

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BUFFALO GROVE POLICE PENSION	)	
FUND, Derivatively on Behalf of Nominal	)	
Defendant NAVIENT CORPORATION,	)	C.A. No. _____
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
WILLIAM M. DIEFENDERFER, III, JOHN	)	
K. ADAMS, ANNA ESCOBEDO CABRAL,	)	
DIANE SUITT GILLELAND, KATHERINE	)	
A. LEHMAN, LINDA A. MILLS, JOHN	)	
(JACK) F. REMONDI, JANE J.	)	
THOMPSON, LAURA S. UNGER, BARRY	)	
L. WILLIAMS, ANN TORRE BATES,	)	
STEVEN L. SHAPIRO, BARRY A.	)	
MUNITZ, TIMOTHY J. HYNES, IV,	)	
SOMSAK CHIVAVIBAL, JOHN M. KANE,	)	
and CHRISTIAN M. LOWN,	)	
	)	
Defendants,	)	
	)	
- and -	)	
	)	
NAVIENT CORPORATION,	)	
	)	
Nominal Defendant.	)	

**STIPULATION AND AGREEMENT OF  
SETTLEMENT, COMPROMISE, AND RELEASE**

This Stipulation and Agreement of Settlement, Compromise, and Release (the “Stipulation”) is entered into between and among the following parties, by and through their respective undersigned counsel, in the Action<sup>1</sup>: (i) Plaintiff, on its own behalf and derivatively on behalf of Navient Corporation (“Navient” or the “Company”); (ii) Defendants; and (iii) Navient,

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<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶1 herein.

as nominal defendant. This Stipulation sets forth the terms and conditions of the Settlement of the Action, and is intended by the Parties to fully, finally and forever resolve, discharge and settle all Released Claims as against the Released Persons, subject to the approval of the Court.

**WHEREAS:**

A. Navient is a public corporation and was created as a result of a spin-off from SLM Corporation (“Sallie Mae”) in 2014. In connection with the reorganization of Sallie Mae, Navient, through its subsidiaries (including Navient Solutions, LLC and Pioneer Credit Recovery, Inc. (“Pioneer”)), assumed the servicing and collection of certain private and federal student loans owned by Navient and various third parties.

B. Navient has been investigated by numerous governmental entities, including the Consumer Financial Protection Bureau (“CFPB”) and multiple state attorneys general, who have alleged that Navient committed payment processing errors and failed to implement the internal controls necessary to appropriately service student loans, leading to misapplied payments, misinformation being sent to borrowers, and false reporting to credit agencies of certain loans. In addition, these regulators have alleged that Navient failed to advise borrowers of certain rights as required by federal and state law.

C. The above allegations led to both regulatory and private actions to be taken against the Company, including lawsuits being filed by the CFPB and state attorneys general and two securities class action lawsuits.

D. On January 15, 2018, Plaintiff sent a demand to inspect certain books and records of the Company pursuant to 8 *Del. C.* §220 to investigate potential wrongdoing, mismanagement, and breaches of fiduciary duty by the members of the Company’s Board of Directors (the “Board”) and management (the “Demand”). On March 12, 2018, the Company

produced to Plaintiff inspection materials pursuant to the Demand (the “220 Documents”). Plaintiff subsequently sent a settlement demand to the Company on May 21, 2018.

E. On May 7, 2018, Plaintiff provided Navient with a draft derivative complaint on behalf of the Company against certain directors and officers of Navient for breaches of fiduciary duty. Plaintiff alleged breach of fiduciary duty claims arising out of Defendants’ roles in allowing the Company to function without effective controls in place to ensure compliance with minimum federal standards for student loan servicing, allowing the Company to violate the federal securities laws, and allowing certain Defendants to enrich themselves at the expense of the Company and its stockholders. Defendants informed Plaintiff that they believed the claims were without merit and would defend them in court, if the complaint were filed.

F. In August 2018, the Parties agreed to mediate the claims at issue in the Demand. The Parties retained Bill Baten (“Mr. Baten”) of Van Winkle Baten Dispute Resolution to mediate their dispute. Prior to mediating, the Parties exchanged written proposals on possible reforms intended to benefit Navient. The Parties separately had multiple communications with Mr. Baten to discuss the merits of their allegations and their respective positions. On September 21, 2018, the Parties attended a mediation in Washington, D.C., before Mr. Baten. After a full day session, the Parties reached an agreement-in-principle on substantive terms to settle the Action and executed a memorandum of understanding (the “MOU”). This Stipulation memorializes the terms of the Parties’ agreement to settle the Action.

G. The Parties have, separately from the substantive settlement terms, agreed on attorneys’ fees. Plaintiff’s Counsel intends to submit a Fee and Expense Application in an amount not to exceed \$1,495,000. Plaintiff’s Counsel also intends on requesting an incentive

award for Plaintiff in the amount of \$5,000, which shall come out of the amount received in response to Plaintiff's Counsel's Fee and Expense Application.

H. Plaintiff has owned shares of Navient common stock since the outset of the Action and continues to do so. Plaintiff, having thoroughly considered the facts and law underlying the Action, and based upon the investigation and prosecution of the Action and the mediation that led to the Settlement, and after weighing the risks of continued litigation, has determined that it is in the best interests of Navient and Navient Stockholders that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation, and that these terms and conditions are fair, reasonable, and adequate to Navient and Navient Stockholders.

I. Defendants have denied and continue to deny the allegations of wrongdoing, allegations of liability, and existence of any damages asserted in or arising from the Action. Defendants have concluded that further litigation in connection with the Action would be time-consuming and expensive. After weighing the costs, disruption, and distraction of continued litigation, they have determined, solely to eliminate the risk, burden, and expense of further litigation, that the Action should be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation.

**NOW THEREFORE, IT IS STIPULATED AND AGREED**, by and among the Parties, by and through their undersigned counsel, and subject to the approval of the Court, that the Action shall be fully and finally compromised and settled, the Released Claims shall be released as against the Released Persons, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of the Settlement, as follows:

## DEFINITIONS

1. The following terms, as used in this Stipulation, have the meanings specified below:

a. “Action” means the above-captioned action and all claims set forth in the books and records demand letters that Plaintiff served on Navient.

b. “Court” means the United States District Court for the Eastern District of Pennsylvania.

c. “Defendants” means William M. Diefenderfer, III, John K. Adams, Anna Escobedo Cabral, Diane Suitt Gilleland, Katherine A. Lehman, Linda A. Mills, John (Jack) F. Remondi, Jane J. Thompson, Laura S. Unger, Barry L. Williams, Ann Torre Bates, Steven L. Shapiro, Barry A. Munitz, Timothy J. Hynes, IV, Somsak Chivavibal, John M. Kane, and Christian M. Lown.

d. “Effective Date” means the first date by which all of the conditions precedent set forth in ¶8 below have been met and occurred, or have been waived in writing by the Parties.

e. “Fee and Expense Application” means the application by Plaintiff’s Counsel to be filed with the Court for an award of attorneys’ fees and reimbursement of litigation expenses and incentive award for Plaintiff.

f. “Final,” with respect to the judgment approving the Settlement or any other court order, means: (i) if no appeal from an order or judgment is taken, the date on which the time for taking such an appeal expires under the Federal Rules of Appellate Procedure, *i.e.*, 30 days after entry of the judgment or order; or (ii) if any appeal is taken, the date on which all appeals, including petitions for rehearing or reargument, have been

finally disposed of (whether through expiration of time to file, through denial of any request for review, by affirmance on the merits, or otherwise).

g. “Final Order and Judgment” or “Judgment” means the Final Order and Judgment of the Court, substantially in the form attached hereto as Exhibit D, approving the Settlement and dismissing the Action with prejudice without costs to any party (except as provided in this Stipulation).

h. “Navient” or the “Company” means Navient Corporation.

i. “Navient Stockholder(s)” means any and all Persons who hold of record, or beneficially own, shares of Navient as of the close of business on the date of this Stipulation

j. “Notice” means the Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit B.

k. “Parties” means Plaintiff, Defendants, and Nominal Defendant Navient.

l. “Person” means any individual, corporation, professional corporation, limited liability company, partnership, limited partnership, limited liability partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, or any other business or legal entity.

m. “Plaintiff” means Buffalo Grove Police Pension Fund.

n. “Plaintiff’s Counsel” means Scott+Scott Attorneys at Law LLP.

o. “Preliminary Approval Order” means the order to be entered pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, substantially in the form attached

hereto as Exhibit A: (i) preliminarily approving the Settlement; (ii) approving the form and manner of Notice to Navient Stockholders of the pendency of the Action, the Settlement, and their right to object; and (iii) establishing the procedure and schedule for the Court's consideration of the Settlement, dismissal of the Action with prejudice, and Plaintiff's Counsel's Fee and Expense Application.

p. "Released Claims" means all Released Plaintiffs' Claims and all Released Defendants' Claims.

q. "Released Defendants' Claims" means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues, and controversies of any kind, nature, or description whatsoever, whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including both known and Unknown Claims that were or could have been asserted by any of the Defendants in any court, tribunal, forum, or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule, and that are based upon, arise out of, or relate to the commencement, prosecution, defense, mediation, or settlement of the Action, including, but not limited to, discovery produced in the Action; provided, however, for the avoidance of doubt, that the Released Defendants' Claims shall not include any claims to enforce this Stipulation, the Settlement, or the Final Order and Judgment.

r. “Released Defendants’ Persons” means, whether or not each or all of the following Persons were named, served with process, or appeared in the Action, Defendants, Defendants’ counsel, and all of their former or current agents, parents, controlling persons, partners (including general or limited partners), members, managers, managing members, direct or indirect equity holders, subsidiaries, affiliates, employees, officers, directors, trustees, predecessors, successors, attorneys, heirs, successors, assigns, insurers, reinsurers, consultants, other representatives, servants, respective past or present family members, spouses, agents, fiduciaries, corporations, bankers, estates, and advisors.

s. “Released Persons” means the Released Defendants’ Persons and the Released Plaintiffs’ Persons.

t. “Released Plaintiffs’ Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues, and controversies of any kind, nature, or description whatsoever, whether disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including both known and Unknown Claims, that (i) Plaintiff asserted in the Verified Shareholder Derivative Complaint; or (ii) Plaintiff could have asserted derivatively on behalf of Nominal Defendant Navient in any court, tribunal, forum, or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common, or other law or rule, and that are based upon, arise out of, or relate to the actions, inactions, deliberations, discussions, decisions, votes, or any other conduct of any kind by

any of the Released Defendants' Persons relating to any agreement, transaction, occurrence, conduct, or fact alleged or set forth in the Verified Shareholder Derivative Complaint; provided, however, for the avoidance of doubt, that the Released Plaintiffs' Claims shall not include: (i) any direct claims of any Navient Stockholder, including any claims arising out of, based upon, or relating to the federal or state securities laws; or (ii) any claims to enforce this Stipulation, the Settlement, or the Final Order and Judgment.

u. "Released Plaintiffs' Persons" means Plaintiff, Plaintiff's Counsel, and any and all of their former or current agents, parents, controlling persons, partners (including general or limited partners), members, managers, managing members, direct or indirect equity holders, subsidiaries, affiliates, employees, officers, directors, trustees, predecessors, successors, attorneys, heirs, successors, assigns, insurers, reinsurers, consultants, other representatives, servants, respective past or present family members, spouses, agents, fiduciaries, corporations, bankers, estates, and advisors.

v. "Release(s)" means the releases set forth in ¶¶3-4 below.

w. "Settlement" means the settlement and resolution of the Action on the terms and conditions contained in this Stipulation.

x. "Settlement Hearing" means a hearing required under Fed. R. Civ. P. 23.1, at or after which the Court will review the adequacy, fairness, and reasonableness of the Settlement and determine whether to issue the Final Order and Judgment.

y. "Stipulation" means this Stipulation and Agreement of Settlement, Compromise, and Release dated January 3, 2019.

z. “Summary Notice” means the Summary Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing, and Right to Appear, substantially in the form attached hereto as Exhibit C.

aa. “Unknown Claims” means any Released Claims that a Person granting a Release hereunder does not know or suspect to exist in his, her, or its favor at the time of the Release, including, without limitation, those that, if known, might have affected the decision to enter into or object to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, Plaintiff, Defendants, and Navient shall have expressly waived, and each of the other Navient Stockholders shall be deemed to have waived, and by operation of the Final Order and Judgment shall have expressly waived, and released any all provisions, rights, and benefits conferred by or under California Civil Code §1542 (and provisions of the laws of the United States or any state or territory thereof, or of the common law, that are equivalent, comparable, or analogous to Cal. Civ. Code §1542), which provides that:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Plaintiff, Defendants, and Navient acknowledge, and all other Navient Stockholders by operation of law shall be deemed by operation of law to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Plaintiff, Defendants, and Navient, and of all other Navient Stockholders by operation of law, to completely, fully, finally, and forever extinguish any and all Released Claims without

regard to the subsequent discovery of additional or different facts. Plaintiff, Defendants, and Navient acknowledge, and all other Navient Stockholders by operation of law shall be deemed to have acknowledged, that this waiver and the inclusion of “Unknown Claims” in the definition of “Released Claims” was separately bargained for, a material element of the Settlement, and relied upon by each and all of the Parties in entering into this Stipulation and agreeing to the Settlement.

bb. “Verified Shareholder Derivative Complaint” or “Complaint” means the Verified Shareholder Derivative Complaint to be filed by Plaintiff in January 2019.

### **SETTLEMENT CONSIDERATION**

2. In consideration of the full settlement, satisfaction, compromise, and release of the Released Plaintiffs’ Claims and dismissal with prejudice of the Action, the Parties agree as specified below:

a. Navient acknowledges that the pendency, prosecution, and settlement of the Action and the litigation efforts of Plaintiff and its counsel were a material and substantial cause of the Settlement consideration described below and that the Settlement and each of its terms are fair, reasonable, and adequate and in the best interest of Navient and Navient Stockholders.

b. This Settlement has been approved by those Navient director(s) who have not been named as Defendants in any of the Action as being in the best interests of the Company.

c. Navient’s Board has adopted or shall adopt resolutions, amend committee charters, or shall take other action necessary for the implementation of the Corporate Governance Reforms set forth below. The corporate governance changes set forth herein shall be maintained for a period of at least five years, unless any provision (or part of any

provision) is rendered unlawful or ill-advised under any statute or regulation. The Board may exercise its discretion in deciding whether to continue any of the corporate governance changes after five years.

d. **Board Composition.** Navient commits to appoint, or to have appointed, following receipt of Plaintiff's Complaint, two new independent directors to the Company's Board by the May 31, 2020.

e. **Director Orientation and Continuing Education.**

i. Within six months of their election or appointment, all new members of the Board must receive training on applicable consumer protection laws and state collection laws; and

ii. In addition, every member of the Board shall receive annual training on compliance with such consumer protection laws, standards, and regulations.

f. **Risk Oversight Disclosures.** Navient shall prepare a summary of the Board's risk oversight responsibilities for publication on Navient's publicly facing website. Navient shall provide Plaintiff with the summary prior to the date when Plaintiff's final fairness papers are due with the Court.

g. **Revisions to the Board's Committee Charters.** Navient shall review and revise, as necessary, the charter for each standing committee to ensure that each committee's risk oversight responsibilities are clearly described. Navient shall provide Plaintiff with the final revisions prior to the date when Plaintiff's final fairness papers are due with the Court.

h. **Limitations on Directors and Audit Committee Service.** Navient shall amend the Board's Governance Guidelines to provide that: (i) the Chair of the Audit Committee shall not serve on the audit committee of more than one other public company's board of directors; and (ii) any individual member of the Board will not serve as the chair of more than one committee or as a member of more than three committees.

i. **Independent Director Meetings in Executive Session.**

i. Navient shall amend the Board's Governance Guidelines to require the independent directors of the Board to meet in executive session at each regularly scheduled meeting of the Board, with a minimum requirement to meet at least four times annually, outside of the presence of any director who serves as an officer for Navient; and

ii. Navient shall amend the Board's Governance Guidelines to provide that the independent directors shall have the power to call for reporting from any business unit at the executive session, including, without limitation, from audit and compliance segments.

j. **Maintenance of Senior Executive Position(s) for Loan Servicing and Collections.** Navient shall maintain at least one executive position at the Senior Vice-President level or higher whose primary areas of responsibility shall be: (a) loan servicing operations; and (b) loan-related collections efforts reasonably designed to achieve compliance with state and federal law.

k. **Creation of a Loan Servicing and Collections Compliance Committee.**

i. Navient shall create an executive-level Loan Servicing and Collections Compliance Committee;

ii. The executive(s) listed in ¶2.j. above, General Counsel/Principal Legal Officer, and Chief Risk and Compliance Officer shall all serve on the Loan Servicing and Collections Compliance Committee;

iii. The Loan Servicing and Collections Compliance Committee shall report directly to the Company's Audit Committee;

iv. The Loan Servicing and Collections Compliance Committee shall provide additional oversight of the Company's loan servicing and loan-related collections efforts. Reports regarding these responsibilities shall be provided to the Company's Audit Committee; and

v. The Loan Servicing and Collections Compliance Committee shall provide additional oversight of internal controls regarding the Company's loan servicing and loan-related collections efforts. Reports regarding these responsibilities shall be provided to the Company's Audit Committee.

l. **Revisions to the Code of Business Conduct.** Navient shall amend its Code of Business Conduct to state the following (or similar language):

If you become aware of a failure by the Company to comply with loan servicing or collection procedures mandated by federal or state consumer protection laws and/or by the federal securities laws and SEC rules, regulations or guidance, or if you, or anyone else you are aware of, are asked to discharge your/their respective duties in a manner that fails to comply with any such rules, regulations, or guidance, you shall immediately report the event via email to [legalcompliance@navient.com](mailto:legalcompliance@navient.com).

m. **Revisions to the Confidential Whistleblower Program.** Navient shall require the Chief Risk and Compliance Officer to meet with the Audit Committee at least annually to present on and discuss the current Whistleblower Policy and to consider any amendments that the Chief Risk and Compliance Officer or Audit Committee recommends.

## **RELEASES**

3. Upon the Effective Date, Plaintiff and each and every other Navient Stockholder, derivatively on behalf of Navient, and Navient, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Plaintiffs' Claims against the Released Defendants' Persons, and shall be forever enjoined from prosecuting the Released Plaintiffs' Claims against the Released Defendants' Persons. Nothing herein shall in any way impair or restrict the rights of any Party to enforce the terms of this Stipulation.

4. Upon the Effective Date, Defendants, Navient, and each of the other Released Defendants' Persons shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Defendants' Claims against the Released Plaintiffs' Persons, and shall be forever enjoined from prosecuting the Released Defendants' Claims against the Released Plaintiffs' Persons. Nothing herein shall in any way impair or restrict the rights of any Party to enforce the terms of this Stipulation. Nothing in this Stipulation shall be construed as a waiver or release of any rights or claims of Defendants, Navient, and/or each of the other Released Defendants' Persons against their insurers, or their insurers' subsidiaries, predecessors, successors, assigns, affiliates, or representatives, including, but not limited to, any rights or claims by Defendants, Navient, and/or each of the other Released Defendants' Persons under any directors and officers liability, management liability, company reimbursement, or other applicable insurance policy maintained by Defendants, Navient, and/or any of the Released Defendants' Persons.

## **PRELIMINARY APPROVAL ORDER**

5. Promptly after the execution of this Stipulation, the Parties shall jointly request entry of the Preliminary Approval Order: (i) preliminarily approving the settlement;

(ii) approving the form and manner of notice to Navient Stockholders of the pendency of the Action, the Settlement, and their right to object; and (iii) establishing the procedure and schedule for the Court's consideration of the Settlement, dismissal of the Action with prejudice, and Plaintiff's Counsel's Fee and Expense Application.

### **NOTICE**

6. The Preliminary Approval Order will provide that notice of the Settlement be given by Navient in the following manner: (i) publishing the Summary Notice once in *Investor's Business Daily*; (ii) inclusion of the Notice on the Company's website; and (iii) placement of the Notice on the website(s) maintained by Plaintiff's Counsel.

7. Navient shall be responsible for, and pay all costs and expenses related to, providing notice of the Settlement irrespective of whether the Court approves the Settlement and in no event shall Plaintiff or Plaintiff's Counsel be responsible for any notice costs.

### **CONDITIONS OF SETTLEMENT; TERMINATION**

8. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver in writing by all Parties of all of the following events:

- a. the Court has entered the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A;
- b. the Court has approved the Settlement, following notice and a hearing;
- c. the Court has entered the Judgment; and
- d. the Judgment has become Final.

9. Plaintiff and Defendants (provided Defendants unanimously agree amongst themselves) shall each have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice") to the other Parties within 30 calendar days of: (a) the Court's final refusal to enter the Preliminary Approval Order

in any material respect; (b) the Court's final refusal to approve the Settlement or any material part thereof; (c) the Court's final refusal to enter the Judgment in any material respect as to the Settlement; or (d) the date upon which an order vacating, modifying, revising, or reversing the Judgment becomes Final, and the provisions of ¶10 below shall apply. However, any decision or proceeding, whether in this Court or any appellate court, solely with respect to an application for an award of attorneys' fees or litigation expenses, shall not be considered material to the Settlement, shall not affect the finality of the Judgment, and shall not be grounds for termination of the Settlement.

10. If Plaintiff or Defendants exercise their right to terminate the Settlement pursuant to ¶9 above, then: (a) the Settlement and the relevant portions of this Stipulation shall be canceled; (b) Plaintiff, Defendants, and Navient shall revert to their respective litigation positions in the Action as of immediately prior to the execution of the MOU on September 21, 2018; and (c) the terms and provisions of the MOU and this Stipulation, with the exception of this ¶10 and ¶16 below, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and the Parties shall proceed in all respects as if the MOU and this Stipulation had not been entered.

#### **ATTORNEYS' FEES AND EXPENSES**

11. Plaintiff's Counsel intends to submit to the Court the Fee and Expense Application based upon the benefits provided to Navient and its stockholders from the Settlement and the prosecution of the Action. The Fee and Expense Application shall be the only petition for attorneys' fees and expenses allowed on behalf of Plaintiff, Plaintiff's Counsel, or counsel purporting to represent any other Navient Stockholder in connection with the Action or the Settlement.

12. Subsequent to the execution of the MOU, and after all of the material terms of the Settlement were agreed upon by the Parties, Plaintiff's Counsel engaged in arm's-length negotiations with the Defendants and Navient concerning an appropriate award of attorneys' fees and litigation expenses for Plaintiff's Counsel. As a result of those negotiations, it has been agreed that Plaintiff's Counsel's Fee and Expense Application will not exceed \$1,495,000.00, including a service award for Plaintiff in the amount of \$5,000, and Defendants and Navient will not oppose a request up to that amount. The above-referenced fee and expense award shall constitute the full amount that Navient and Defendants shall be required to pay to Plaintiff's Counsel, or any other counsel, in connection with the litigation and settlement of the claims asserted in this Action.

13. Defendants shall pay, or cause to be paid, the attorneys' fees and expenses as awarded by the Court in response to the Fee and Expense Application within 10 business days after the Court issues such an order to an account designated by Plaintiff's Counsel, notwithstanding the existence of any timely filed objections thereto, potential for appeal therefrom, or collateral attacks on the Settlement or any part thereof.

14. If, after payment of the award for attorneys' fees and expenses, the Settlement is terminated pursuant to the terms of this Stipulation or the award is reversed, vacated, or reduced by final order, Plaintiff's Counsel shall, within 30 calendar days after (a) receiving from Defendants' counsel notice of the termination of the Settlement; or (b) any order of a court of appropriate jurisdiction reversing, vacating, or reducing the award becomes final, make appropriate refunds or repayments to Navient or Defendants.

#### **COOPERATION**

15. In addition to the actions specifically provided for in this Stipulation, the Parties agree to use their best efforts from the date hereof to take, or cause to be taken, all actions, and to

do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations, or agreements, to consummate and make effective this Stipulation and the Settlement. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of the Settlement and to use their best efforts to effect the consummation of this Stipulation and the Settlement, including, but not limited to, resolving any objections raised with respect to the Settlement.

**STIPULATION NOT AN ADMISSION**

16. Neither this Stipulation nor any act or omission in connection therewith is intended or shall be deemed to be a presumption, concession, or admission by: (i) any of the Defendants or any of the Released Defendants as to the validity of any claims, causes of action, or other issues that were, might be, or have been raised in the Action or in any other litigation, or to be evidence of or constitute an admission of wrongdoing or liability by any of them, and each of them expressly denies any such wrongdoing or liability; or (ii) Plaintiff as to the infirmity of any claim or the validity of any defense, or to the amount of any damages. The existence of this Stipulation, its contents, or of any negotiations, statements, or proceedings in connection therewith, shall not be offered or admitted in evidence or referred to, interpreted, construed, invoked, or otherwise used by any Person for any purpose in the Action or otherwise, except as may be necessary to effectuate the Settlement. Notwithstanding the foregoing, any of the Released Persons may file this Stipulation, or any judgment or order of the Court related hereto, in any other action that may be brought against them in order to support any and all defenses or counterclaims based on *res judicata*, collateral estoppel, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

### **NO WAIVER**

17. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions in this Stipulation by such other Party. All waivers must be in writing and signed by the Party against whom the waiver is asserted.

18. No waiver, express or implied, by any Party of any breach or default in the performance by any other Party of its obligations under this Stipulation shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

### **AUTHORITY**

19. This Stipulation will be executed by counsel to the Parties, each of which represents and warrants that he, she, or it has been duly authorized and empowered to execute this Stipulation on behalf of such Party and that it shall be binding on such Party in accordance with its terms.

### **SUCCESSORS AND ASSIGNS**

20. This Stipulation is, and shall be, binding upon, and inure to the benefit of, the Parties and their respective agents, spouses, heirs, predecessors, successors, personal representatives, representatives and assigns; *provided, however*, that no Party shall assign or delegate its rights or responsibilities under this Stipulation without the prior written consent of the other Parties.

### **BREACH**

21. The Parties agree that in the event of any breach of this Stipulation, all of the Parties' rights and remedies at law, equity, or otherwise are expressly reserved.

## **GOVERNING LAW AND FORUM**

22. This Stipulation shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflict of laws principles. Any action relating to this Stipulation will be filed exclusively in the Court. Each Party: (i) consents to personal jurisdiction in any such action (but no other action) brought in the Court; (ii) consents to service of process by registered mail upon such Party and/or such Party's agent; and (iii) waives any objection to venue in the Court and any claim that the Court is an inconvenient forum.

## **NON-DISPARAGEMENT**

23. Plaintiff's Counsel will not issue press releases relating, in any way, to the Stipulation, Action, or Settlement unless Navient agrees to such press releases in advance, which agreement shall not be unreasonably withheld. After a motion for preliminary approval is filed with the Court, Plaintiff's Counsel may make public statements, including disclosure on its internet website, involving the following facts: (i) its representation of Plaintiff in the Action; (ii) the Action was resolved through Settlement; (iii) the reforms associated with the Settlement; and (iv) the procedural status of the Case in the U.S. District Court (collectively, these facts are referred to as the "Permissible Disclosures"). Plaintiff's Counsel shall not make any public statements beyond the Permissible Disclosures unless Navient agrees to such public statements in advance, which agreement shall not be unreasonably withheld.

24. Plaintiff's Counsel shall refrain from disparaging any Defendant or taking any action designed or reasonably foreseeable to cause harm to the public perception of any Defendant regarding any issue related in any way to the Action or Settlement.

## **ENTIRE AGREEMENT**

25. This Stipulation and the attached exhibits constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous

oral or written agreements, understandings, or representations. All Parties agree that no representations, warranties, or inducements have been made to any Party concerning this Stipulation or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. All Parties further agree that they are not relying on any representations, warranties, or covenants that are not expressly contained and memorialized in this Stipulation or its exhibits. All of the exhibits hereto are material and integral parts hereof and are fully incorporated herein by reference.

### **INTERPRETATION**

26. This Stipulation will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

27. Section and/or paragraph titles have been inserted for convenience only and will not be used in interpreting the terms of this Stipulation.

28. The terms and provisions of this Stipulation are intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights or remedies upon any other Person, except with respect to: (i) any attorneys' fees and expenses to be paid to Plaintiff's Counsel pursuant to the terms of this Stipulation; and (ii) the Released Persons who are not signatories hereto, who shall be third-party beneficiaries under this Stipulation and entitled to enforce it in accordance with its terms, but the consent of such third-party beneficiary shall not be required to amend, modify, or terminate this Stipulation.

### **AMENDMENTS**

29. This Stipulation may not be amended, changed, waived, discharged, or terminated (except as explicitly provided herein), in whole or in part, except by an instrument in writing signed by counsel to all of the Parties to this Stipulation on behalf of each such Party.

**COUNTERPARTS**

30. This Stipulation may be executed in any number of actual, telecopied, or electronically mailed counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered will be an original. This Stipulation will become effective when the actual, telecopied, or electronically mailed counterparts have been signed by each of the Parties to this Stipulation and delivered to the other Parties. The executed signature page(s) from each actual, telecopied, or electronically mailed counterpart may be joined together and attached and will constitute one and the same instrument.

**CONTINUING JURISDICTION**

31. The consummation of the Settlement, as embodied in this Stipulation, shall be under the authority of the Court, and the Court shall retain exclusive jurisdiction for the purpose of enforcing the terms of this Stipulation.

**NOTICE TO PARTIES**

32. If any Party is required to give notice to any other Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand or courier delivery, or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiff:

Geoffrey M. Johnson  
SCOTT+SCOTT ATTORNEYS AT LAW LLP  
12434 Cedar Road, Suite 12  
Cleveland Heights, OH 44118  
(216) 229-6088  
gjohnson@scott-scott.com

If to Defendants:

Andrew B. Clubok  
LATHAM & WATKINS LLP  
555 Eleventh St. NW, Suite 1000  
Washington, DC 20004  
(202) 637-2200  
andrew.clubok@lw.com

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed  
by their duly authorized counsel as of January 3, 2019.

**SCOTT+SCOTT ATTORNEYS AT LAW LLP**



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*Counsel for Navient and Defendants*