

EXECUTION COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CHEYENNE SHONGO et al., individually)	Case No. 1:22-cv-02684-MJM
and on behalf of all other similarly)	
situated people,)	
)	
PLAINTIFFS)	
v.)	
)	
CSX TRANSPORTATION, INC.,)	
)	
DEFENDANT)	

CLASS SETTLEMENT AGREEMENT AND RELEASE

THIS CLASS SETTLEMENT AGREEMENT AND RELEASE (“Settlement Agreement”) is entered into and executed by and among the following Parties: CSX Transportation, Inc. (“CSX,” or “Defendant”); Named Plaintiffs Cheyenne Shongo and Kennett Walker (“Named Plaintiffs”), on behalf of themselves and the “Settlement Class” (as defined below), acting by and through “Settlement Class Counsel” (as defined below).

WHEREAS, the Named Plaintiffs have asserted claims on their own behalf and on behalf of the Settlement Class against Defendant in connection with the explosion at CSX’s Curtis Bay Coal Piers facility in Baltimore, Maryland on December 30, 2021 (the “Incident”);

WHEREAS, Defendant denies and continues to deny any wrongdoing by it in connection with the Incident;

WHEREAS, the Parties desire to settle the disputes on the terms and conditions stated herein without further litigation;

EXECUTION COPY

WHEREAS, the Named Plaintiffs and Defendant have been in litigation for more than one (1) year, including a mediation session with the Honorable Bill Taylor (Retired), which led to this Class Settlement Agreement and Release; and

WHEREAS, in consideration of the promises and the mutual covenants hereinafter set forth, the Named Plaintiffs, on behalf of themselves and the Settlement Class, acting by and through Settlement Class Counsel, and Defendant have agreed to this Class Settlement Agreement and Release.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each signatory hereto, IT IS HEREBY AGREED by the Parties, subject to Court approval, as follows:

1. DEFINITIONS

For purposes of this Class Settlement Agreement and Release, the following terms shall have the meanings set forth below:

1.1 **“Action”** means the above-captioned putative class action lawsuit.

1.2 **“Agreement”** or **“Settlement Agreement”** means this Class Settlement Agreement and Release including all exhibits.

1.3 **“Complaint”** means the complaint filed in this Action.

1.4 **“Court”** means the United States District Court for the District of Maryland, the Honorable Judge Matthew J. Maddox, presiding.

1.5 **“Cy Pres Fund”** means the fund established by this Agreement consisting of any funds remaining in the Settlement Fund and to be distributed as the Court directs in accordance with Section 9.3 of this Agreement after payment of (i) Settlement Class Member claims as described in Article 9 of this Agreement, (ii) notice expenses as described in Article 4 of this

EXECUTION COPY

Agreement, (iii) Settlement Administrator fees and costs as described in Article 11 of this Agreement, (iv) Settlement Class Counsel's attorneys' fees and expenses, as described in Article 10 of this Agreement; and (v) Named Plaintiff Incentive Awards as described in Article 10 of this Agreement.

1.6 **“Effective Date”** means the first date by which all of the events and conditions specified in Sections 13.1.1 through 13.1.4 of this Agreement have occurred and been satisfied.

1.7 **“Fairness Hearing”** means the hearing at which the Court will consider whether to give final approval to this Agreement; approve, modify, or deny an award of attorneys' fees, Incentive Awards, costs, and expenses; enter the Final Approval Order; and make such other final rulings as are contemplated by this Agreement.

1.8 **“Final Approval Order”** means the Court's entry of a final judgment approving this Agreement.

1.9 **“Monetary Benefits”** has the meaning set out in Section 9.2.3 of this Agreement.

1.10 **“Opt-Out Request”** means the request for exclusion as provided for in Section 5.1.

1.11 **“Party”** or **“Parties”** mean the persons who have entered into this Agreement, being the Named Plaintiffs, on behalf of themselves and the Settlement Class, acting by and through Settlement Class Counsel, and Defendant.

1.12 **“Person”** means a natural person, individual, business, corporation, association, limited liability company, partnership, limited partnership, joint venture, affiliate, and any other type of legal entity and their respective spouses, heirs, predecessors, successors, executors, administrators, representatives, or assigns.

1.13 **“Preliminary Approval”** means the Court's order certifying the Settlement Class, directing notice to the Settlement Class, and preliminarily approving this Agreement and all

EXECUTION COPY

exhibits under Federal Rule of Civil Procedure 23, where such approval is in substantially the same form as the Preliminary Approval Order attached as Exhibit A to this Agreement.

1.14 **“Released Claims”** means any and all actions, causes of actions, claims, and demands that have been asserted in the Complaint or could have been asserted in any form the Settlement Class Members (including Named Plaintiffs) against any or all of the Released Persons, including but not limited to, claims based on statutory or regulatory violations, tort (excluding personal injury and wrongful death), contract, common law causes of action, and any claims for damages or other relief (including any compensatory damages, special damages, consequential damages, medical monitoring, punitive damages, statutory fines or penalties, attorneys’ fees, costs, and any equitable relief), direct or indirect, whether or not currently unknown, arising out of, based upon, or causally related to the explosion on December 30, 2021, as alleged in the Complaint.

1.15 **“Released Persons”** means CSX Transportation, Inc., and each of its present and former, direct, and indirect, divisions, parents, subsidiaries, and affiliates; any partnership (whether limited or general) or joint venture of which any of the above is or was a partner or member; the predecessors, successors, insurers, and assigns of any of the foregoing; and all of the present and former agents, servants, officers, directors, employees, attorneys, consultants, advisors, owners, shareholders, members, and partners (whether limited or general), of any of the above.

1.16 **“Settlement Administrator”** means the entity selected by Settlement Class Counsel and Defendant (subject to Court approval) to perform the settlement administration duties described in Articles 5 and 9 of this Agreement.

1.17 **“Settlement Amount”** means \$1,750,000.00. This is the maximum amount Defendant shall be obligated to pay under this Agreement under any circumstances with the sole

EXECUTION COPY

exception of indemnification or enforcement related amounts provided for expressly elsewhere in this Agreement.

1.18 “**Settlement Class**” means a class to be certified by the Court pursuant to this Agreement solely for the purpose of effectuating this Agreement, as provided for in Section 3.3.

1.19 “**Settlement Class Counsel**” means the following lawyers: Jonathan Nace and Zachary Kelsay of Nidel & Nace, P.L.L.C.

1.20 “**Settlement Class Member**” means a member of the Settlement Class.

1.21 “**Settlement Fund**” means the qualified settlement fund created by Defendant’s payments described in Sections 9.2.1 of this Agreement and used to pay the Monetary Benefits to the Settlement Class Members, the Settlement Class Counsel’s attorneys’ fees and expenses (including notice costs), the Named Plaintiffs’ Incentive Awards, and the Settlement Administrator’s expenses and costs, each as described in this Agreement.

2. NO ADMISSION OF WRONGDOING OR LIABILITY

2.1 Nothing in this Agreement or in any final judgment or order of dismissal entered in this Action, constitutes an admission or concession of any liability or wrongdoing by Defendant or that there is any validity to any allegation in the Complaint. Neither this Agreement, the Final Approval Order, the fact of settlement, the settlement negotiations, nor any documents or facts related to the settlement or settlement negotiations, shall be offered or received in evidence against any Party for any purpose in any proceeding other than (i) in such proceedings as may be necessary to consummate or enforce this Agreement, or (ii) in any action against or by Named Plaintiffs or Class Members against or by any of the Released Persons to support a defense of *res judicata*, collateral estoppel, release, or other theory of claim preclusion, issue preclusion, or similar defense. A breach of the provisions of this Article 2 shall entitle the aggrieved person(s) to an

EXECUTION COPY

injunction from any such future conduct and an award of attorneys' fees and costs associated in obtaining the injunction, but only against the Party, Settlement Class Member, or their respective counsel who breached this Article.

3. SETTLEMENT CLASS CERTIFICATION

3.1 Defendant agrees that, solely for the purposes of this settlement and its implementation, it will not oppose the certification of a Settlement Class pursuant to Federal Rule of Civil Procedure 23(e), as more particularly described in this Agreement. The Settlement Class Members and Settlement Class Counsel agree that they will not use, suggest, or offer the fact that Defendant did not oppose such certification in support of any future effort to certify a non-settlement class in the event this settlement is not consummated and finally approved.

3.2 Based on an analysis of the facts and the law and taking into account the burden and expense of litigation, as well as the fair, cost-effective, and assured method of resolving claims of the Settlement Class Members, the Parties have concluded that this Agreement provides benefits to the Parties and is fair, adequate, reasonable, and in the best interest of Settlement Class Members and Defendant. The Parties agree to recommend approval of this Agreement by the Court, and to support approval of this settlement as fair, adequate, and reasonable. Plaintiffs further agree to undertake their best efforts, including all reasonable and proper steps and efforts that may become necessary by order of the Court, to effectuate the terms and purposes of this Agreement, to secure the Court's approval, and to oppose any appeals from or challenges to the Final Approval Order.

3.3 For purposes of this Agreement, the term "Settlement Class" refers to a class to be certified by the Court under Federal Rule of Civil Procedure 23(b)(3) and (e) solely for the purpose of effectuating this Agreement, and is defined as follows:

All Persons either (a) residing (as their primary residence) on December 30, 2021, or (b) owning residential real property on or since December 30, 2021, in the area

EXECUTION COPY

identified on the map attached as Exhibit B as the “Class Area” and narratively defined as follows:

Beginning at the intersection of W. Bay Ave. and E. Patapsco Ave., extending southeast to the intersection of E. Patapsco Ave. and Curtis Ave., then extending south along Curtis Ave. until its intersection with railroad tracks (located at approximately 39.216431, -71.586-087), then southwest to the intersection of Branch Ave. and Arundel Blvd., then northwest to the intersection of W. Bay Avenue and Church Street, then north along W. Bay Ave. to the intersection of W. Bay Ave. and E. Patapsco Ave., all within the City of Baltimore, Maryland.

The Class Area includes properties immediately abutting the boundary lines described above, including, for example, on the north side of E. Patapsco Ave. between West Bay Ave. and Curtis Ave.

4. NOTICE OF PROPOSED CLASS SETTLEMENT

4.1 Provided no appeal is taken of the Preliminary Approval of the Agreement and certification of the Settlement Class (or upon the conclusion of any such appeal), the Settlement Administrator, pursuant to Section 11.3, will provide notice of the proposed settlement to the Settlement Class as required by Federal Rule of Civil Procedure 23 and all applicable due process requirements. Subject to Court approval, that notice shall be provided as outlined in the notice plan included as part of the Preliminary Approval Order attached as Exhibit A. In particular, the Settlement Administrator shall provide notice to Settlement Class Members who have moved outside of the Class Area in the manner discussed in the notice plan. The Parties also agree to provide the notice required by the Class Action Fairness Act, 28 U.S.C. § 1715, to the appropriate federal and state officials.

4.2 The text of the notices to the Settlement Class as described by Section 4.1 shall be substantially equivalent to the notices included with the proposed Preliminary Approval Order which is attached as Exhibit A.

EXECUTION COPY

5. OPT-OUT PROCEDURE

5.1 Settlement Class Members who want to be excluded from the Settlement Class must send a written request for exclusion clearly evidencing their desire to opt out of the settlement (“Opt-Out Request”) and signed by them (or their duly authorized representative with documentation of such representative authorization) to Settlement Administrator, Settlement Class Counsel, *and* counsel for Defendant, consistent with the procedure described in Section 14.1 of this Agreement. Such request shall be postmarked or sent via email no more than forty-five (45) days after the date of the mailing of the notice distributed pursuant to Article 4, the exact calendar date to be specified in such Notice.

5.2 The Settlement Administrator, within seven (7) days from the running of the opt-out period, shall prepare a preliminary list of the names of all Persons who submitted an Opt-Out Request and will provide the list to the Parties. Settlement Class Counsel shall file with the Court, unless otherwise ordered by the Court, a final list of Persons who have elected to opt out of the Settlement Class within fourteen (14) days from the running of the opt-out period. Persons who submit a valid Opt-Out Request (and do not withdraw such request prior to the entry of the Final Approval Order) are not Settlement Class Members, and will not be bound by any final judgment entered in this case or the release contained in this Agreement. Such Persons will not be eligible for any of the benefits provided to Settlement Class Members under this Agreement.

6. OBJECTION PROCEDURE

6.1 Each Settlement Class Member wishing to object to the settlement shall file a timely written notice of their objection postmarked or sent via email no more than forty-five (45) days after the mailing of the Notice distributed pursuant to Article 4, the exact calendar date to be specified in such Notice. The objection shall set forth the reasons for the Settlement Class

EXECUTION COPY

Member's objection. The objection must be signed by the Settlement Class Member, or the objector's duly authorized representative (including attorney), and state (i) the objector's name and address, (ii) all bases claimed for membership in the Settlement Class, (iii) whether the objector plans to appear at the Final Fairness Hearing, and (iv) the reason or reasons for the objection, along with whatever legal authority, if any, the objector asserts supports the objection. The objection shall be filed with the Clerk of Court for the United States District Court for the District of Maryland, 101 West Lombard Street Baltimore, Maryland 21201. Additionally, the objector shall serve copies of the written objection upon Settlement Class Counsel and counsel for Defendant, according to the procedure described in Section 14.1 of this Agreement.

7. PRELIMINARY AND FINAL COURT APPROVAL

7.1 The Settlement Class, acting by and through Settlement Class Counsel, shall move for the Preliminary Approval Order. Defendant shall not oppose the motion to the extent it is consistent with the terms of this Agreement.

7.2 After Notice is given pursuant to Article 4 and the Opt-Out period has expired, the Settlement Class, acting by and through Settlement Class Counsel, shall move for the Court's final approval of this settlement, and agree to use its best efforts to obtain such approval under Federal Rule of Civil Procedure 23. The motion shall be accompanied by a proposed Final Approval Order, Judgment, and Order of Dismissal that (i) approves the class settlement as fair, adequate, and reasonable under Federal Rule of Civil Procedure 23(e), (ii) dismisses the Action with prejudice, (iii) enjoins all further litigation on the Released Claims, and (iv) enters final judgment (with continuing jurisdiction to administer the settlement), substantially in the form attached as Exhibit C ("Final Approval Order"). These materials shall be filed prior to the Fairness Hearing,

EXECUTION COPY

or as the Court may order. Defendant shall not oppose the Motion for Final Approval to the extent it is consistent with the terms of this Agreement.

7.3 The Settlement Class, acting by and through Settlement Class Counsel, shall use their best efforts to resolve any and all objections that may arise or be filed with respect to the Settlement. Defendant will not be obligated to contribute any money for addressing or resolving any objector issue.

7.4 If any person, other than the Parties hereto, appeals the Court's Final Approval Order, Settlement Class Counsel will use their best efforts to defeat the appeal.

7.5 The terms of this Agreement are conditioned upon the Court's Final Approval Order being entered substantially in the same form attached as Exhibit C to this Agreement, and, in the event the Final Approval Order is appealed, the dismissal of said appeals or affirmance of the Court's Final Approval Order.

7.6 In the event of any appeal, all dates and deadlines herein set to occur after the date of the issuance of Final Approval order shall be stayed until the final disposition of all such appeals, and adjusted by adding the duration of the appeal to the otherwise applicable date or deadline.

8. TERMINATION

8.1 In the event of any order by any court altering this Agreement in a way that materially and adversely affects the Settlement Class or Defendant, the affected Party may void the Agreement within ten (10) business days from the date that such order becomes final and not subject to any appeal or further appeal.

8.2 A Party wishing to avail itself of this option must deliver written notice of intent to counsel for the other Parties (by email, with a paper copy following), and the Court (via electronic filing) by such deadline, except that the additional paper copy need not be received by the deadline.

EXECUTION COPY

Notwithstanding the above, the Court's entry of an order for Settlement Class Counsel's attorneys' fees, costs, expenses, and/or incentive awards below the amounts (as described in Article 10), or an appellate court order to the same effect, shall not be grounds to void the Agreement. The only remedy in such an event shall be a separate appeal or further appeal to the extent provided by law.

8.3 If more than ten (10) percent of Settlement Class Members file valid Opt-Out Requests, then Defendant shall have the absolute right, in its sole discretion, to terminate this Agreement. If Defendant in their sole discretion elects to terminate this Agreement, Defendant must provide notice of termination of this Agreement in the manner provided for in Section 8.2 within ten (10) business days after receipt by the Court of the final list of Settlement Class Members who opt out as described in Section 5.2. In the event the Court orders that no such list should be filed, the period shall run from receipt of the same list by Defendant.

8.4 The Parties agree that, if final approval of the Agreement is not achieved, or the Agreement is terminated, the settlement and all proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the Parties, and the Parties further agree to jointly move the Court to vacate all court orders issued pursuant to the Settlement and certification of the Settlement Class.

9. SETTLEMENT CLASS RELIEF

9.1 The Parties have agreed to this Agreement to provide for the resolution of any and all disputes concerning the Settlement Class Members and Named Plaintiffs arising from the Incident, and believe that this Agreement provides substantial and meaningful benefits to the Settlement Class Members.

9.2 **Settlement Class Monetary Benefits**

EXECUTION COPY

9.2.1 Defendant shall pay the Settlement Amount to the Settlement Fund on or before twenty-eight (28) days after the Preliminary Approval Order.

9.2.2 In order to be eligible for certain Monetary Benefits under this Agreement (as specified in Section 9.2.3), each Settlement Class Member must submit a timely and properly completed Claim Form (included as part of the Individual Notice attached as part of Exhibit A), including a declaration under the penalties of perjury in accordance with 28 U.S.C. § 1746, that all of the factual matters set out on the Claim Form are true and correct. The Settlement Class Member shall cooperate with the Settlement Administrator in providing such other and further information as may be reasonably necessary. Failure to cooperate with the Settlement Administrator in a timely manner shall be a sufficient basis for denial of the claim, in whole or in part. The Parties will obtain a confidentiality agreement from the Settlement Administrator requesting that it treat any private information obtained from Settlement Class Members as confidential, subject to the requirements of the Court.

9.2.3 Subject to and as explained by the additional conditions set out below, an equal Monetary Benefit shall be allocated for each property for which there is any valid claim (based on residency and/or ownership)

- (a) In the event of multiple valid claims based on ownership and/or residency of the same property, the Monetary Benefit shall be divided in equal parts among all valid Claims. Thus, for example, a family of four (4) owning their own home and living together at the same real property and each making a valid claim will share, as a group (25% each), the same total Monetary Benefit as an individual who is the sole owner and occupant of a different property.
- (b) Each claimant may only make one claim per eligible real property.
- (c) Claimants over the age of eighteen (18) will be required to demonstrate residence and/or real property ownership in the Class Area (as applicable) by producing a copy of a utility bill, driver's license, real property tax assessment invoice or payment stub, or

EXECUTION COPY

other similar official documentation that contains the name and address of the claimant.

- (d) If a claimant opts out of the Class Settlement, that opt out is effective as to all categories of claims.

9.2.4 All decisions by the Settlement Administrator as to whether a Settlement Class Member qualifies for Monetary Benefits and the amount of Monetary Benefits due shall be final.

9.2.5 Settlement Class Members' Claim Form submissions must be postmarked within forty-five (45) days after the date of the mailing of the notice distributed pursuant to Article 4, the exact calendar date to be specified in such Notice. Failure to submit a Claim Form within forty-five (45) days of the date of the mailing of the notice distributed pursuant to Article 4 shall result in permanent waiver of all remedies and release of rights, as set forth in Released Claims, without entitlement to any payments hereunder.

9.2.6 The Settlement Administrator will distribute checks to the Settlement Class Members in the amounts set forth in Section 9.2.3. Failure by Settlement Class Members to cash distributed checks within ninety (90) days from receipt shall result in permanent waiver of all remedies and release of rights, as set forth in Released Claim. All funds from uncashed checks will be placed in the Cy Pres Fund.

9.3 Following completion of the claims process and the payment of other amounts expressly provided for herein from the Settlement Fund, the balance (if any) of the Cy Pres Fund (including any accrued interest and returned tax remittances), shall be paid to a Court-designated donee. Settlement Class Counsel and Defendant recommend to the Court that the Cy Pres Fund, if any, be distributed to the following organization: Drink At The Well Inc., a/k/a "The Well," 4710 Pennington Avenue, Baltimore, MD 21226.

EXECUTION COPY

10. ATTORNEYS' FEES, COSTS, EXPENSES, AND CLASS REPRESENTATIVE INCENTIVE AWARDS

10.1 The Parties agreed to all substantive terms of this Agreement prior to reaching any agreement concerning attorneys' fees. Settlement Class Counsel shall be paid reasonable attorneys' fees and out-of-pocket expenses (including the costs to provide notice to the absent class members as required under Rule 23) arising from their representation of the Settlement Class Members in this case from the Settlement Fund. Settlement Class Counsel shall file a motion with the Court seeking such fees and expenses, and Defendant agrees not to oppose Settlement Class Counsel's fee application or appeal the amounts awarded as fees and expenses by the Court, so long as all fees and expenses are drawn exclusively from the Settlement Fund and the amount of the requested fees, exclusive of reimbursed expenses, does not exceed \$577,500.

10.2 Settlement Class Counsel's fee petition shall comply in all respects with the requirements of Federal Rule of Civil Procedure 23(h).

10.3 Settlement Class Counsel may at their sole discretion file a motion with the Court seeking Incentive Awards for the individual Named Plaintiffs, and Defendant agrees not to oppose Settlement Class Counsel's motion for Named Plaintiffs' Incentive Awards, as long as all Incentive Awards are drawn exclusively from the Settlement Fund and the amount of any one (1) Incentive Award does not exceed \$5,000 to a single Named Plaintiff.

10.4 Each claimant who submits a Claim Form for processing under this Agreement may be represented by claimant's counsel of the claimant's choice, but all fees and expenses for an individual claimant's counsel shall be paid by the claimant, and those payments shall not impact Settlement Class Counsel's fees and expenses.

EXECUTION COPY

11. COSTS OF CLAIMS ADMINISTRATION

11.1 All costs necessary for the establishment and operation of the Settlement Fund claims administration procedures described in this Agreement, including fees of the Settlement Administrator, shall be paid from the Settlement Fund and approved by the Court.

11.2 The Settlement Administrator shall be entitled to a reasonable fee. These fees shall be paid from the Settlement Fund subject to Court approval.

11.3 The Settlement Administrator may perform certain pre-Effective Date administrative services, including printing and distribution of the class notice, receipt of Claim Forms, development of claims administration procedures, and receipt and tabulation of Opt-Out Requests. The Settlement Administrator shall be entitled to a reasonable fee for such services according to the provisions of this Agreement and the Preliminary Approval Order; but in no event shall the Settlement Administrator engage in any pre-Effective Date services except where the services were expressly authorized in writing in advance by Settlement Class Counsel and Defendant or their designated representatives.

11.4 In addition to all other rights under applicable law, upon reasonable notice, Settlement Class Counsel and Defendant shall have the right to examine all books and records of the Settlement Administrator related to the processing of Settlement Fund claims under this Agreement.

12. SETTLEMENT CLASS MEMBERS' RELEASE AND EXCLUSIVE REMEDY

12.1 **Release.** Settlement Class Members and each of them hereby release and forever discharge the Released Persons and each of them, and their respective heirs, executors, administrators, predecessors, successors, insurers, and assigns, of and from each, every, and all Released Claims as defined in Section 1.14 of this Agreement.

EXECUTION COPY

12.2 In connection with the release in Section 12.1 and to the extent allowed by law, Named Plaintiffs and Settlement Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the Released Claims. Nevertheless, it is the intention of the Named Plaintiffs and the Settlement Class Members to fully, finally, and forever settle and release all such Released Claims, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action) and accrued on or before the date that the Final Judgment and Order of Dismissal is entered. In this regard, Named Plaintiffs and the Settlement Class Members expressly waive, to the extent allowed by law, any potentially applicable statutory or common law provisions that arguably provide otherwise (*see, e.g.*, Section 1542 of the Civil Code of the State of California provides that a “general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party,” which if applicable to any individual Settlement Class Member’s claim is expressly waived by this provision).

12.3 **Exclusive Remedy.** Submission of a Claim Form in accordance with the procedures set forth in this Agreement is the EXCLUSIVE method of obtaining a remedy for any and all Released Claims, with the sole exception of any Incentive Payments to Named Plaintiffs. A Claim Form submitted hereunder shall be in lieu of any other remedy or right of action against the Released Persons for the Released Claims. Accordingly, no Released Person shall be subject to liability or expense of any kind to any Settlement Class Member with respect to any Released Claims, other than as set forth in this Agreement.

EXECUTION COPY

12.4 **Covenant Not To Sue.** Settlement Class Members shall not commence, prosecute, or cause to be commenced or prosecuted against, or with regard to the asserted conduct of any Released Persons any action or other proceedings based upon any Released Claims. No Settlement Class Member has assigned, sold, or otherwise transferred any Released Claims of any kind.

12.5 **Injunction Against Additional Litigation.** Upon Final Approval, all Settlement Class Members shall be enjoined from filing or becoming part of any action, including, without limitation, any putative class actions, filed against the Released Persons or any other person or entity, and that relate the subject matter of the instant action, specifically the acts that took place in December 2021, insofar as those actions implicate any of the Released Claims or otherwise interfere with this Agreement or the settlement of the class action claims generally. This Paragraph does not apply to any action to enforce the terms of this Agreement or the Final Approval Order.

12.6 Each Settlement Class Member shall release Defendant by virtue of a submission of his or her Claim Form that is consistent with the provisions of this Article 12 and in a form approved by Defendant. If a Claim Form is not required or if no Claim Form is filed, a Settlement Class Member shall still be bound by this Article 12.

12.7 Nothing contained in this Article 12 releases, nor shall be construed to release, any continuing rights of Settlement Class Members resulting from this Agreement and the remedies and benefits created and conferred hereby.

13. EFFECTIVE DATE OF THE SETTLEMENT

13.1 The Effective Date, as used in this Agreement, is the date on which the last of all of the following events and conditions has occurred or been met:

13.1.1 The Parties, through their respective counsel, have executed this Agreement;

EXECUTION COPY

13.1.2 The Court has, by entry of a Preliminary Approval Order, (i) certified the Settlement Class and authorized Notice to be sent to the Settlement Class, (ii) preliminarily found that the settlement set forth in this Agreement is fair, reasonable, and valid, subject to any objections that may be raised at the Fairness Hearing, and (iii) approved the method of providing notice to the relevant Settlement Class set forth herein;

13.1.3 The Court has entered a Final Approval Order approving this Agreement as fair, adequate, and reasonable under Federal Rule of Civil Procedure 23 and entered a Final Judgment substantially identical to that attached as Exhibit C; and

13.1.4 Five (5) business days have passed after the latest of the following has occurred: (i) the time to appeal from the Final Approval Order has expired and no notice of appeal has been filed; (ii) in the event of an appeal, any appeal from the Final Approval Order has been finally dismissed or the Final Approval Order and Final Judgment has been affirmed on appeal; (iii) the time to petition for review with respect to any appellate decision affirming the Final Approval Order has expired; and (iv) if a petition for review of an appellate decision is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Final Approval Order.

14. NOTICE

14.1 Any notice required to be given to the Named Plaintiffs, Settlement Class, or Settlement Class Counsel or Defendant or its counsel shall be given in the manner prescribed in the relevant provision of this Agreement using the addresses specified below, or if not specified by email and United States mail (return receipt requested) to those addresses:

FOR NAMED PLAINTIFFS, SETTLEMENT CLASS, AND
SETTLEMENT CLASS COUNSEL:

Jonathan Nace
NIDEL & NACE, P.L.L.C.

EXECUTION COPY

One Church Street, Suite 802
Rockville, Maryland 20850
jon@nidellaw.com

FOR DEFENDANT:

Michael K. Murphy
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
MMurphy@gibsondunn.com

15. NONDISPARAGEMENT

15.1 No press release shall be issued by Settlement Class Counsel, Named Plaintiffs, or Defendant's Counsel regarding this Agreement or the resolution of this matter unless the content of such press release is first agreed to by Settlement Class Counsel and Defendant's Counsel. For purposes of this subsection, "press release" shall include blog posts or other Internet postings and announcements except that Settlement Class Counsel may publish publicly available information on its website such as the allegations in the Complaint, the fact of a proposed settlement, or the preliminary or final approval of any settlement. Nothing herein shall be construed to interfere with any attorney's or law firm's practice of law.

15.2 Named Plaintiffs agree to keep all of the negotiations leading up to this Agreement strictly confidential except to the extent necessary to move for preliminary or final approval so as to define efforts made to obtain an adequate class settlement. Named Plaintiffs, on behalf of themselves and the Settlement Class Members, represent that they have not disclosed settlement negotiations to any other person or entity. Named Plaintiffs further agree that until this Agreement is filed with the United States District Court for the District of Maryland, they will not disclose the existence of this Agreement or any of the terms or conditions of this Agreement to anyone other than their attorneys and tax or financial advisor and immediate family (all of whom shall agree to maintain this information in confidence), or as may be required pursuant to legal process.

EXECUTION COPY

16. MISCELLANEOUS

16.1 This Agreement constitutes the entire settlement among the Parties and supersedes all prior agreements or understandings between them relating to the settlement of the Action.

16.2 The Parties acknowledge that this Agreement was jointly drafted, and agree that if any of its terms are ambiguous, that the rule of construction construing the ambiguity against the drafting party shall not be employed in the interpretation of this Agreement.

16.3 The Agreement shall be governed by, construed by, and follow the laws of the State of Maryland, without regard to its conflicts of laws rules. Jurisdiction and venue for all proceedings in connection with the Agreement, or arising as a result of any matter relating to this settlement, or addressed in the Agreement, shall be in the United States District Court for the District of Maryland.

16.4 The Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Agreement, subject to approval by the Court as may be required.

16.5 To the extent any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

16.6 In construing this Agreement, the use of the singular includes the plural (and vice-versa), and the use of the masculine includes the feminine (and vice-versa).

16.7 This Agreement may be executed in counterparts and shall be binding upon each Party and all Parties executing this or any counterpart.

EXECUTION COPY

Defendant

For CSX Transportation, Inc.

Jeremy Carnes

Date

Named Plaintiffs

Cheyenne Shongo

Apr 02 2024 13:37 EST

Date

Kennett Walker

Apr 02 2024 14:24 EST

Date

Settlement Class acting by and through Settlement Class Counsel

Jonathan Nace

4/2/2024

Date

EXECUTION COPY

Defendant

For CSX Transportation, Inc.



Jeremy Carnes

April 2, 2024

Date

Named Plaintiffs

Cheyenne Shongo

Date

Kennett Walker

Date

Settlement Class acting by and through Settlement Class Counsel

Jonathan Nace

Date