parties hereby represent that their signatories below are fully authorized to enter into the Settlement Agreement and to bind the Parties and the Class Members to the terms and conditions hereof, subject to this Court's approval.

13.2. The Parties acknowledge that they have been represented by competent, experienced counsel in all negotiations that preceded the execution of the Settlement Agreement and that the Settlement Agreement is made with the consent and advice of counsel who have jointly prepared the Settlement Agreement.

13.3. The Parties acknowledge that they are participating voluntarily and knowingly in the Settlement Agreement in exchange for the consideration described herein and that they were provided with a reasonable period of time within which to consider the Settlement Agreement.

**14. MODIFICATION**

14.1. The Settlement Agreement and its exhibits and attachments may not be terminated or substantively changed, altered, or modified, except in writing by the Parties, and subject to this Court's approval; provided, however, the Parties may by agreement effect such amendments, modifications, or expansions of this Settlement Agreement and its implementing documents (including the exhibits hereto) without notice to or approval by the Court if such

changes are consistent with the Court's Final Approval Order and do not unreasonably limit the rights of Class Members under this Settlement Agreement.

**15. ENTIRE AGREEMENT AND PRELIMINARY APPROVAL ORDER**

15.1. The Settlement Agreement and its exhibits and attachments, subject to this Court's approval, constitute the entire agreement among the Parties concerning the subject matter hereof.

15.2. The Settlement Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any Party, regardless of who drafted or who was principally responsible for drafting the Settlement Agreement or any specific term or condition thereof. No extrinsic oral or written representations or terms shall modify, vary, or contradict the terms or conditions of the Settlement Agreement except as provided in Section 14.1.

15.3. In the event of any conflict between the Settlement Agreement and any other document or information (other than an order of the Court), the Parties intend that the Settlement Agreement shall be controlling.

**16. CONFIDENTIALITY**

16.1. Counsel for the Parties shall maintain in confidence all drafts of this Settlement Agreement, as well as all settlement communications and negotiations, other than terms and conditions memorialized herein.

16.2. Nothing in this Agreement shall preclude the Parties or their counsel from posting publicly available information about this Action (including but not limited to the Complaint, Class Notice, and Settlement Agreement) on their websites or other publicly available media sources or making statements consistent with such publicly available information.

**17. CHOICE OF LAW AND JURISDICTION**

17.1. The Settlement Agreement and the exhibits attached hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the Commonwealth of Massachusetts, and the rights and obligations of the Parties to the Settlement Agreement shall be subject to, governed by, construed, enforced, and administered in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to any choice-of-law principles.

17.2. This Court, and any appellate court from which appeals of this Court's decisions may properly be brought, shall retain jurisdiction of the implementation and enforcement of the terms of the Settlement Agreement, and all Parties and their counsel shall submit to the exclusive jurisdiction of this Court for purposes of implementing and enforcing the Settlement Agreement.

**18. COUNTERPARTS**

18.1. The Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties and the Class.

**19. VOIDING THE SETTLEMENT AGREEMENT AND PRELIMINARY APPROVAL ORDER**

19.1. In the event the Settlement Agreement, or any amended version, does not obtain this Court's approval for any reason, the Settlement Agreement shall be null and void in its entirety, unless expressly agreed in writing by all Parties. In that event, the Parties and the Class shall be deemed to have returned to the status quo in this Action as it was immediately prior to the execution of the Settlement Agreement.

20. FAIRNESS HEARING

20.1. A fairness hearing shall be held at a date and time to be set by this Court, at which time the Court will hear argument as to whether the Court should approve the Settlement Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Stipulation and Settlement Agreement as of the date indicated below;

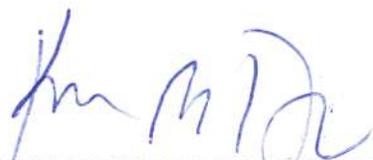
Dated: 1 June, 2022

  
\_\_\_\_\_  
LUKE RYAN, BBO#664999  
SASSON, TURNBULL, RYAN & HOOSE  
100 Main Street, Third Floor  
Northampton, MA 01060  
(413) 586-4800  
[lryan@strhlaw.com](mailto:lryan@strhlaw.com)

*Counsel for Class Representatives  
and Class Members*

  
\_\_\_\_\_  
WILLIAM FICK, BBO# 650562  
DANIEL MARX, BBO# 674523  
FICK & MARX, LLP  
24 Federal Street, 4<sup>th</sup> Floor  
Boston, MA 02110  
(857) 321-8360  
[wfick@fickmarx.com](mailto:wfick@fickmarx.com)  
[dmarx@fickmarx.com](mailto:dmarx@fickmarx.com)

*Counsel for Class Representatives  
and Class Members*

  
\_\_\_\_\_  
ANNE STERMAN, BBO# 650426  
KATHERINE B. DIRKS, BBO# 673674  
Assistant Attorneys General  
Office of the Attorney General  
Government Bureau/Trial Division  
One Ashburton Place, Room 1813  
Boston, MA 02108  
(617) 963-2524 (Sterman)  
(617) 963-2277 (Dirks)  
[anne.sterman@mass.gov](mailto:anne.sterman@mass.gov)  
[katherine.dirks@mass.gov](mailto:katherine.dirks@mass.gov)

*Counsel for the Commonwealth*

Exhibit A  
to Settlement Agreement

***Foster et al. v. Commonwealth of Massachusetts* – CLASS ACTION**

**ADMINISTRATOR CLAIM APPROVAL LETTER**

[Date]

[Claimant Name]

[Claimant Address]

[ID#]

Re: **Administrator's Resolution of Refund Amount Claim**

Dear [Claimant]:

Thank you for submitting a Refund Amount Claim, seeking additional refund amounts as part of the class action settlement in *Foster et al. v. Commonwealth of Massachusetts*, Dkt. No. 1984CV03373C (Mass. Sup. Ct.). Your Claim has been approved, and you will be receiving the following relief:

A Final Refund Amount of [APPROVED RELIEF]

Please note that all decisions of the Administrator approving a Refund Amount Claim are final. The payment of the amount above will be made in approximately the next 60 days and will be sent by check to the address listed above. The check that contained the initial Presumptive Refund Amount challenged in your Refund Amount Claim has been cancelled.

If you have questions regarding this process, please visit [website] or call the Settlement Call Center at [telephone number].

Sincerely,

[Settlement Administrator]

Exhibit B  
to Settlement Agreement

***Foster et al. v. Commonwealth of Massachusetts* – CLASS ACTION**

**ADMINISTRATOR CLAIM DENIAL LETTER**

[Date]

[Claimant Name]

[Claimant Address]

[ID#]

Re: **Administrator's Resolution of Refund Amount Claim**

Dear [Claimant]:

Thank you for submitting a Refund Amount Claim, seeking additional refund amounts as part of the class action settlement in *Foster et al. v. Commonwealth of Massachusetts*, Dkt. No. 1984CV03373C (Mass. Sup. Ct.). After a thorough review of your Claim, it has been determined that your Claim does not meet the criteria for further relief under the settlement, and therefore your Claim has been denied.

Please note that all decisions of the Administrator denying a Refund Amount Claim are final. Because the check that contained the initial Presumptive Refund Amount challenged in your Refund Amount Claim was cancelled, a new check containing your refund amount will be reissued to you. The payment of this amount will be made in approximately the next 60 days and will be sent by check to the address listed above.

If you have questions regarding this process, please visit [website] or call the Settlement Call Center at [telephone number].

Sincerely,

[Settlement Administrator]

# Exhibit C to Settlement Agreement

***Foster et al. v. Commonwealth of Massachusetts* – CLASS ACTION**

**ADMINISTRATOR CLAIM PARTIAL DENIAL LETTER**

[Date]

[Claimant Name]

[Claimant Address]

[ID#]

Re: **Administrator's Resolution of Refund Amount Claim**

Dear [Claimant]:

Thank you for submitting a Refund Amount Claim, seeking additional refund amounts as part of the class action settlement in *Foster et al. v. Commonwealth of Massachusetts*, Dkt. No. 1984CV03373C (Mass. Sup. Ct.). After a thorough review of your Claim, it has been determined that part of your Claim is approved and part of your Claim is denied. For the approved portion, you will be receiving the following relief:

[APPROVED RELIEF]

It has also been determined that your Claim for [REQUESTED RELIEF] does not meet the criteria for relief under the settlement, and therefore this portion of your Claim has been denied.

Please note that all decisions of the Administrator approving or denying a Refund Amount Claim are final. A new check containing the corrected refund amount (including the additional refund amount approved in this letter) will be issued to you. The payment of this amount will be made in approximately the next 60 days and will be sent by check to the address listed above. The check that contained the initial Presumptive Refund Amount challenged in your Refund Amount Claim has been cancelled.

If you have questions regarding this process, please visit [website] or call the Settlement Call Center at [telephone number].

Sincerely,

[Settlement Administrator]

# Exhibit D to Settlement Agreement

*Foster et al. v. Commonwealth of Massachusetts* – CLASS ACTION

**ARBITER CLAIM APPROVAL LETTER**

[Date]

[Claimant Name]  
[Claimant Address]  
[ID#]

Re: **Arbiter's Resolution of Refund Amount Claim**

Dear [Claimant]:

Thank you for submitting your Refund Amount Claim as part of the class action settlement in *Foster et al. v. Commonwealth of Massachusetts*, Dkt. No. 1984CV03373C (Mass. Sup. Ct.). After further consultation with the Arbiter, your claim has been approved.

You will be receiving the following relief:

A Final Refund Amount of [APPROVED RELIEF].

Please note that all decisions of the Arbiter are final. The payment of the amount above will be made in approximately the next 60 days and will be sent by check to the address listed above. The check that contained the initial Presumptive Refund Amount challenged in your Refund Amount Claim has been cancelled.

If you have questions regarding this process, please visit [website] or call the Settlement Call Center at [telephone number].

Sincerely,

[Settlement Administrator]

Exhibit E  
to Settlement Agreement

*Foster et al. v. Commonwealth of Massachusetts* – CLASS ACTION

ARBITER CLAIM DENIAL LETTER

[Date]

[Claimant Name]

[Claimant Address]

[ID#]

Re: **Arbiter's Resolution of Refund Amount Claim**

Dear [Claimant]:

Thank you for submitting your appeal regarding your Refund Claim as part of the class action settlement in *Foster et al. v. Commonwealth of Massachusetts*, Dkt. No. 1984CV03373C (Mass. Sup. Ct.). Unfortunately, after a thorough review of your Claim by the Administrator and the Arbiter, it has been determined that your Claim does not meet the criteria for relief under the Settlement, and your Claim has been denied. All decisions of the Arbiter are final.

Because the check that contained the initial Presumptive Refund Amount challenged in your Refund Amount Claim was cancelled, a new check containing your refund amount will be reissued to you. The payment of this amount will be made in approximately the next 60 days and will be sent by check to the address listed above.

If you have questions regarding this process, please visit [website] or call the Settlement Call Center at [telephone number].

Sincerely,

[Settlement Administrator]

Exhibit F  
to Settlement Agreement

*Foster et al. v. Commonwealth of Massachusetts* – CLASS ACTION

ARBITER CLAIM PARTIAL DENIAL LETTER

[Date]

[Claimant Name]  
[Claimant Address]  
[ID#]

Re: **Arbiter's Resolution of Refund Amount Claim**

Dear [Claimant]:

Thank you for submitting your appeal regarding your Refund Claim as part of the class action settlement in *Foster et al. v. Commonwealth of Massachusetts*, Dkt. No. 1984CV03373C (Mass. Sup. Ct.). The Arbiter has reviewed your Claim and determined that it should be approved in part, and you will receive the following relief:

[APPROVED RELIEF].

The Arbiter has also determined that your Claim for [DENIED RELIEF] does not meet the criteria for relief under the Settlement, and that portion of your Claim has been denied. All decisions of the Arbiter are final.

A new check containing the corrected refund amount (including the additional refund amount approved in this letter) will be issued to you. The payment of this amount will be made in approximately the next 60 days and will be sent by check to the address listed above. The check that contained the initial Presumptive Refund Amount challenged in your Refund Amount Claim has been cancelled.

If you have questions regarding this process, please visit [website] or call the Settlement Call Center at [telephone number].

Sincerely,

[Settlement Administrator]

# Exhibit G to Settlement Agreement

***Foster et al. v. Commonwealth of Massachusetts* – CLASS ACTION**

**REFUND CLAIM REFERRAL LETTER**

[Date]

[Claimant Name]

[Claimant Address]

[ID#]

**Re: Refund Claim Referral for Further Review**

Dear [Claimant]:

Thank you for submitting a Refund Amount Claim, seeking additional refund amounts as part of the class action settlement in *Foster et al. v. Commonwealth of Massachusetts*, Dkt. No. 1984CV03373C (Mass. Sup. Ct.). After a thorough review of your Claim, it has been determined that the Administrator cannot complete review your Claim without further fact-finding. The Administrator has referred your Claim to an Arbiter for further review and resolution.

The Arbiter may ask you to provide additional information regarding your Claim. All decisions of the Arbiter are final.

If you have questions regarding this process, please visit [website] or call the Settlement Call Center at [telephone number].

Sincerely,

[Settlement Administrator]

# Exhibit H to Settlement Agreement

**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**

**BASIC INFORMATION**

1. Why is there a notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a Settlement?

**WHO IS PART OF THE SETTLEMENT**

5. Who is included in the Settlement?
6. What if I am not sure whether I am included in the Settlement?
7. What if I do not want to be part of the Class?

**THE SETTLEMENT BENEFITS**

8. What does the Settlement provide?

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

9. How do I participate in the Settlement? Do I have to make a claim?
10. Will I receive a payment? How much will my payment be?
11. When will I receive my payment?
12. What rights must Class Members give up?

#### **HOW TO RECEIVE A PAYMENT**

13. How can I receive a payment?

#### **THE LAWYERS REPRESENTING YOU**

14. Do I have a lawyer in the case?
15. How will the lawyers be paid?

#### **OBJECTING TO THE SETTLEMENT**

16. How do I tell the Court if I do not like the Settlement?
17. What is the difference between objecting and asking to be excluded?

#### **THE FAIRNESS HEARING**

18. When and where will the Court decide whether to approve the Settlement?
19. Do I have to attend the hearing?
20. May I speak at the hearing?

#### **GETTING MORE INFORMATION**

21. How do I get more information?

### **BASIC INFORMATION**

1. Why is there a notice?
---------------------------

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.

---

<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)

# Exhibit I to Settlement Agreement

***Foster et al. v. Commonwealth Class Action***  
**Estate Claim Form**

---

This form pertains to the class action, *Foster et al. v. Commonwealth*, Civil No. 1984CV03372 (Suffolk Superior Court). You should complete this form if you: (1) are aware that a class member of the class action is deceased (“Deceased Class Member”); and (2) are either a Personal Representative of the estate of the Deceased Class Member, have applied to become a Personal representative of the estate of a Deceased Class Member, or anticipate applying to become or a Personal Representative of the estate of the Deceased Class Member.

Personal Representative. A Personal Representative is a person appointed by the court to collect, manage, and transfer estate property to the devisees or heirs of a deceased Class Member.

You must provide the information set forth below and mail the completed form to the Settlement Administrator listed below, postmarked no later than forty (40) days after the initial issuance of the refund check to the Deceased Class Member pursuant to the settlement agreement of this class action.

You should send your completed form to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please note: a Final Refund Amount that is due to a Deceased Class Member will be paid to only ONE Personal Representative.**

If you have questions about this form or need assistance in completing it, you may contact the Settlement Administrator: [phone number, email address, hours].

For further information regarding this class action, please visit [website] or call [phone number].

---

**PART A: Your Identification**

Your Name	
Your Date of Birth	
Your Address	
Your Phone Number	

Your Email Address	
Your Relationship to the Deceased Class Member  (check <b>only one</b> )	<input type="checkbox"/> I am a Personal Representative of Deceased Class Member's estate.  <input type="checkbox"/> I have a pending application to become a Personal Representative of the Deceased class Member's estate.  <input type="checkbox"/> I intend to submit an application to become a Personal Representative of the Deceased Class Member's estate.

**PART B: The Deceased Class Member's Identification**

The Deceased Class Member's Name	
The Deceased Class Member's Date of Birth	
The Deceased Class Member's Date of Death	
The Deceased Class Member's Last Address	

**PART C: Other Information and Requested Supporting Documents**

In order to process a claim on behalf of a Deceased Class Member, the Settlement Administrator must receive copies of documents (such as a will, judgment, decree, or other probate documents) that help establish the identity of the Personal Representative of the estate of a Deceased Class Member. Do not send original documents.

Please indicate:

- that you have included copies of documents (such as a will, judgment, decree, or other probate documents) that help establish the identity of the Personal Representative of the estate of a Deceased Class Member (please do not send original documents),
- OR** that you need additional time to collect such documents for the following reasons:

---



---



---

**PART D: Authorization, Disclaimer, and Attestation**

I hereby authorize the Settlement Administrator to process the data and documents referenced in and/or attached to this Form, including sensitive data. This information is not to be used for reasons other than the settlement of this class action.

I understand that the submission of this Form does not in any way ensure that the estate of the Deceased Class Member will receive a payment from the settlement of this class action.

I understand the penalties for perjury and I swear that the above statements are true to the best of my knowledge.

SIGNATURE: \_\_\_\_\_

DATE SIGNED: \_\_\_ / \_\_\_ / \_\_\_

Exhibit J  
to Settlement Agreement

*Foster et al. v. Commonwealth of Massachusetts* – CLASS ACTION

MEMBERSHIP CLAIM APPROVAL LETTER

[Date]

[Claimant Name]  
[Claimant Address]  
[ID#]

Re: **Class Membership Claim**

Dear [Claimant]:

Thank you for submitting a Class Membership Claim as part of the class action settlement in *Foster et al. v. Commonwealth of Massachusetts*, Dkt. No. 1984CV03373C (Mass. Sup. Ct.). Your Claim has been approved. The payment of your Presumptive Refund Amount will be made in approximately the next 60 days and will be sent by check to the address listed above.

If you have questions regarding this process, please visit [website] or call the Settlement Call Center at [telephone number].

Sincerely,

[Settlement Administrator]

# Exhibit K to Settlement Agreement

*Foster et al. v. Commonwealth of Massachusetts* – CLASS ACTION

MEMBERSHIP CLAIM DENIAL LETTER

[Date]

[Claimant Name]  
[Claimant Address]  
[ID#]

Re: **Class Membership Claim**

Dear [Claimant]:

Thank you for submitting a Class Membership Claim as part of the class action settlement in *Foster et al. v. Commonwealth of Massachusetts*, Dkt. No. 1984CV03373C (Mass. Sup. Ct.). After a thorough review of your Claim, it has been determined that your Claim does not meet the criteria for relief under the settlement, and therefore your Claim has been denied.

Please note that all decisions of the Administrator are final. If you have questions regarding this process, please visit [website] or call the Settlement Call Center at [telephone number].

Sincerely,

[Settlement Administrator]

Exhibit L  
to Settlement Agreement

***Foster et al. v. Commonwealth Class Action***  
**Membership Claim Form**

---

**Instructions**

This form pertains to the class action, *Foster et al. v. Commonwealth*, Dkt. No. 1984CV03372 (Mass. Sup. Ct.). The class in this case consists of individuals: (a) who were convicted of state drug offenses; and (b) whose convictions of such state drug offenses have, as of May 19, 2020, 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. You should complete this form only if you are a member of this class but have not received a check as part of the settlement of this litigation.

Please complete each of the sections below and provide information regarding you and your criminal case(s).

For further information regarding this class action and the refunds that are available to you, please visit [website] or call [phone number].

If you have questions about this form or need assistance in completing it, you may contact the Settlement Administrator: [phone number, email address, hours].

---

**PART A: Identification** *(complete as many fields as you can)*

Name	
Date of Birth	
Address	
Phone Number	
Email Address	
Criminal Docket Number	
Court Location (example: Suffolk County)	
Court Type (example: District Court)	

INTERPRETER/TRANSLATION SERVICES:

- I request the assistance of a language interpreter or translator to complete this form. The language requested is \_\_\_\_\_. (Note: There is no charge to you for interpreter or translation services.)

**PART B: Why I Am Owed Money**

- I am eligible for a refund amount because:
1. I am a member of the *Foster v. Commonwealth* class; and
  2. No check was issued to me as part of the settlement of this litigation.

Please provide a written explanation of the reasons you think your exclusion from the *Foster v. Commonwealth* class was in error. Please attach any documentary evidence in support of your membership claim (such as court dockets, correspondence from the Supreme Judicial Court notifying you of the dismissal of your conviction).

---

---

---

Are documents attached to support this membership claim?  Yes  No

**PART C: Attestation**

I understand the penalties for perjury and I swear that the above statements are true to the best of my knowledge.

SIGNATURE: \_\_\_\_\_

DATE SIGNED: \_\_\_/\_\_\_/\_\_\_

Exhibit M  
to Settlement Agreement

### PRESUMPTIVE REFUND AMOUNT FORMULA

To determine the Presumptive Refund Amounts for class members, the Settlement Administrator shall utilize the following five-step process: (1) calculate the presumptive payments made by the class member for Trial Court exactions; (2) reduce that figure by 50% in cases with surviving convictions; (3) calculate the presumptive payments made by the class member for non-Trial Court exactions; (4) add the total of presumptive payments of Trial Court exactions (minus the 50% reduction in cases with surviving convictions) to the total of presumptive payments of non-Trial Court exactions; and (5) increase that sum by \$150.

**Step One:** To create the Step One Total, add presumptive payments for the following seven Trial Court exactions: (1) victim witness fees; (2) probation fees; (3) court costs; (4) drug analysis fees; (5) fines/sur fines; (6) post-conviction GPS monitoring fees; and (7) restitution. If, however, the class member submitted an individual motion or request prior to May 19, 2020 for a refund of Trial Court exactions, the Step One Total shall be zero.

<b>Trial Court Exactions</b>	<b>Presumptive Payments</b>
Victim-Witness Fees	
Probation Fees	
Court Costs	
Drug Analysis Fees	
Fines/Sur fines	
GPS Monitoring Fees	
Restitution	
<b>Step One Total</b>	

**Step Two:** Determine whether the class member's docket contains any "surviving convictions," *i.e.*, charges which resulted in adverse dispositions for class members that were not vacated and dismissed as a result of Dookhan's or Farak's misconduct but that would have resulted in the imposition of the same (or similar) Trial Court exactions. For purposes of Step Two, the following dispositions constitute surviving convictions:

- ADJUDICATED DELINQUENT
- ADMIT TO SUFFICIENT FACTS
- CONTINUED WITHOUT A FINDING
- CONTINUED WITHOUT A FINDING - 24D PROGRAM
- DELINQUENT
- DISMISSED - AFTER CONTINUANCE WITHOUT A FINDING
- FOUND TO BE A YOUTHFUL OFFENDER
- GUILTY
- GUILTY - BENCH FINDING
- GUILTY - BENCH FINDING LESSER INCLUDED OFFENSE
- GUILTY – PLEA
- GUILTY - PROBATION VIOLATION FOUND

- GUILTY FINDING
- GUILTY FINDING - LESSER INCLUDED
- GUILTY OF LESSER INCLUDED OFFENSE
- GUILTY PLEA
- GUILTY PLEA - 24D PROGRAM
- GUILTY PLEA - AGREED UPON
- GUILTY PLEA - AGREED UPON (LESSER OFFENSE)
- GUILTY PLEA - LESSER INCLUDED
- GUILTY VERDICT
- GUILTY VERDICT - LESSER INCLUDED
- JURY RETURNS VERDICT OF GUILTY
- REVOKED DISP. - AFTER MOTION HEARING
- TRANSFERRED OUT FOR GUILTY PLEA (MRCRP 37 {A})

For purposes of Step Two, the following dispositions **DO NOT** constitute surviving convictions:

- ADJUDICATED NOT DELINQUENT
- CONVERSION
- DENIED - CHARGE AMENDED
- DISMISSED
- DISMISSED - ACCORD & SATISFACTION
- DISMISSED - AFTER PRETRIAL PROBATION
- DISMISSED - DEFENDANT DECEASED
- DISMISSED - DEFENDANT INDICTED
- DISMISSED - LACK OF PROSECUTION
- DISMISSED - PRETRIAL DIVERSION
- DISMISSED - REQUEST OF COMMONWEALTH
- DISMISSED - REQUEST OF VICTIM
- DISMISSED - SUBSTITUTE COMPLAINT ISSUED
- DISMISSED - WITH PREJUDICE
- DISMISSED - WITHOUT PREJUDICE
- DISMISSED AT REQUEST OF COMMONWEALTH
- DISMISSED DUE TO JP LAB ANALYSIS
- DISPOSITION VACATED AFTER SJC REVERSAL
- DISPOSITION VACATED, GUILTY PLEA WITHDRAWN
- FILED - GUILTY BENCH FINDING
- FILED - GUILTY FINDING
- FILED - GUILTY PLEA
- FILED - GUILTY VERDICT
- FILED - NO PLEA CHANGE
- FILED - WITHOUT A FINDING
- FILED WITH CONSENT OF COMMONWEALTH AND DEFENDANT

- FOUND NOT RESPONSIBLE BY JUDGE
- JURY RETURNS VERDICT OF NOT GUILTY
- JURY TRIAL CLAIMED
- NO PROBABLE CAUSE FOUND
- NOLLE PROS
- NOLLE PROSEQUI
- NOLLE PROSEQUI - DEFENDANT INDICTED
- NOLLE PROSEQUI PRIOR/DURING JP LAB COURT REVIEW
- NOT DELINQUENT
- NOT GUILTY
- NOT GUILTY - BENCH FINDING
- NOT GUILTY FINDING
- NOT GUILTY VERDICT
- NOT RESPONSIBLE
- NOT RESPONSIBLE UNDER G.L. C. 277, §70C
- PRETRIAL PROBATION AS DISPOSITION
- PROBABLE CAUSE FOUND
- RESPONSIBLE
- RESPONSIBLE UNDER G.L. C. 277 §70C
- TO BE DISMISSED UPON PAYMENT
- TRANSFERRED OUT FOR TRIAL (MRCRP 37 {B})
- TRANSFERRED TO ANOTHER COURT
- VACATED & DISMISSED WITH PREJUDICE (SJC ORDER – AM)
- VACATED & DISMISSED WITH PREJUDICE (SJC ORDER)

For dockets with surviving convictions, calculate the Step Two Total by dividing Step One Total in half. For example, if a docket indicates presumptive payments of \$50 for the victim-witness fee and \$390 in probation supervision fees, the Step One Total would be \$440. If that same docket revealed a surviving conviction, the Step Two Total would be \$220.

For dockets with no surviving convictions, the Step Two Total is the same as the Step One Total.

	<b>Dockets with No Surviving Convictions</b>	<b>Dockets with at Least One Surviving Conviction</b>
<b>Step Two Total</b>	100% of Step One Total	50% of Step One Total

**Step Three:** To determine the Step Three Total, add together presumptive payments for these three non-Trial Court exactions: (1) parole supervision fees; (2) DNA collection fee; and (3) driver’s license reinstatement fee. If, however, the class member submitted an individual motion or request prior to May 19, 2020 for a refund of any such fees, the Step Three Total shall exclude amounts for any such fees.

<b>Non-Trial Court Exactions</b>	<b>Presumptive Payments</b>
Parole Supervision Fees	
DNA Collection Fee	
Driver's License Reinstatement Fee	
<b>Step Three Total</b>	

**Step Four:** Calculate the Step Four Total by adding Step Two Total and the Step Three Total.

Step Two Total + Step Three Total = Step Four Total.

**Step Five:** Calculate the Presumptive Refund Amount for each class member by adding \$150 to the Step Four Total (even if such total is zero), unless the class member submitted an individual motion or request prior to May 19, 2020 for a refund of Trial Court exactions, parole supervision fees, DNA collection fees, or driver's license reinstatement fees, in which case the Final Total Settlement Payment shall exclude this \$150.

\* \* \*

# Exhibit N to Settlement Agreement

***Foster et al. v. Commonwealth Class Action***  
**Refund Claim Form**

---

**Instructions**

This form pertains to the class action, *Foster et al. v. Commonwealth*, No. 1984CV03372 (Suffolk Superior Court). You should complete this form only if you are a member of the class and if you claim that the amount of fees and fines you paid as a consequence of your vacated conviction is *more than* the amount identified in the check issued to you as part of the settlement of this litigation. If you do not believe that you paid more than the amount identified in the check, you do not need to complete this form.

Please complete each of the sections below and provide information regarding you and your criminal case. **Please provide as much information as possible regarding the fees and fines that you paid.** Please provide any and all documents available to you that support your claim, including but not limited to receipts, cashier's stamps, docket entries, emails, letters, or affidavits reflecting the payments you made.

For further information regarding this class action and the refunds that are available to you, please visit [website] or call [phone number].

If you have questions about this form or need assistance in completing it, you may contact the Settlement Administrator: [phone number, email address, hours].

---

**PART A: Identification**

Name	
Date of Birth	
Address	
Phone Number	
Email Address	
Criminal Docket No.	
Court Location (e.g., Suffolk)	
Court Type (e.g., District, Superior, BMC or Juvenile)	

INTERPRETER/TRANSLATION SERVICES:

- I request the assistance of a \_\_\_\_\_ language interpreter or translator to complete this form. (Note: *There is no charge to you for interpreter or translation services.*)

**PART B: Why I Am Owed More Money**

- I am eligible for an additional refund amount because:
1. I am a member of the *Foster v. Commonwealth* class; and
  2. I paid fees or fines as a consequence of my vacated conviction; and
  3. The amount that I paid is more than the amount identified in the check issued to me as part of the settlement of this litigation.

**PART C: The Payments I Made as a Consequence of a Vacated Conviction**

Check each of the fees that you paid and provide information regarding those payments:

- Victim witness fee**
- I paid \$ \_\_\_\_\_
  - I paid a victim witness fee, but I do not remember how much I paid.
- Probation supervision fee**
- I paid \$ \_\_\_\_\_
  - I paid probation supervision fee, but do not remember how much I paid.
- Court costs**
- I paid \$ \_\_\_\_\_
  - I paid court costs, but do not remember how much I paid.
- Drug analysis criminal assessment fee**
- I paid \$ \_\_\_\_\_
  - I paid a drug assessment fee, but do not remember how much I paid.
- Ch. 94C fines and surfines**
- I paid \$ \_\_\_\_\_
  - I paid a fine, but do not remember how much I paid.
- GPS monitoring fee**
- I paid \$ \_\_\_\_\_
  - I paid a fine, but do not remember how much I paid.
- Restitution**
- I paid \$ \_\_\_\_\_
  - I paid restitution, but do not remember how much I paid.
- DNA collection fee (State Police)**
- I paid \$ \_\_\_\_\_
  - I paid a DNA collection fee, but do not remember how much I paid.

- Parole supervision fee**
  - I paid \$ \_\_\_\_\_
  - I paid a parole supervision fee, but do not remember how much I paid.
- Driver's license reinstatement fee**
  - I paid \$ \_\_\_\_\_
  - I paid a driver's license reinstatement fee, but do not remember how much I paid.

**PART D: Additional Papers Showing My Payments**

Check the box that applies to you:

- I have attached receipts or other papers showing what I paid.
- I do not have receipts or other papers showing what I paid.

**PART E: Other Information Regarding My Payments**

Please provide any other information you may have relating to these payments that you have not already provided.

---

---

---

---

---

---

---

---

---

---

**PART F: Attestation**

I understand the penalties for perjury and I swear that the above statements are true to the best of my knowledge.

SIGNATURE: \_\_\_\_\_

DATE SIGNED: \_\_\_ / \_\_\_ / \_\_\_\_\_