

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE: BANK OF NOVA SCOTIA  
SPOOFING LITIGATION

Civil Action No. 20-11059 (MAS) (RLS)

**DECLARATION OF  
JAMES E. CECCHI**

I, JAMES E. CECCHI, ESQ., of full age, hereby declare under penalty of perjury, that the following is true and correct:

1. I am an attorney licensed to practice in New Jersey and am a member of the law firm of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. (“Carella Byrne”), Liaison Counsel to the Court and U.S. Department of Justice (“DOJ”) on behalf of Class Plaintiffs in the above-captioned matter. I am fully familiar with the facts contained herein. I respectfully submit this Declaration in support of Class Plaintiffs’ Motion for Preliminary Approval of the Proposed Class Action Settlement (“Mot.”).

2. Defendants Bank of Nova Scotia, Scotia Capital (USA) Inc., Scotia Holdings (US) Inc., and The Bank of Nova Scotia Trust Company of New York are collectively referred to hereinafter as “BNS.” Defendant Corey Flaum (“Flaum”) is a trader formerly employed by BNS. BNS and Flaum are collectively referred to as “Defendants.” All capitalized terms not defined here have the same meaning as those used in the Stipulation and Agreement of Settlement with Defendants, dated November 2, 2022.

**I. SPOOFING AND THE PRECIOUS METAL MARKETS**

3. This case concerns precious metals (*e.g.*, gold, silver, platinum, palladium) traded on certain commodities exchanges, *i.e.*, COMEX (Commodity Exchange Inc., the world’s largest physical futures trading exchange) and NYMEX (the New York Mercantile Exchange) in the form of futures and options. Futures are agreements to buy or sell a specific commodity at a specified

price, with delivery and payment at a later time. Options provide the right, but not the obligation, to purchase or sell an amount of a commodity at a particular price in the future. Both futures and options traded on exchanges are considered fungible, standardized instruments.

4. “Spoofing” is a form of price manipulation wherein bids or orders are placed in a commodities exchange, here, NYMEX and COMEX, with the intent to cancel them before they can be executed (“spoof orders”). *See* Commodity Exchange Act (“CEA”), 7 U.S.C. §6c(a)(5)(C) (defining spoofing, listing it as a disruptive and unlawful practice); *Choi v. Tower Rsch. Cap. LLC*, 2 F.4th 10, 14 n.4 (2d Cir. 2021).

5. These spoof orders are generally made for the purpose of driving the market price up (from a purchase order) or down (from a sale order). Once the market reaches the desired price target, a preexisting real order executes a trade at that level, and the false or “spoof order” is cancelled before it can be completed. As a result of spoofing, other market participants unwittingly trade at artificial rates.

6. The CEA expressly prohibits certain disruptive trading practices, including those that are “of the character of, or is commonly known to the trade as, ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution).” 7 U.S.C. §4c(a)(5)(C). The Commodity Futures Trading Commission (“CFTC”) has offered further guidance to clarify what it considers spoofing and describes it (in pertinent part) as including, “but is not limited to: . . . (iv) submitting or canceling bids or offers with intent to create artificial price movements upwards or downwards.” *See* CFTC, *Interpretive Guidance and Policy Statement on Disruptive Practices* (last accessed August 12, 2022), available at [https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dtp\\_factsheet.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/dtp_factsheet.pdf), at 2. The CFTC guidance further clarifies

that, based on the foregoing intent requirement, “reckless trading, practices, or conduct will not constitute a ‘spoofing’ violation.” *Id.*

7. In addition to directly prohibiting spoofing, the CEA broadly prohibits both the manipulation and attempted manipulation of commodities markets. *See* 7 U.S.C. §9(1), (3). A separate section of the CEA provides a private right of action for any person or entity “who purchased or sold a [futures contract]” against any person who violated the CEA, “if the violation constitutes . . . the use or employment of . . . any manipulative device or contrivance . . . or a manipulation of the price of any such contract.” 7 U.S.C. §25(a)(1)(D).

8. The markets at issue are notably opaque in terms of market participant identities and actions, which makes detecting spoofing particularly challenging – even for regulators. Traders utilize a “Tag50” ID or IDs to make their trades, and market participants do not know and cannot determine which traders have placed which orders. There are five entities that can learn a particular trader’s orders and cancelations: the trader; the trading firm; its futures commission merchant (“FCM”); the exchange (who needs help from the FCM, trading firm, and trader); and a government regulator (who also needs help from the FCM, trading firm, and trader).

9. Class Plaintiffs in this Action are traders, investors, or entities who traded precious metals futures contracts and options on those contracts from 2008-2016. ECF No. 31, ¶¶13-22.<sup>1</sup> Collectively, Class Plaintiffs traded every type of precious metal futures contract and every type of option on those contracts throughout the 2008-2016 timeframe. *Id.*, ¶22. Consistent with the Deferred Prosecution Agreement (“DPA”) discussed below, Class Plaintiffs allege that Defendants spoofed the precious metals futures and options markets thousands of times from 2008-2016, that

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<sup>1</sup> All ECF citations are to the docket in this Action, No. 3:20-cv-11059 (MAS) (RLS), unless otherwise noted.

the specific trading details provided in the DPA were just a few examples, and that because of the concealed and secretive nature of Defendants' manipulation, further details of Defendants' manipulation is in Defendants' possession and control such that more evidence could only be uncovered during discovery. *Id.*, ¶¶9, 50, 55-68, 80-84. Class Plaintiffs further allege that Defendants' scheme affected thousands of precious metals futures and options orders throughout the Class Period. As a result, Class Plaintiffs were deprived of trading in a fair market and, instead, traded at artificial prices and earned lower profits and/or suffered greater losses because of Defendants' conduct. *Id.*, ¶¶13-22, 92-93, 103, 110.

## **II. THE DEFERRED PROSECUTION AGREEMENT**

10. On or about August 19, 2020, BNS and the DOJ entered into a Deferred Prosecution Agreement. *See* ECF No. 31-1. Under the terms of the DPA, BNS acknowledged that it had been charged with wire fraud in violation of 18 U.S.C. §1343 and attempted price manipulation in violation of the CEA at 7 U.S.C. §13(a)(2). *Id.* at 1-2 of 58, ¶1. As part of the DPA, BNS:

admits, accepts, and acknowledges that it is responsible under United States law for the acts of its . . . employees . . . as charged in the Information, and as set forth in the Statement of Facts, and that the allegations described in the Information and the facts described in the Statement of Facts are true and accurate.

*Id.* at 2 of 58, ¶2. Similarly, BNS agreed that it would not permit anyone acting on its behalf to make any public statement, in litigation or otherwise, contradicting its acceptance of responsibility above, or the facts described in the DPA's Statement of Facts. *Id.* at 21-22 of 58, ¶33. Subject to certain cure rights for BNS under the DPA, any contradictory statements it makes will constitute a breach of the DPA, subjecting BNS to prosecution. *Id.*

11. Within the Statement of Facts, BNS conceded responsibility for the acts of four of its traders, including Flaum (collectively referred to as the "Subject Traders") as described therein. *Id.* at 29 of 58, ¶¶1-2. Specifically:

Between approximately January 2008 and July 2016 (the ‘Relevant Period’), four precious metals traders employed by [BNS] engaged in fraudulent and manipulative trading practices in connection with the purchase and sale of gold, silver, platinum, and palladium futures contracts (collectively, ‘precious metals future contracts’) on . . . the New York Mercantile Exchange, Inc. and Commodity Exchange Inc., . . . exchanges operated by the CME Group, Inc.

*Id.*, ¶2.

12. The Statement of Facts admitted by BNS includes a number of specific examples of their traders’ spoofing, one of which is reproduced here to illustrate the technique:

[O]n December 31, 2015, at approximately 11:39:10.679 a.m. (CST), [Trader] Flaum placed a genuine order to sell five gold futures contracts at the price of \$1,060.40. Approximately 82.987 seconds later, Flaum placed a Manipulative Order to buy 245 gold futures contracts at the price of \$1,059.90 with the intent to create the illusion of demand, deceive other market participants, and artificially move the price higher. One millisecond after Flaum placed the Manipulative Order to buy, the market price did in fact move higher, and Flaum’s [genuine] order to sell five gold futures contracts was executed in its entirety. Approximately 1.123 seconds later, Flaum canceled his Manipulative Order in its entirety.

*Id.* at 30-31 of 58, ¶5.

13. Flaum was separately charged, and pled guilty to “knowingly manipul[at]ing and attempt[ing] to manipulate the price of certain commodities for future delivery; namely, futures and precious metals.” *United States of America v. Flaum*, No. 1:19-cr-00338-BMC, ECF No. 7 at 12:1-4 (E.D.N.Y. July 25, 2019) (transcript of plea hearing); *id.* at 22:14-23:14 (plea and allocution). Flaum is currently awaiting sentencing, which has been postponed based on his cooperation in another case. *See, e.g., Flaum*, ECF No. 12, ¶4.

14. The Statement of Facts also concedes that in or around April 2016, a BNS compliance officer “falsely represented to the National Futures Association (“NFA”), the self-regulatory organization for the U.S. derivatives industry, that [BNS] used sophisticated algorithmic trade surveillance tools to identify spoofing and other manipulative trading practices.” ECF No. 31-1 at 35-36 of 58, ¶22. The reported use of such tools was “important to the NFA’s

assessment of [BNS'] internal controls.” *Id.* The Statement of Facts also includes further examples of the Subject Traders’ spoofing, as well as details regarding BNS compliance officers’ failure to detect the spoofing or failing to report activities they should have recognized as spoofing. *See id.* at 34-35 of 58, ¶¶14-20.

15. Under the terms of the DPA, BNS paid a Total Criminal Monetary Amount of \$60,451,102, which included \$42,000,000 in penalties, \$11,828,912 in disgorgement of profits, and \$6,622,190 in victim compensation. *Id.* at 9-12, ¶¶7-17. BNS was also ordered to pay “a record setting \$17 million for making false and misleading statements to CFTC staff during the CFTC’s first investigation into the bank’s spoofing . . . .” *See* Press Release, CFTC, *CFTC Orders The Bank of Nova Scotia to Pay Record \$77.4 Million for Spoofing and Making False Statements*, Release No. 8221-20 (Aug. 19, 2020), *available at* <https://www.cftc.gov/PressRoom/PressReleases/8221-20>.

16. Pursuant to the terms of the DPA, the government “shall serve as the claims administrator for making victim compensation payments and shall have sole discretion to determine how the Victim Compensation Amount will be disbursed.” ECF 31-1 at 12 of 58, ¶16.

### **III. HISTORY OF THE ACTION**

17. On August 21, 2020, Class Plaintiffs Casey Sterk and Kevin Maher filed the initial class action complaint against Defendants The Bank of Nova Scotia and Flaum in the United States District Court for the District of New Jersey. *See* ECF No. 1. That complaint alleged that Defendants unlawfully and intentionally manipulated Precious Metals Futures contracts traded on the COMEX and/or the NYMEX and Options on Precious Metals Futures contracts from at least January 1, 2008 through at least July 31, 2016 (the “Class Period”) in violation of the Commodity Exchange Act, 7 U.S.C. §1, *et seq.*, and the common law.

18. Defendants allegedly manipulated the prices of Precious Metals Futures contracts and Options on Precious Metals Futures contracts using a manipulative technique called “spoofing,” whereby they placed orders for Precious Metals Futures contracts that they never intended to execute, then canceled them prior to execution in order to send false supply and demand signals to the market. Defendants allegedly caused artificial prices in Precious Metals Futures contracts and Options on Precious Metals Futures contracts throughout the Class Period. This false pricing information caused the prices of Precious Metals Futures contracts and Options on Precious Metals Futures contracts to move in a direction that was favorable to Defendants’ trading positions at the expense of other investors.

19. Thereafter, other plaintiffs filed similar and related actions concerning the same misconduct, and on October 29, 2020, the Court consolidated all of these related cases into this Action. *See generally* ECF No. 17. The plaintiffs from these now consolidated actions filed a single amended consolidated complaint against Defendants on May 5, 2021. *See* Consolidated Complaint at ECF No. 31.

20. By order dated October 15, 2020, and pursuant to Fed. R. Civ. P. 23(g)(3), the Court, *inter alia*, appointed: Linda Nussbaum of Nussbaum Law Group, Patrick J. Coughlin of Robbins Geller Rudman & Dowd LLP, Christopher Burke of Scott+Scott Attorneys at Law LLP, and George Zeles of Korein Tillery as Interim Lead Co-Lead Counsel. *See* ECF No. 12. The Court also appointed the undersigned as Court/Government Liaison. *Id.*

21. Defendants filed a motion to dismiss the consolidated complaint on June 18, 2021 on the grounds of Article III standing, timeliness, and failure to state a claim. *See generally* ECF No. 38, *et seq.* Briefing from both sides concluded on September 15, 2021. *See generally* ECF Nos. 38, 40, 43, 48-49.

22. By order dated January 20, 2022, the Court administratively converted Defendants' motion to dismiss to one for summary judgment on the issue of statute of limitations, *i.e.*, whether Class Plaintiffs' claims were timely brought, and indicated that it had rejected Defendants' arguments as to Article III standing and would issue a later opinion setting forth that reasoning. *See generally* ECF No. 50. As part of the January 20, 2022 order, the Court indicated it would grant discovery on the timeliness issue and directed Class Plaintiffs and Defendants (collectively, the "Parties") to file a letter with their respective positions as to the necessary scope of that discovery. *Id.*

#### **IV. SETTLEMENT NEGOTIATIONS**

23. The Parties thereafter requested and were granted several extensions of their time to file the discovery letter required by the Court so that they could attempt to negotiate a settlement. *See generally* ECF Nos. 51-54, 57-59. As part of their good faith, zealous efforts to resolve the case at arm's-length, the Parties agreed to retain Jed D. Melnick, Esq. of JAMS as the Mediator.

24. On May 16, 2022, the Parties exchanged lengthy, detailed, and confidential mediation statements detailing their respective positions, and their factual and legal support for same. On May 26, 2021, the Parties attended a full-day mediation session in person at JAMS, which concluded without reaching a settlement.

25. The Parties therefore began serving discovery requests and negotiating the necessary scope of discovery on the issue of the statute of limitations for Class Plaintiffs' claims. Notwithstanding, the Parties simultaneously continued negotiating potential resolution in good faith and at arm's-length both directly with one another and with the assistance of the Mr. Melnick.



26. On or about July 28, 2022, after hard-fought negotiations on both sides and with the assistance of Mr. Melnick, the Parties were able to reach an agreement in principle to resolve the case for \$6.6 million in cash.

27. On August 4, 2022, Class Plaintiffs and Defendants executed a binding settlement term sheet. As part of the term sheet, Defendant Bank of Nova Scotia agreed to provide (within 30 days of execution) further mediation information that included: trade data during the Class Period from the traders referenced in the DPA.

28. On August 5, 2022, the Parties notified the Court that they had signed a confidential, binding settlement term sheet to resolve this Action. The Parties requested that the Court suspend all existing case deadlines to enable them to finalize and file a motion for preliminary approval of the settlement. *See* ECF No. 65. The Court granted the Parties' request by order dated August 8, 2022. *See* ECF No. 66.

29. The Parties thereafter negotiated a formal Settlement Agreement that was executed on November 2, 2022. A true and correct copy of that executed Settlement Agreement is annexed hereto as Exhibit 1.

30. Negotiations leading to the Settlement were entirely non-collusive and strictly at arm's-length. Class Plaintiffs and Plaintiffs' Counsel were well-informed regarding the strengths and weaknesses of Class Plaintiffs' claims. Plaintiffs' Counsel also had the benefit of information from the DPA and related investigations by Government agencies. The Class Plaintiffs support and agree with the Settlement, and when the Settlement Agreement was executed, Plaintiffs' Counsel had access to sufficient information to allow them to conclude that the proposed Settlement was fair, reasonable, and adequate.

31. At all times while negotiating and executing the proposed Settlement Agreement with Defendants, Class Plaintiffs were vigorously and zealously represented by Plaintiffs' Counsel, who have significant experience prosecuting federal complex class action claims arising under the CEA. *See* Exhibit 3 (firm resumes of Lead Counsel). Defendants were represented by WilmerHale, a leading international law firm that has significant experience defending federal complex class action claims and Krieger Kim & Lewin, a litigation boutique specializing in representing clients involved in government investigations.

## **V. KEY SETTLEMENT TERMS**

32. Pursuant to the terms of the Settlement, BNS has agreed to pay \$6,600,000 on behalf of Defendants, for the benefit of the proposed Settlement Class:

[A]ll persons and entities that purchased or sold any COMEX Gold Futures contract, COMEX Silver Futures contract, NYMEX Platinum Futures contract, or NYMEX Palladium Futures contract (together "Precious Metals Futures"), or any option on those futures contracts ("Options on Precious Metals Futures"), during the period of at least January 1, 2008 through at least July 31, 2016 (the "Class Period"). Excluded from the Class are Defendants, their officers and directors, management, employees, subsidiaries, and affiliates. Also excluded from the Class is the Judge presiding over this Action, his or her law clerks, spouse, any other person within the third degree of relationship living in the Judge's household, the spouse of such person, and the U.S. government.

*See* Exhibit 1, §1(F).

33. The consideration that BNS has agreed to pay on behalf of Defendants is within a range that Plaintiffs' Counsel believe may be found to be fair, reasonable, and adequate at final approval. The Settlement will also serve to enhance the recovery for Class Members to the extent that they may be eligible to receive proceeds from the Victim Compensation fund administered by the DOJ under the DPA.

34. The Settlement involves a structure and terms that are common in class action settlements, including a confidential Supplemental Agreement that provides Defendants with a

qualified right to terminate the Settlement in the event that the volume of Precious Metals Futures contracts or Options on same transacted by Class Members who timely exercise their right to request exclusion from the Settlement Class exceeds a certain percentage. *See id.*, §19(D).

35. Plaintiffs' Counsel has strong reason to believe that there are many thousands of geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on trading volume data and expert analysis.

36. Class Members that do not request exclusion from the Settlement Class and submit a valid claim via the Claim and Release Form will receive a *pro rata* share of the Net Settlement Fund, based on the volume of their Precious Metals Futures contracts transactions as well as transactions involving options on such contracts, and adjusted by certain multipliers as described in the accompanying Distribution Plan. A true and correct copy of the proposed Distribution Plan is annexed hereto as Exhibit 4.

37. In the event that the Settlement is terminated pursuant to the terms of the Settlement Agreement, any amounts paid by BNS into an Escrow Account, plus all net interest accrued thereon and any amount required to be refunded by Lead Counsel pursuant to the terms of the Settlement Agreement, will be refunded, reimbursed, and repaid to BNS pursuant to the terms of the Settlement within 10 business days of written notice of termination. *See* Exhibit 1, §§20 (A)-(C).

38. If approved, the Settlement provides that "the Releasing Parties shall release and be deemed to have released and forever discharged and shall be forever enjoined from prosecuting the Released Claims against the Released Parties." Exhibit 1, §11(A).

39. Plaintiffs' Counsel intend to seek attorneys' fees of not more than one-third of the common fund created by the Settlement, plus reimbursement for the reasonable costs and expenses incurred in litigating this Action.

40. Class Plaintiffs may also request up to \$2,500 in Service Awards each for their efforts in prosecuting this Action as class representatives.

## **VI. DISTRIBUTION PLAN**

41. Plaintiffs' Counsel, together with their consulting economic expert, developed the proposed Distribution Plan. The Net Settlement Fund will be allocated on a *pro rata* basis according to an estimate of the impact of Defendants' spoofing on market transactions. The Distribution Plan calculates an "Instrument Amount" for each Precious Metals Futures contract or Options on Precious Metals Futures contract transaction. Exhibit 4, ¶9. The Instrument Amount is determined by multiplying together three metrics: the "Volume Multiplier," "Instrument Multiplier," and "Futures Contract Specification Multiplier." *Id.*

42. The Volume Multiplier reflects the notional value of each transaction, which is equal to the product of: (1) the number of contracts traded; (2) the futures contract price, denominated in U.S. dollars per troy ounce (or in the case of options, the option premium); and (3) the futures contract unit, denominated as troy ounces per futures contract, and, then dividing that product by 1 million. *Id.*, ¶11. The Instrument Multiplier assigns a multiplier value depending on whether the transaction involves a futures contract, or an option on a futures contract. *Id.*, ¶12. Finally, the Futures Contract Specification Multiplier accounts for the impact of Defendants' spoofing on specific Precious Metals Futures contracts. *Id.*, ¶13.

43. The Instrument Amounts for each transaction by a Class Member will be added together and represent that Claimant's Transaction Claim Amount. *Id.*, ¶14. The Transaction

Claim Amount is not the Claimant's payment amount. *Id.* Under the proposed Distribution Plan, the Net Settlement Fund will be distributed to each Class Member based on their *pro rata* fraction of the Class Member's Transaction Claim Amount divided by the total of all Transaction Claim Amounts. *Id.*, ¶15.

44. An exception will apply to Class Members whose expected distribution based on their *pro rata* fraction is less than the costs of administering their Claim. These Class Members will receive a Minimum Payment Amount in an amount to be determined after the Claim Forms are reviewed, calibrated to ensure that a minimal portion of the Net Settlement Fund is reallocated toward Authorized Claimants receiving the Minimum Payment Amount. After determining the portion of the Net Settlement Fund that will be used to make the Minimum Payment Amounts, the remainder of the Net Settlement Fund will be reallocated *pro rata* among the remaining Class Members. *Id.*, ¶16.

45. The Settlement does not bar Class Members from filing a victim impact statement with the DOJ to participate in the DOJ's Victim Compensation fund, created in connection with the DPA.

46. Plaintiffs' Counsel recommend the proposed Distribution Plan as fair, reasonable, and adequate to the proposed Settlement Class, having determined it to be the most fair and efficient manner for distributing funds to Class Members.

## **VII. NOTICE PLAN**

47. The proposed settlement administrator, A.B. Data, Ltd. ("A.B. Data"), developed the proposed Notice Plan in coordination with Plaintiffs' Counsel. Exhibit 5 (Declaration of Elaine Pang, Vice President of Media with A.B. Data). After considering A.B. Data's experience,

institutional knowledge, and price competitiveness, Plaintiffs' Counsel determined that the selection of A.B. Data was in the best interest of the Settlement Class.

48. A.B. Data's proposal included a detailed understanding of the instruments and trading volume involved, and the need for a noticing process that included publications and mailings to entities (*e.g.*, brokers). A.B. Data has extensive experience administering class action settlements and designing notice plans that have been approved in numerous complex class actions, including class actions involving commodities and futures contracts, such as *In re JPMorgan Precious Metals Spoofing Litig.*, No. 1:18-cv-10356 (GHW) (S.D.N.Y.); *In re Silver Fixing Antitrust Litig.*, Nos. 14-md-02573 & 14-mc-02573 (VEC) (S.D.N.Y.); *Boutchard v. Gandhi*, No. 1:18-cv-07041 (N.D. Ill.); and *In re LIBOR-Based Financial Instruments Antitrust Litigation*, Nos. 11-md-2262 & 11-cv-2613 (NRB) (S.D.N.Y.). Exhibit 5, Ex. B at 2 (Notice Plan).

49. The Declaration of Elaine Pang describes the proposed Notice Plan, which is consistent with notice plans that courts have repeatedly approved in prior CEA manipulation class action settlements. *See, e.g., In re JPMorgan Precious Metals Spoofing Litig.*, No. 1:18-cv-10356, 2021 WL 5998410, at \*2 (S.D.N.Y. Dec. 20, 2021); *Boutchard v. Gandhi*, No. 1:18-cv-07041(JJT), ECF No. 125-2 at 14-40 (N.D. Ill. Jan. 29, 2021) (Declaration of Linda V. Young); *Boutchard v. Gandhi*, No. 1:18-cv-07041(JTT), ECF No. 132 (N.D. Ill. Mar. 5, 2021) (preliminary approval order); *Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419(GBD)(HBP), ECF No. 684 at 4-5 (S.D.N.Y. Sept. 27, 2016) (Affidavit of Eric J. Miller); *Laydon v. Mizuho Bank Ltd.*, No. 1:12-cv-03419, ECF No. 796 (S.D.N.Y. Sept. 14, 2017) (preliminary approval order).

## **VIII. CONCLUSION**

50. For the reasons set forth above and in the accompanying memorandum of law in support of the motion for preliminary approval of the settlement, Plaintiffs' Counsel respectfully

recommend that the proposed Settlement be preliminarily approved as fair, reasonable, and adequate in all respects.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: November 2, 2022

s/ James E. Cecchi  
JAMES E. CECCHI