

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between Plaintiffs Frank Long, Joseph Shipley, and Michael White (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, and Defendant Southeastern Pennsylvania Transportation Authority (“Defendant” or “SEPTA” and, together with Plaintiffs, the “Parties”).

I. RECITALS AND BACKGROUND

WHEREAS, on April 27, 2016, Plaintiff Frank Long filed a Class Action Complaint against SEPTA in the United States District Court for the Eastern District of Pennsylvania alleging that SEPTA’s criminal history screening policies and practices for applicants violated Pennsylvania’s Criminal History Record Information Act (“CHRIA”), 18 Pa. Cons. Stat. § 9125, and the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681, *et seq.*;

WHEREAS, on May 26, 2016, Plaintiffs filed a First Amended Class Action Complaint (ECF No. 21), adding additional claims pursuant to the FCRA;

WHEREAS, on June 24, 2016, SEPTA filed a Motion to Dismiss Plaintiffs’ First Amended Complaint (ECF No. 25) pursuant to, *inter alia*, Fed. R. Civ. P. 12(b)(1), which the Court granted on April 5, 2017 (ECF No. 52), and the United States Court of Appeals for the Third Circuit issued a decision on September 10, 2018 affirming, in part, and reversing, in part, the Court’s decision, case no. 17-1889;

WHEREAS, on March 20, 2019 and June 28, 2019, respectively, the Parties participated in two mediation sessions with the Honorable Patricia McInerney (Ret.), a JAMS mediator with experience in the mediation of complex employment class actions, and the Parties continued discussing the possibility of settlement with the mediator’s assistance for a period of time after the June 2019 mediation session;

WHEREAS, on August 6, 2019, Plaintiffs filed a Second Amended Class Action Complaint (ECF No. 66);

WHEREAS, the Parties have engaged in extensive discovery in this action, including document production and exchange of interrogatory responses, and the Parties have engaged in numerous discovery meet and confers and submitted their discovery disputes to the Court;

WHEREAS, in early 2020, the Parties renewed their settlement discussions and, on June 8, 2020, the Court granted the Parties’ request to stay discovery in this matter to focus their efforts on those discussions (ECF No. 84);

WHEREAS, on November 23, 2020, the Parties fully executed a settlement term sheet;

WHEREAS, Defendant denies any and all liability or damages with respect to the alleged facts and causes of action asserted by Plaintiffs;

WHEREAS, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to settlement of Plaintiffs' claims on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty in litigating these claims;

WHEREAS, Plaintiffs' Counsel has analyzed and evaluated the merits of the claims made against SEPTA, and the impact of this Agreement on Plaintiffs and members of the proposed Class, and based upon Plaintiffs' Counsel's analysis and evaluation of a number of factors, and recognizing the substantial risks of class litigation, including the possibility that if not settled now, future litigation might not result in any recovery, or might result in a recovery that is less favorable and that would not occur for several years, as well as recognizing that many of the non-monetary elements of this Agreement would have been difficult to achieve through litigation, and are independently significant to members of the Class, Plaintiffs' Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interests of Plaintiffs and the members of the Class;

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

1. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1 **Agreement.** "Agreement" or "Settlement" means this Settlement Agreement and Release.
- 1.2 **Bar Date.** "Bar Date" means the date set by the Court by which any Class Member who wishes to qualify as a Participating Class Member must timely submit a Claim Form pursuant to Section 4.1(C).
- 1.3 **CHRIA Class Members.** "CHRIA Class Members" means applicants who applied to SEPTA for positions as Bus Operators, Maintenance Custodian Drivers, Railroad Conductor/Engineer Trainees, Mechanics, Railroad Engineers, Surface Train Operators, Rail Vehicle Equipment Welders, Rail Vehicle Machinists, Rail Vehicle Electronic Maintainers, Transportation Managers, Railroad Supervision Managers and/or any other position that requires the operation and/or maintenance of a SEPTA vehicle, between April 27, 2010, and August 26, 2018, and were denied in whole or in part based on drug conviction(s). Excluded from the CHRIA Class are applicants with a violent felony conviction on their consumer report within two years of their application to SEPTA.

- 1.4 CHRIA Class Release.** “CHRIA Class Release” means all criminal history discrimination failure to hire claims against SEPTA that accrued during the period from April 27, 2010, through August 26, 2018, including, without limitation, claims arising under Pennsylvania’s Criminal History Record Information Act, 18 Pa. Cons. Stat. § 9125, Title VII of the Civil Rights Acts of 1964, 42 U.S.C. §§ 2000e, *et seq.*, and the Pennsylvania Human Relations Act, 43 Pa. Stat. Ann. §§ 951, *et seq.*
- 1.5 Class Counsel or Plaintiffs’ Counsel.** “Class Counsel” or “Plaintiffs’ Counsel” means Outten & Golden LLP, Lawyers’ Committee for Civil Rights Under Law, Public Interest Law Center, and Willig, Williams & Davidson.
- 1.6 Class Members or the Class.** “Class Members” or the “Class” means CHRIA Class Members and FCRA Class Members.
- 1.7 Consultant.** “Consultant” is Industrial Organizational Psychologist (“IO”) Dr. Katherine Lundquist of APTMetrics, whom SEPTA will retain to perform work in accordance with this Agreement.
- 1.8 Court.** “Court” means the United States District Court for the Eastern District of Pennsylvania.
- 1.9 Days.** “Days” means calendar days, unless otherwise noted.
- 1.10 Defendant or SEPTA.** “Defendant” or “SEPTA” means Southeastern Pennsylvania Transportation Authority.
- 1.11 Defendant’s Counsel.** “Defendant’s Counsel” means Cozen O’Connor.
- 1.12 Effective Date.** “Effective Date” of the Settlement means the latest of the following dates: (a) the expiration of time for appeal of the Final Approval Order; or (b) if there is an appeal of the Final Approval Order, the date after all appeals are finally resolved in favor of final approval.
- 1.13 Fairness Hearing.** “Fairness Hearing” means the hearing before the Court relating to the Motion for Final Approval.
- 1.14 FCRA Class Members.** “FCRA Class Members” means all applicants to SEPTA who were denied employment by SEPTA, from April 27, 2011, through August 26, 2018, because of their criminal history.
- 1.15 FCRA Class Release.** “FCRA Class Release” means all claims against SEPTA that accrued during the period April 27, 2011, through August 26, 2018, under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*

- 1.16 Final Approval Order.** “Final Approval Order” means the Order entered by the Court after the Fairness Hearing, approving the terms and conditions of this Agreement.
- 1.17 Gross Settlement Fund.** “Gross Settlement Fund” means Three Million Six Hundred Thousand Dollars and Zero Cents (\$3,600,000.00) paid by Defendant to Plaintiffs and Class Members to resolve their claims, inclusive of attorneys’ fees and expenses, Service Awards to Named Plaintiffs, the Settlement Administrator’s fees and expenses, and any taxes which the Settlement Administrator is required to pay on SEPTA’s behalf on W-2 settlement proceeds.
- 1.18 Individual Settlement Amount.** “Individual Settlement Amount” means the payment(s) to be distributed to each Participating Class Member in accordance with the allocation formula set forth in Section 3.4 herein, and to be distributed by the Settlement Administrator from the Net Settlement Fund.
- 1.19 Litigation.** “Litigation” means *Long, et al. v. Southeastern Pennsylvania Transportation Authority*, No. 16 Civ. 1991 (E.D. Pa.) (PBT).
- 1.20 Named Plaintiffs.** “Named Plaintiffs” means Frank Long, Joseph Shipley, and Michael White.
- 1.21 Net Settlement Fund.** “Net Settlement Fund” means the Gross Settlement Fund minus Court-approved attorneys’ fees and expenses, Court-approved Service Awards to the Named Plaintiffs, any taxes which the Settlement Administrator is required to pay on SEPTA’s behalf on W-2 settlement proceeds, and the Settlement Administrators fees and expenses.
- 1.22 Notice and Claim Form.** “Notice and Claim Form” means the Court-approved Notice of Proposed Settlement of Class Action Lawsuit and Claim Form. There shall be one form of Notice and Claim Form for CHRIA Class Members and one form of Notice and Claim Form for FCRA Class Members who are not also CHRIA Class Members. *See* Exs. A (CHRIA Class Member Notice and Claim Form), B (FCRA Class Member Notice and Claim Form).
- 1.23 Objector.** “Objector” means an individual who properly files an objection to this Agreement, but does not include any individual who opts out of this Agreement.
- 1.24 Opt-out Statement.** “Opt-out Statement” is a written, signed statement that an individual Class Member has decided to opt out and not be included in this Agreement.

- 1.25 Participating Class Members.** “Participating Class Members” means a Class Member or the authorized legal representative of such Class Member who timely submits a Claim Form.
- 1.26 Parties.** “Parties” are the Named Plaintiffs and Defendant.
- 1.27 Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Court (i) conditionally certifying the Class under Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) solely for the purpose of effectuating this Agreement; (ii) preliminarily approving the terms and conditions of this Agreement; (iii) appointing Class Counsel as defined above; (iv) directing the manner and timing of providing Notices and Claim Forms to the Class Members; and (v) setting dates to effectuate the terms of this Agreement, including the Bar Date and the date of the Fairness Hearing.
- 1.28 Priority Hiring Candidates.** Priority Hiring Candidates means Participating CHRIA Class Members who submit a timely Claim Form indicating that they are interested in employment with SEPTA in the next year in the position for which they previously applied (or a substantially similar position) and were disqualified based on a criminal drug conviction.
- 1.29 Priority Hiring Invitation Letter.** “Priority Hiring Invitation Letter” means the text which SEPTA will send to the Priority Hiring Candidates, inviting them to make an online profile through the exclusive web portal established for the priority hiring process.
- 1.30 Reminder.** “Reminder” means the text set forth in **Exhibit C** attached hereto, which the Settlement Administrator shall send via e-mail and First Class United States Mail to Class Members who have not returned a Claim Form or opted out thirty (30) days after the initial dissemination of Notice and Claim Form.
- 1.31 Service Award.** “Service Award” means Court-approved compensation awarded to Named Plaintiffs for their role in the case.
- 1.32 Settlement Administrator.** “Settlement Administrator” means the company selected by Plaintiffs’ Counsel, with approval by SEPTA, and unaffiliated with either party or any involved law firms, retained by the Parties to administer Notice and distribution of settlement monies.
- 1.33 Submitting CHRIA Class Members.** “Submitting CHRIA Class Members” means CHRIA Class Members who submit documentation as evidence of mitigation in accordance with Section 3.4(B) herein in order to claim more than the minimum CHRIA Individual Settlement Amount.

2. INITIAL PROCEDURAL ISSUES

- 2.1 Binding Agreement.** This Agreement is a binding agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Litigation.
- 2.2 Retention and Responsibilities of the Settlement Administrator.** The Settlement Administrator will be selected by Plaintiffs' Counsel, with approval by SEPTA, and unaffiliated with either party or any involved law firms. The Settlement Administrator's fees and expenses will come out of the Gross Settlement Fund.

(A) The Settlement Administrator shall be responsible for: preparing, printing, and disseminating to Class Members the Notices and Claim Forms and Reminders, as provided herein; performing skip traces and resending, within one day of receipt, any Notice and Claim Form returned without a forwarding address or resending to those with a new forwarding address; responding to requests or communications made by the Parties; preparing, monitoring, and maintaining a website where Class Members can review additional information regarding the settlement and submit a Claim Form; preparing, monitoring, and maintaining a telephone number with phone answerers; promptly furnishing to counsel for the Parties copies of any Objections and requests for exclusion that the Settlement Administrator receives; receiving, retaining, and reviewing the Claim Forms submitted by Class Members; providing counsel for the Parties with copies of all Claim Forms submitted by Class Members; keeping track of requests for exclusion, Objections, or otherwise, including maintaining the original mailing envelope in which the request was mailed; distributing the settlement checks to Participating Class Members; preparing, sending, and/or wire transferring Class Counsel's approved attorneys' fees and costs; mailing Service Awards in accordance with this Agreement and the Final Approval Order; referring to Class Counsel all inquiries by Class Members regarding matters not within the Settlement Administrator's duties specified herein; responding to inquiries of Class Counsel and Defendant's Counsel consistent with the Settlement Administrator's duties specified herein; promptly apprising counsel for the Parties of the activities of the Settlement Administrator; maintaining adequate records of its activities, including the dates of the mailing of Notices and Claim Forms and receipt of Claim Forms, returned mail and other communications and attempted written or electronic communications with Class Members, confirming in writing to Class Counsel and Defendant's Counsel its completion of the administration of the Agreement; timely responding to communications from the Parties and their counsel; calculating the Individual Settlement Amounts; reporting on the status of the settlement to the Parties on a weekly basis (including, but not limited to, the number of Notices mailed, returned as undeliverable, and re-mailed; the number of Claim Forms received; the number of requests for exclusion received; and any other pertinent information); notifying counsel for all Parties of all timely and untimely submissions; providing a compliance affidavit in connection with the Application for Final Approval; locating Class Members, including calling Class Members, if necessary; establishing and administering the QSF; calculating and paying, as provided herein, all appropriate taxes and complying with all applicable tax reporting obligations, including preparing and filing all applicable tax forms; and such other tasks as set forth herein, or as the Parties mutually agree.

(B) The Parties will have equal access to the Settlement Administrator and information provided to the Settlement Administrator. Defendant agrees to cooperate

with the Settlement Administrator to facilitate Defendant's obligations in this Agreement, including to provide information to assist the Settlement Administrator in locating Class Members, as specified in Section 4.1 below.

(C) The Settlement Administrator shall assume responsibility for any errors or omissions caused solely by the Settlement Administrator regarding the calculation of Participating Class Member's individual settlement payments, including any applicable taxes on W-2 settlement payments.

2.3 Preliminary Approval Motion.

(A) Within ten (10) days following the Parties' execution of this Agreement, Class Counsel will file with the Court a Motion for Preliminary Settlement Approval ("Preliminary Approval Motion") which shall include (1) the proposed Notices and Claim Forms, attached hereto as Exhibits A and B, respectively; (2) a proposed Preliminary Approval Order; (3) an executed version of this Agreement; and (4) necessary documents, memoranda, affidavits, and exhibits for purposes of certification of a Class under Federal Rule of Procedure 23(b)(2) and (b)(3) for settlement purposes only, and preliminarily approving the Settlement.

(B) The Preliminary Approval Motion also will seek the setting of the Bar Date for Class Members to submit a Claim Form, which date will be sixty (60) days from the mailing of Notice and Claim Forms to Class Members, or, for Class Members for whom the Notice and Claim Form was re-mailed, thirty (30) days from re-mailing. The Preliminary Approval Motion will also seek the setting of a date for Class Members to opt out, or provide objections to this Agreement, which date will be forty-five (45) days from the mailing of the Notice and Claim Forms to Class Members, or, for Class Members for whom a Notice and Claim Form was re-mailed, thirty (30) days from re-mailing, and for a Fairness Hearing for Final Approval of the Settlement before the Court at the earliest practicable date.

(C) In the Preliminary Approval Motion, Class Counsel will seek to certify a Rule 23(b)(2) and 23(b)(3) class, and inform the Court of the intended process to obtain a Final Approval Order that will, among other things, seek to: (1) approve the Settlement as fair, adequate, and reasonable; (2) incorporate the terms of the FCRA and CHRIA Release, as set forth herein; (3) dismiss the Litigation with prejudice; (4) award Class Counsel attorneys' fees and costs; and (5) award Service Awards to the Named Plaintiffs.

(D) If the Court denies the Preliminary Approval Motion, the Parties will work together in good faith to revise the Agreement to address the Court's concerns, seek reconsideration, and/or appeal the Court's decision. If these efforts are ultimately unsuccessful or a Class is not certified, the Litigation will resume as if no settlement had been attempted, and this Settlement will be null and void, with no force and effect.

(E) The Parties will work together, diligently and in good faith, to expeditiously obtain a Preliminary Approval Order, Final Approval Order, and all other aspects of the settlement approval process.

3. SETTLEMENT TERMS

3.1 Settlement Amount.

(A) This is a claims-made settlement, in which Defendant agrees to pay the Participating Class Members settlement monies in accordance with the allocation formula set forth in Section 3.4 herein.

(B) Defendant agrees to transfer Three Million Six Hundred Thousand Dollars and Zero Cents (\$3,600,000.00) to the Settlement Administrator within ten (10) days of the Effective Date.

(C) Class Counsel will seek an award of up to one-third of the Gross Settlement Fund (\$1,200,000.00), plus reasonable out-of-pocket litigation costs and expenses, for the payment of attorneys' fees and costs. In addition to the Litigation, Class Counsel's application for reasonable litigation costs and expenses shall include costs and expenses incurred in prosecuting Plaintiffs' appeal to the United States Court of Appeals for the Third Circuit, Case No. 17-1889, and costs and expenses incurred in prosecuting Plaintiffs' related Pennsylvania state court action, *Long, et al. v. Southeastern Pennsylvania Transportation Authority*, No. 784 (Pa. Com. Pl., Phil. Cty.) (filed May 4, 2017). Attorneys' fees and costs will be allocated from the Gross Settlement Fund, and shall be wired to Outten & Golden LLP (or as agreed to by Plaintiffs' Counsel) no later than four (4) days after Defendant's transfer of the Settlement Fund to the Settlement Administrator (i.e. no later than fourteen (14) days after the Effective Date).

(D) The entire costs of implementing the injunctive/programmatic relief provisions of this Agreement shall be paid by Defendant, except as set forth in Section 3.3(B) herein that SEPTA will only pay \$50,000.00 for Consultant work in the event that there are no additional funds remaining in the Net Fund after the initial distribution to Participating Class Members. Additional funds remaining in the Net Fund may be used to reimburse SEPTA for the cost of the initial Consultant work up to \$50,000.00 and for additional Consultant work in accordance with Section 3.5. SEPTA's commitment includes, but is not limited to, funding the work of the Consultant, as described in Section 3.3(B) below.

(E) Any uncashed checks as of one hundred and twenty (120) days after the issuance of Settlement Checks in accordance with this Agreement will distributed in accordance with Section 3.5 herein.

3.2 **Class Definition:** The Class is comprised of CHRIA Class Members and FCRA Class Members as defined in Sections 1.3 and 1.14 herein.

3.3 **Programmatic and Injunctive Relief.**

(A) Priority Hiring for Participating CHRIA Class Members.

(i) Priority Hiring Candidates. Only CHRIA Class Members will be considered for Priority Hiring. In order to be considered for priority hiring, Participating CHRIA Class Members must submit a timely Claim Form indicating that they are interested in employment with SEPTA within the next year in the position for which they previously applied (or a substantially similar position) and were disqualified based on a criminal drug conviction.

(ii) Priority Hiring Invitation Letter. Within ten (10) days after the Effective Date, the Settlement Administrator will compile a list of Priority Hiring Candidates and will provide such list to Class Counsel and Defendant's Counsel. Within thirty (30) days after the Effective Date, SEPTA will send the Priority Hiring Invitation Letter to Priority Hiring Candidates via email (if available) or U.S. mail (if email is not available) inviting them to make an online submission through SEPTA's exclusive web portal established for the Priority Hiring Process. SEPTA shall provide Plaintiffs' Counsel with a reasonable opportunity to review and comment upon the text of the Priority Hiring Invitation Letter in advance of issuance. To the extent there are any disagreements regarding the text of the Priority Hiring Invitation Letter, the Parties shall mutually cooperate in good faith to resolve them.

(iii) Online Profile. The Priority Hiring Candidates will have three (3) months from the date of the invitation to make an online profile through the exclusive web portal established for the priority hiring process.

(iv) Priority Hiring Process. Consistent with SEPTA's ordinary processes for hiring, SEPTA will inform Priority Hiring Candidates of the additional steps they must complete in order to be considered for employment and of the reasonable time period in which they must complete such steps. Specifically, Priority Hiring Candidates must pass a DMV check, medical exam, including a drug and alcohol screening, and new background check. For bus operator positions and other positions which require a CDL, Priority Hiring Candidates must possess a CDL, or acquire a CDL within the reasonable time period specified by SEPTA consistent with its ordinary processes for hiring. Consistent with SEPTA's processes, Priority Hiring Candidates must take and pass the behavioral assessment online if one is required for the position, or schedule to take other mandatory tests within ten (10) days of receiving notification from SEPTA.

(v) Priority Hiring Placement.

(a) Open Positions. Priority Hiring Candidates who clear all requisite steps of SEPTA's ordinary hiring process will be hired on the date of the

next available new employee orientation for the positions that have job openings or on another date agreed to by the Priority Hiring Candidate.

(b) Other Positions. For positions that do not have current job openings, Priority Hiring Candidates who clear all requisite steps of SEPTA's ordinary hiring process will be placed in a pool of candidates, given a randomized number, and will be offered employment in numerical order (based on that randomized number) as it becomes available. Priority Hiring Class Members will remain in the pool for a period of one year from being placed in the pool. Priority Hiring Candidates in the pool will be hired before any other applicants for a period of one year after being placed in the pool, except to the extent that doing so would violate any collectively bargained agreements between SEPTA and any union representing SEPTA employees. Should any such issues arise, SEPTA agrees to raise those issues promptly with Plaintiffs' counsel and work in good faith to address and resolve them.

(c) Recruitment Facilitators. SEPTA will designate recruitment employee(s) within thirty (30) days of the Effective Date to facilitate the priority hiring process (the precise number to be determined by applicant volume). The recruitment facilitator(s) will work with the Priority Hiring Candidates with the goal of finding each Priority Hiring Candidate suitable employment.

(B) Consultant.

(i) Retention. Within thirty (30) days after the Effective Date, SEPTA will retain the Consultant to perform work in accordance with this Agreement.

(ii) Scope of Work.

(a) Review. The Consultant will review SEPTA's criminal history screen as to the Bus Operator, Maintenance Custodian Driver, Railroad Conductor/Engineer Trainee, Mechanic, Railroad Engineer, Surface Train Operator, and Railroad Supervision Manager positions. As part of this review, SEPTA shall promptly provide the Consultant with relevant and accessible information, including its criminal history background check policy, template documents used in the hiring process, including QRB forms, job descriptions, and job postings, and will work cooperatively to provide additional information, if any, requested by the Consultant. The Consultant will endeavor to complete her review within forty-five (45) days.

(b) Proposal. Once the Consultant's review is completed, the Consultant will provide a non-binding proposal for changes, if any, to SEPTA's criminal history screen (the "Proposal"). The Proposal will be

provided to the Parties and will specifically include: (1) identification of classes of convictions and/or time periods that are not related to the Bus Operator, Maintenance Custodian Driver, Railroad Conductor/Engineer Trainee, Mechanic, Railroad Engineer, Surface Train Operator, and Railroad Supervision Manager positions, and thus can be pass through SEPTA's screen without an individualized review; and (2) changes to SEPTA's individual criminal history review aimed at ensuring compliance with the CHRIA, the FCRA, Title VII, and other applicable laws.

(c) Implementation. Within sixty (60) days of receiving the Proposal, if SEPTA does not agree to certain aspects of the Proposal, it must also inform the Consultant and Plaintiffs' Counsel of its exact areas of disagreement. Plaintiffs' Counsel and Defendant's Counsel shall then meet and confer in an effort to resolve any difference between the Parties regarding the Consultant's Proposal. This agreement does not obligate SEPTA to accept any of the Proposal.

(d) Training. SEPTA will take part in a one-time training conducted by the Consultant as to best practices regarding the evaluation of applicants' criminal history.

(e) Cost. The Consultant's scope of work as set forth in this Section 3.3(B) shall not exceed \$50,000.00. To the extent that there are additional funds remaining in the Net Fund after distribution, such funds may be used to fund additional Consultant work in accordance with Section 3.5 herein.

(f) Confidentiality. The Consultant's Proposal, and the Parties' subsequent discussions, will be maintained as a confidential document resulting from this Settlement. They will not be used for any purpose other than the Settlement of this matter.

(C) Other Relief. SEPTA agrees not to institute (or reinstitute) an absolute bar to employment for any type of felony or misdemeanor conviction, unless required by federal, state, or local law or regulation.

3.4 Monetary Relief: The Settlement Administrator shall determine each Participating Class Member's Individual Settlement Amount as follows:

(A) FCRA Class Members. Participating FCRA Class Members shall receive a flat payment from the Net Fund. Each Participating FCRA Class Member's maximum FCRA payment shall be \$250.

(B) CHRIA Class Members. Each Participating CHRIA Class Member will receive a minimum gross CHRIA payment of \$5,000.

(i) **Submitting CHRIA Class Members.** To be entitled to claim more than \$5,000 a Participating CHRIA Class Member must submit documentation as evidence of mitigation (“Submitting CHRIA Class Members”). Submitting CHRIA Class Members may submit documentation establishing their wages for 2019 and any prior years since their denial by SEPTA (i.e. if an applicant applied in 2017, they may provide documentation establishing their wages for 2017, 2018, 2019). To the extent the Submitting CHRIA Class Member made less than the yearly entry level salary of the job to which they applied, they are entitled to recover that difference up to a maximum of \$35,000. I.e. the following formula will be applied: (SEPTA salary – 2019 employment income) + (SEPTA salary – any other prior year employment income since their denial by SEPTA).

(C) **Reduction formula.** If the amount claimed by Participating Class Members exceeds the amount of the Net Fund, and the amount claimed by Participating FCRA Class Members exceeds \$1,000,000, then the flat per person FCRA payment will first be reduced pro rata until the amount claimed by Participating FCRA Class Members equals no more than \$1,000,000. If, after the aforementioned reduction, the amount claimed still exceeds the amount of the Net Fund (or if the amount claimed exceeds the amount of the Net Fund, but the amount claimed by Participating FCRA Class Members does not exceed \$1,000,000), then all Participating Class Members will receive an equal pro rata reduction to their claimed amount, so that the amount claimed by Participating Class Members no longer exceeds the amount of the Net Fund.

3.5 Distribution of Unclaimed Funds.

(A) **Unclaimed Funds.** Should any funds remain in the Net Fund after the one hundred and twenty (120) day check cashing deadline, then the remaining funds shall be distributed as follows:

(i) **Additional Consultant Work.** First, any additional remaining funds, up to \$150,000.00 will be allocated to SEPTA for additional Consultant work consistent with the scope of work negotiated by the parties to be conducted by the Consultant both at the outset, and for any follow-up Consultant work within two years of implementation of the proposal (either in whole or in part).

(ii) **Reimbursement for Initial Consultant Work.** After allocation to SEPTA for additional Consultant work up to \$150,000.00, if applicable, as set forth above, any additional remaining funds shall be allocated to reimburse SEPTA for its initial Consultant work up \$50,000.00.

(iii) Late Claims. After allocation to SEPTA for its Consultant work up to \$200,000.00, if applicable, as set forth above, any additional remaining funds will be used to make payments to Class Members who submitted untimely Claim Forms (should the Parties agree to accept their late Claim Forms). The Parties at their discretion may agree to allocate funds to the late claims outside of the order specified in this Section 3.5(A).

(iv) Redistribution. After allocation to Class Members who submitted untimely Claim Forms (should the Parties agree to accept their late Claim Forms), if applicable, as set forth above, any additional remaining funds will be redistributed to Participating Class Members. To the extent it is not economically feasible to redistribute to all Class Members, the redistribution will be limited to CHRIA Class Members

3.6 Tax Treatment of Individual Settlement Payments.

(A) FCRA Payments. FCRA payments will be treated as non-wages, for which the Settlement Administrator shall issue an IRS Form 1099-MISC to Participating FCRA Class Members.

(B) CHRIA Payments. 50% of the CHRIA payment will be considered wages subject to the withholdings of applicable federal, state and local taxes. The settlement administrator will calculate the required withholdings and will issue an IRS Form W-2 to CHRIA Class Members for this portion of their payment. 50% of the CHRIA payment will be considered non-wages, for which no withholdings will be taken out. The settlement administrator will issue an IRS Form 1099-MISC to CHRIA Class Members for this portion of their payment.

3.7 Attorneys' Fees and Costs.

(A) At the Fairness Hearing and in the Motion for Final Approval, Class Counsel will request that the Court approve an award of up to one third of the Gross Settlement Fund (\$1,200,000.00) for attorneys' fees, plus reasonable out-of-pocket litigation costs and expenses. SEPTA agrees not to oppose Plaintiffs' request for attorneys' fees and costs in accordance with this Agreement.

(B) Attorneys' fees and costs shall be wired to Outten & Golden LLP (or as agreed to by Plaintiffs' Counsel) no later than four (4) days after Defendant's transfer of the Gross Settlement Amount to the Settlement Administrator.

(C) Payments of attorneys' fees and costs pursuant to this Section shall be made without withholding and reported to the IRS and the payee under the payee's name and taxpayer identification number, which such payee shall provide for this purpose, on an IRS Form 1099.

3.7 Service Awards to Named Plaintiffs.

(A) In return for services rendered to the Class and in consideration for execution of the General Release set forth in Section 5.3 herein, at the Fairness Hearing, Class Counsel will seek Court approval of Service Awards of Fifteen Thousand Dollars and Zero Cents (\$15,000.00) each for Named Plaintiffs Frank Long, Joseph Shipley, and Michael White.

(B) The Service Awards shall be sent to Named Plaintiffs no later than four (4) days after Defendant's transfer of the Gross Settlement Amount to the Settlement Administrator.

(C) Defendant agrees not to oppose Plaintiffs' request for Service Awards in accordance with this Agreement.

(D) The Settlement Administrator shall determine the tax treatment of the Service Awards to Named Plaintiffs.

4. **Class Procedural Issues.**

4.1 **Notice to Class Members.**

(A) **Class List.** Within five (5) days after the date of the Preliminary Approval Order, Defendant will provide the Settlement Administrator a class list containing the following information for each Class Member: names, last four digits of social security number, last known address, last known telephone number (if known), and last known e-mail address (if known), date of application to SEPTA, and whether such individual is a CHRIA Class Member and/or FCRA Class Member (the "Class List"). For the FCRA Class, SEPTA shall provide the above information for applicants to SEPTA who had a criminal record and were denied employment by SEPTA from April 27, 2011 through August 26, 2018. The Settlement Administrator will maintain the Class List and any information contained therein and derived therefrom in a confidential manner, and shall not provide such list to any other entity or person, except Class Counsel, without the prior consent of Defendant. After receipt of the Class Members' information from Defendant, the Settlement Administrator will perform a search and update using the National Change of Address Database to correct any known or identifiable address changes for Class Members.

(B) **Notice Procedure.** Within fourteen (14) days after receipt of the Class List, the Settlement Administrator shall cause a copy of the Notice and Claim Form, containing information instructing Class Members of their right to submit a Claim Form, object, or opt-out of the agreement, to be distributed, as approved by the Court, by e-mail (where available) and First Class United States Mail to Class Members. The Parties agree that the Notice and Claim Form, sent by email and First Class United States Mail, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice of the pendency of the proposed Settlement and a final approval hearing to all persons entitled to notice in full compliance with due process under the United States Constitution and state law.

(C) Bar Date. Any Class Member sent a Notice and Claim Form that is not returned as undeliverable shall have sixty (60) days from the date of mailing by the Settlement Administrator to submit a Claim Form. Class Members to whom the Notice and Claim Form was re-mailed shall have the later of sixty (60) days from the initial mailing or thirty (30) days from re-mailing in which to return the Claim Form. Any Class Member sent a Notice and Claim Form that is not returned as undeliverable shall have forty-five (45) days from the date of mailing by the Settlement Administrator to object or opt out of the Agreement pursuant to Sections 4.2 and 4.3 herein, and as instructed in the Notice. Class Members to whom the Notice and Claim Form was re-mailed shall have the later of forty-five (45) days from the initial mailing or thirty (30) days from the re-mailing to object or opt out of the Agreement.

(D) The Settlement Administrator will take all reasonable steps to obtain the correct address of any Class Members for whom a Notice and Claim Form is returned by the post office as undeliverable and shall attempt reasonable re-mailings of the Notice and Claim Form to the updated address. The Settlement Administrator will notify Class Counsel and Defendant's Counsel if any Notice and Claim Form sent to a Class Member is returned as undeliverable after the first mailing, as well as if any such Notice and Claim Form is returned as undeliverable after any subsequent mailing(s) as set forth in this Agreement. To the extent requested by the Settlement Administrator as part of the notice process, SEPTA will make a reasonable search of its records to provide the full social security number for any individual Class Member whom the Settlement Administrator identifies.

(E) Reminders. The Settlement Administrator shall send the Reminder attached hereto as Exhibit C via e-mail and First Class United States Mail postcard to each Class Members who has not returned a Claim Form or opted out thirty (30) days after the initial dissemination of the Notice.

(F) The Settlement Administrator shall cause settlement checks to be mailed to Participating Class Members within thirty (30) days after the Effective Date.

(G) Each Participating Class Member shall have one hundred and twenty (120) days from the date of mailing by the Settlement Administrator to deposit or cash his or her settlement check.

(H) The Settlement Administrator will send out a reminder postcard, by e-mail (where available) and First Class United States Mail within sixty (60) days after the initial distribution of checks to Participating Class Members who have not yet cashed their Settlement Checks reminding them to cash their checks prior to the one hundred and twenty (120) day deadline.

(I) Within seven (7) days of the expiration of the one hundred twenty (120) day cashing deadline, any remaining uncashed amounts shall be distributed in accordance with Sections 3.5 herein.

4.2 Class Member Opt-Out Statements.

(A) Any Class Member who chooses to opt out of the Settlement as set forth in this Agreement must mail via First Class United States Mail, postage prepaid, a written, signed statement to the Settlement Administrator that states their name, address, email address, and telephone number, and that states, “I opt out of the SEPTA Applicant Settlement.” (“Opt-out Statement”)

(B) The Settlement Administrator will promptly furnish the Parties with copies of all Opt-out Statements received by the Settlement Administrator. At the request of the Parties, and in preparation of the declaration that the Settlement Administrator will prepare as part of the Final Approval Motion, the Settlement Administrator will send the Parties a list of the names of all individuals who submitted Opt-out Statements. The final list will be submitted by Plaintiffs, with redaction of any personal identifying information, along with the declaration of the Settlement Administrator, as an exhibit to the Final Approval Motion. The Settlement Administrator will retain the stamped originals of all Opt-out Statements and the originals of all envelopes accompanying Opt-out Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.

(D) Any Class Member who does not properly submit an Opt-out Statement pursuant to this Agreement and who does not submit a Claim Form will be deemed to have accepted the Settlement and shall be bound by the applicable FCRA and/or CHRIA Release set forth in Sections 5.1 and 5.2 herein, but will not receive a settlement check.

(E) **Option to void Agreement.** If the number of Class Members who properly submit Opt-out statements exceeds 10% of the total number of Class Members, than SEPTA shall have the option to void this entire Agreement. If SEPTA chooses to exercise that option, the Litigation will resume as if no settlement had been attempted, and this Settlement will be null and void, with no force and effect.

4.3 Objections to Settlement.

(A) Class Members who wish to present objections to the proposed Settlement at the Fairness Hearing must first do so in writing. To be considered, such statement must be mailed to the Settlement Administrator via United States Mail, postage pre-paid, and be received by the Settlement Administrator within the applicable deadline set forth herein. The statement must include all reasons for the objection; and any reasons not included in the statement will not be considered. The statement must also include the name, address, email address, and telephone number for the Class Member making the objection. The Settlement Administrator will stamp the date received on the original and send copies of each objection to Class Counsel and Defendant’s Counsel as soon as they are received. The final list will be submitted by Plaintiffs, with redaction on any personal identifying information, along with the declaration of the Settlement Administrator attached to the Final Approval Motion.

(B) Any individual who files objections to the Settlement (“Objector”) also has the right to appear at the Fairness Hearing, either in person or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing in his or her written objections at the time he or she submits such written objections. An Objector may withdraw his or her objections at any time. No Class Member may present an objection at the Fairness Hearing based on a reason not stated in his or her objections. A Class Member who has submitted an Opt-out Statement may not submit objections to the Settlement.

(C) The Parties may file with the Court written responses to any filed objections no later than three (3) business days before the Fairness Hearing, if not otherwise addressed in their Motion for Final Approval.

4.4 Fairness Hearing and Motion for Final Approval and Dismissal.

(A) At the time established by the Court via the Preliminary Approval Order, Plaintiffs’ Counsel will file with the Court a Motion for Final Approval of Settlement, and a Proposed Order Approving the Settlement and Dismissing the Litigation with prejudice (“Final Approval Motion”) that is consistent with this Agreement.

(B) At the Fairness Hearing and in the Motion for Final Approval of Settlement, Class Counsel will request that the Court, among other things: (1) certify the Class for purposes of the Settlement; (2) find that the dissemination of the Settlement notice was accomplished as directed and met the requirements of due process; (3) approve the Settlement and Agreement as fair, reasonable, adequate, and binding on all Class Members who have not timely opted out of the Settlement; (4) award attorneys’ fees and costs to Class Counsel; (5) award the Service Awards to Named Plaintiffs; (6) order entry of Final Judgment and dismissal with prejudice in accordance with this Agreement; and (7) retain jurisdiction as necessary for the purpose of facilitating the Settlement and other relief pursuant to this Agreement.

(C) If the Court does not enter a Final Approval Order in accordance with this Agreement, or if the Final Approval Order is set aside on appeal, the Parties will work together in good faith to revise the Agreement to address the Court’s concerns, seek reconsideration, and/or attempt other remedial actions to correct any deficiencies in the Agreement. If these attempts are unsuccessful, or the Class is not certified, the Litigation will proceed as if no settlement had been attempted, and this Settlement will be null and void, with no force and effect.

5. Release

5.1 CHRIA Release. By operation of the entry of Final Approval, and except as to such rights or claims as may be created by the Settlement Agreement, each CHRIA Class Member who does not opt out of the Agreement shall release SEPTA from all criminal history discrimination failure to hire claims against SEPTA that accrued during the period April 27, 2010 through August 26, 2018, including, without limitation, claims arising

under Pennsylvania's Criminal History Record Information Act, 18 Pa. Cons. Stat. § 9125, Title VII of the Civil Rights Acts of 1964, 42 U.S.C. §§ 2000e, *et seq.*, and the Pennsylvania Human Relations Act, 43 Pa. Stat. Ann. §§ 951, *et seq.*

5.2 FCRA Release. By operation of the entry of Final Approval, and except as to such rights or claims as may be created by the Settlement Agreement, each FCRA Class Member who does not opt out of the Agreement shall release SEPTA from all claims against SEPTA that accrued during the period April 27, 2011 through August 26, 2018 under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*

5.3 Named Plaintiff Release. In addition to the waiver and release contained in Sections 5.1 and 5.2 above, and in consideration for the Service Award, if approved and paid under Section 3.7 above, Named Plaintiffs and each of their heirs, executors, representatives, administrators, agents, insurers, and assigns (collectively the “**Releasors**”) irrevocably and unconditionally fully and forever waive, release, and discharge SEPTA, including SEPTA's affiliates, predecessors, successors, and assigns, and each of its and their respective agents, officers, directors, current or former trustees or administrators of any pension or benefit plan, in their corporate and individual capacities (collectively, the “**Released Parties**”), from any and all claims, demands, actions, causes of actions judgments, rights, fees, damages, debts, obligations, liabilities, and expense (inclusive of attorneys' fees) of any kind whatsoever, whether known or unknown (collectively, “**Claims**”), that Releasors may have or have ever had against the Released Parties, or any of them, by reason of any actual or alleged act, omission, transaction, practice, conduct, occurrence, or other matter from the beginning of time up to and including the date of Named Plaintiff's execution of this Agreement, including, but not limited to:

(A) any and all claims under Title VII of the Civil Rights Act of 1964 (Title VII), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) (regarding existing but not prospective claims), the Equal Pay Act, the Employee Retirement Income Security Act (ERISA) (regarding unvested benefits), the Civil Rights Act of 1991, Section 1981 of U.S.C. Title 42, the Fair Credit Reporting Act (FCRA), the Worker Adjustment and Retraining Notification (WARN) Act, the Age Discrimination in Employment Act (ADEA), the Genetic Information Nondiscrimination Act (GINA), the Immigration Reform and Control Act (IRCA), the Pennsylvania Human Relations Act (PHRA), Pennsylvania Whistleblower Law, the Pennsylvania Public Employee Relations Act, the Pennsylvania Criminal History Information Act, the Philadelphia Fair Practices Ordinance, all as amended, all including any amendments and their respective implementing regulations, and any other federal, state, local, or foreign law (statutory, regulatory, or otherwise) that may be legally waived and released; however, the identification of specific statutes is for purposes of example only, and the omission of any specific statute or law shall not limit the scope of this general release in any manner;

(B) any and all claims for compensation of any type whatsoever, including but not limited to claims for wages, vacation, or sick pay;

(C) any and all claims arising under tort, contract, or quasi-contract law, including but not limited to claims of breach of an express or implied contract, tortious interference with a contract or prospective business advantage, breach of the covenant of good faith and fair dealing, promissory estoppel, detrimental reliance, invasion of privacy, nonphysical injury, personal injury or sickness, or any other harm, wrongful or retaliatory discharge, fraud, defamation, false imprisonment, and negligent or intentional infliction of emotional distress;

(D) any and all claims for monetary or equitable relief, including but not limited to attorneys' fees and costs, back pay, front pay, reinstatement, experts' fees, medical fee or expenses, costs and disbursements, punitive damages, liquidated damages, and penalties.

However, this general release and waiver of claims excludes, and the Named Plaintiff does not waive, release, or discharge: (i) any right to file an administrative charge or complaint with or testify, assist, or participate in an investigation, hearing or proceeding conducted by the Equal Employment Opportunity Commission, the Pennsylvania Human Relations Commission, or other similar federal or state administrative agencies, although Named Plaintiff waives any right to monetary relief related to any filed charge or administrative complaint; and (ii) claims which cannot be waived by law, such claims for unemployment benefit rights and workers' compensation.

6. Interpretation, Publicity, and Enforcement.

6.1 Cooperation Between the Parties; Further Acts. Plaintiffs shall use reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. The Parties shall reasonably cooperate with each other, and each Party, upon request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

6.2 Public Statements. The Parties will meet and confer to agree on the parameters of any public statements about the Settlement. Such statements will only be issued in accordance with the Parties' agreed terms.

6.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into the Agreement.

6.4 Binding Effect. This Agreement shall be binding upon the Parties.

6.5 Arms' Length Transaction; Materiality of Terms. The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise stated.

- 6.6 Captions.** The captions or headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 6.7 Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party jointly participated in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.
- 6.8 Governing Law.** This Agreement shall in all respects be interpreted, enforced and government by and under the laws of the Commonwealth of Pennsylvania.
- 6.9 Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated hereby.
- 6.10 Waivers, Modifications, or Amendments in Writing.** No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid and binding unless in writing, signed by or on behalf of Plaintiffs and Defendant, subject to any required Court approval. Any failure by a Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all provisions of this Agreement.
- 6.11 When Agreement Becomes Binding; Counterparts.** This Agreement shall become valid and binding upon its complete execution, except that it shall be without force or effect if not approved by the Court other than as to any act or obligation that is required or contemplated to occur prior to the Court's decision whether to preliminarily or finally approve the Settlement. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 6.12 Facsimile and Email Signatures.** Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.

WE AGREE TO THESE TERMS,

Dated: January 8, 2021

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

By: *Gino Benedetti*

Its: General Counsel

Dated: _____, 2021 FRANK LONG

Frank Long

Dated: _____, 2021 JOSEPH SHIPLEY

Joseph Shipley

Dated: _____, 2021 MICHAEL WHITE

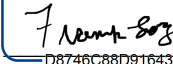
Michael White

By: _____

Its: _____

Dated: January 08, 2021

FRANK LONG

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JOSEPH SHIPLEY

Joseph Shipley

Dated: _____, 2021

MICHAEL WHITE

Michael White

By: _____

Its: _____

Dated: _____, 2021 FRANK LONG

Frank Long

Dated: January 8, 2021 JOSEPH SHIPLEY

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Frank Long

Dated: _____, 2021 JOSEPH SHIPLEY

Joseph Shipley

Dated: January 8, 2021 MICHAEL WHITE

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