

NO. S1812656
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

Naveah North (formerly known as Cody Cragg)

Plaintiff

AND

His Majesty the King in right of
the Province of British Columbia

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

SETTLEMENT AGREEMENT

WHEREAS the Plaintiff brought this class action under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 for breaches of fiduciary duties, negligence, and breaches of ss. 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms* in respect of British Columbia's use of prolonged Separate Confinement and/or Segregation and Separate Confinement and/or Segregation of mental health disordered inmates in British Columbia Correctional Centres;

AND WHEREAS British Columbia has denied the allegations in the Amended Notice of Civil Claim, filed February 1, 2019;

AND WHEREAS counsel for the Parties to this Settlement Agreement have conducted a thorough analysis of the Plaintiff's claims, and they have taken into account the extensive burdens and expense of litigation, including the risks of going to trial;

AND WHEREAS in consideration of all of the circumstances and after extensive arm's length negotiations, both directly and with the assistance of a mediator, the Parties to this Settlement Agreement wish to settle any and all issues among themselves in any way relating to the Action;

AND WHEREAS the Parties executed a term sheet on July 30, 2024 setting out the main terms of agreement between the Parties subject to the execution of this Settlement Agreement;

AND WHEREAS after their investigation, the Plaintiff and Class Counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interests of the Class Members;

NOW THEREFORE the Parties to this Settlement Agreement agree to settle all matters related to the Action on the following terms and conditions:

Definitions

1. For the purposes of this Settlement Agreement and attached Schedules (hereinafter collectively the "**Agreement**"), the following definitions apply:

(a) "**Action**" means the class proceeding, including all amendments thereto, commenced by Naveah North (formerly known as Cody Cragg) in Supreme Court of British Columbia against His Majesty the King in right of the Province of British Columbia, having Court File No. S1812656, and certified as a class proceeding by the Certification Order;

(b) "**Additional Counsel Disbursements**" means all disbursements incurred by Class Counsel in performing its obligations under this Settlement Agreement;

- (c) **“Administration Costs”** means all costs to administer the Opt-Out Process for the Extended Class and the Claims Process, and to distribute the Settlement Funds, including the costs of the Claims Administrator and Claims Adjudicators, and the costs of implementing the Phase 1 Notice Plan and the Phase 2 Notice Plan;
- (d) **“Approval Hearing”** or **“Settlement Approval Hearing”** means the Court hearing to approve the Settlement of the Action;
- (e) **“Approval Order”** means the order of the Court approving the Settlement;
- (f) **“Approved Claims”** means Claims assessed and approved by the Claims Administrator and/or Claims Adjudicators pursuant to the Settlement Agreement and the Claims Process for payment from the Settlement Funds;
- (g) **"BC Correctional Centres"** means:
 - (i) Alouette Correctional Centre for Women;
 - (ii) Ford Mountain Correctional Centre;
 - (iii) Fraser Regional Correctional Centre;
 - (iv) Kamloops Regional Correctional Centre;
 - (v) Nanaimo Correctional Centre;
 - (vi) North Fraser Pretrial Centre;
 - (vii) Okanagan Correctional Centre;
 - (viii) Prince George Regional Correctional Centre;
 - (ix) Surrey Pretrial Services Centre; and
 - (x) Vancouver Island Regional Correctional Centre.
- (h) **“British Columbia”** means the Defendant, His Majesty the King in right of the Province of British Columbia;

- (i) **"Box 1 Award"** means the award to be made to an Eligible Claimant, as calculated by the Administrator according to Box 1 of the Serious Harms Grid, based on the cumulative total length of the Eligible Claimant's Eligible Placements;
- (j) **"Box 2 Award"** means the award to be made to an Eligible Claimant, as calculated by the Adjudicator according to Box 2 of the Serious Harms Grid, based on specific and recorded harms experienced by the Eligible Claimant;
- (k) **"Certification Order"** means the order of Justice N. Smith pronounced December 22, 2020;
- (l) **"Claim"** means a claim made by a Claimant by filing a Claim Form with the Claims Administrator in accordance with the Claims Process;
- (m) **"Claim Form"** means the form, agreed upon by the Parties, through which Class Members may make Claims;
- (n) **"Claimant"** means any person who files a Claim Form in accordance with the Claims Process;
- (o) **"Claims Adjudicator(s)"** or **"Adjudicator(s)"** means the person or persons agreed upon by the Parties to make determinations in the Claims Process;
- (p) **"Claims Administrator"** or **"Administrator"** means the persons or entities agreed upon by the Parties or appointed by the Court to administer the Claims Process;
- (q) **"Claims Deadline"** means the date by which all Claims must be submitted to the Administrator in order to apply for compensation pursuant to the Claims Process, and as defined in Schedule "A" hereto;
- (r) **"Claims Period"** means the period during which Claim Forms are accepted, ending on the Claims Deadline;
- (s) **"Claims Process"** means the procedure for the submission, review and determination of Claims set out in Schedule "A" hereto;

(t) **"Class"**, **"Class Member"** or **"Class Members"** is defined, subject to an order extending the Class Period to the Court Approval Date, to be moved for on consent by the Parties, as per the terms of the Certification Order, as being;

Those persons who, between April 18, 2005 and December 22, 2020 ("Class Period"), were involuntarily subjected to either: (a) Separate Confinement and/or Segregation for at least fifteen consecutive days ("Prolonged Class"), or Separate Confinement and/or Segregation when BC Corrections knew or ought to have known the person suffered from Mental Illness ("SMI Class");

(u) **"Class Counsel"** means Koskie Minsky LLP and McEwan Cooper Kirkpatrick LLP;

(v) **"Class Period"** means April 18, 2005 to December 22, 2020, subject to an order extending the Class Period to the Court Approval Date, to be moved for on consent by the Parties;

(w) **"Common Experience Fund"** means the sum of \$30,000,000 to be distributed to all Eligible Claimants, according to the terms of the Settlement Agreement;

(x) **"Common Experience Payment"** means the payment made to each Eligible Claimant from the Common Experience Fund or from the Serious Harms Fund, if paid after the distribution of the Common Experience Fund;

(y) **"Counsel Fees"** means the fees, disbursements and all applicable taxes awarded to Class Counsel as determined and approved by the Court at the Approval Hearing and pursuant to s. 38 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50;

(z) **"Counsel for British Columbia"** means Hunter Litigation Chambers and the Legal Services Branch of the Ministry of the Attorney General;

(aa) **"Court"** means the Supreme Court of British Columbia;

(bb) **"Court Approval Date"** means the date on which the Court issues the Approval Order;

(cc) **"COVID-19 Protocols"** means any placement of an inmate apart from the general population of a BC Correctional Centre intended to prevent the spread of COVID-19;

(dd) **"Deceased Claimant"** means any Claimant who is deceased prior to receiving a Common Experience Payment and, if the Deceased Claimant would otherwise be an Eligible SHF Claimant, an award from the Serious Harms Fund.

(ee) **"Designated Mental Health Facility"** means a facility designated as a Provincial Mental Health Facility under s. 3(1) of the *Mental Health Act*, R.S.B.C. 1996, c. 288, or a unit designated as a Psychiatric Unit under s. 3(2) of the *Mental Health Act*, R.S.B.C. 1996, c. 288.

(ff) **"Eligible Claimant"** means a Claimant determined to be eligible for compensation from the Common Experience Fund and/or the Serious Harms Fund pursuant to the Claims Process and as determined by the Administrator and/or the Adjudicator;

(gg) **"Eligible Placement"** means a Placement that is not a Statute-Barred Placement and:

(i) For an Eligible Claimant of the SMI Class, is of at least twenty-two (22) consecutive hours; or

(ii) For an Eligible Claimant of the Prolonged Class, is of fifteen (15) or more consecutive days of 22 hours each day, which days must not include any confinement while subject to COVID-19 Protocols;

(hh) **"Eligible SHF Claimant"** means a Claimant determined to be entitled to compensation from the Serious Harms Fund pursuant to the Claims Process and as determined by the Claims Administrator or Claims Adjudicator;

(ii) **"Excluded Claimant"** means a Class Member who:

(i) has previously and validly opted out of the Action in writing;

- (ii) has previously settled claims against British Columbia and has executed a release;
- (iii) was the plaintiff in a claim in which there was a judgment dismissing claims in relation to matters that are the subject of this Action by consent or otherwise;
- (iv) would have had the right to file a claim in relation to matters that are the subject of this Action but entered into an agreement or arrangement with or for the benefit of British Columbia that presents a bar to recovery in the Action; or
- (v) is an Extended Class Member who validly opts out of the Action in writing prior to the Opt-Out Deadline.

(jj) **"Extended Class"**, **"Extended Class Member"** or **"Extended Class Members"** means those persons who become Class Members by virtue of an order extending the Class Period to the Court Approval Date, to be moved for on consent by the Parties;

(kk) **"Extended Class Period"** means the period between April 18, 2005 and the Court Approval Date, should the court make an order extending the Class Period to the Court Approval Date, to be moved for on consent by the Parties;

(ll) **"Honorarium"** means an honorarium, if any, to be paid to the Plaintiff in an amount determined by the Court at the Approval Hearing or thereafter;

(mm) **"Mental Illness"** is defined per the terms of the Certification Order, as being:

[A] diagnosed condition comprising one of the following disorders, as defined in the relevant Diagnostic and Statistics Manual of Mental Disorders ("DSM"):

- (i) Schizophrenia (all sub-types),
- (ii) Delusional disorder,

- (iii) Schizophreniform disorder,
- (iv) Schizoaffective disorder,
- (v) Brief psychotic disorder,
- (vi) Substance-induced psychotic disorder (excluding intoxications and withdrawal),
- (vii) Psychotic disorder not otherwise specified,
- (viii) Major depressive disorders,
- (ix) Bipolar disorder I,
- (x) Bipolar disorder II,
- (xi) Neurocognitive disorders and/or Delirium, Dementia and Amnestic and Other Cognitive Disorders,
- (xii) Post-Traumatic Stress Disorder;
- (xiii) Obsessive Compulsive Disorder; or
- (xiv) Borderline Personality Disorder.

(nn) **“Notice of Approval Hearing”** means the Court-approved notice to the Class Members of the Approval Hearing;

(oo) **"Notice of Certification"** means the Court-approved notice to Extended Class Members, advising that the Court has extended the Class Period such that they are now Class Members, and advising of the Opt-Out Deadline and the Opt-Out Process;

(pp) **“Notice of Settlement Approval”** means the Court-approved notice to the Class Members advising that the Court has approved the Settlement and advising of the Claims Process;

(qq) **"Opt-Out Deadline"** means the deadline, to be prior to the Approval Hearing and to be agreed upon by the Parties and approved by the Court, for Extended Class Members to opt out of this Action;

(rr) **"Opt-Out Form"** means a form, to be agreed upon by the Parties and approved by the Court, by which Extended Class Members may opt out of this Action;

(ss) **"Opt-Out Process"** means the process by which Extended Class Members may opt out of this Action;

(tt) **"Party"** or **"Parties"** means one or both of the Plaintiff and British Columbia;

(uu) **"Phase 1 Notice Plan"** means the plan to disseminate the Notice of Certification and the Notice of Approval Hearing to the Class approved by the Court based on the plan agreed to by the Parties;

(vv) **"Phase 2 Notice Plan"** means the plan to disseminate the Notice of Settlement Approval to the Class approved by the Court based on the plan agreed to by the Parties;

(ww) **"Placement"** means any placement in Separate Confinement and/or Segregation;

(xx) **"Prolonged Class"**, **"Prolonged Class Member"**, or **"Prolonged Class Members"** means those Class Members who (a) were involuntarily subjected to Separate Confinement and/or Segregation for at least fifteen (15) consecutive days of 22 hours each day, which days do not include any confinement while subject to COVID-19 Protocols, and (b) who are not members of the SMI Class;

(yy) **"Releasees"** means individually and collectively British Columbia, and each of its past, present and future officers, employees, representatives, administrators, insurers, volunteers, agents and their respective heirs, successors, executors and assigns;

(zz) "**SDM**" means a Claimant's authorized substitute decision-maker, who is appointed by either the Claimant or the Court, or granted a power of attorney pursuant to the *Power of Attorney Act*, R.S.B.C. 1996, c. 370;

(aaa) "**Section 19 Placement**" means any placement in Separate Confinement and/or Segregation that was made pursuant to section 19 of the *Correction Act Regulation*, B.C. Reg. 58/2005;

(bbb) "**Separate Confinement and/or Segregation**" means any Placement apart from the general population pursuant to ss. 17, 18, 24 or 27(1)(d) of the *Correction Act Regulation*, B.C. Reg. 58/2005;

(ccc) "**Serious Harms Award**" means the award made to an Eligible SHF Claimant from the Serious Harms Fund;

(ddd) "**Serious Harms Fund**" means the sum of \$25,000,000, with a potential additional \$5,000,000 pursuant to clause 2(b)(ii) of the Settlement Agreement, to be distributed according to the terms of the Settlement Agreement;

(eee) "**Serious Harms Grid**" means the grid set out in paragraph 75 of the Claims Process which shall be used to calculate Serious Harms Awards;

(fff) "**Settlement**" or "**Settlement Agreement**" or "**Agreement**" means this Agreement, as executed by the Parties or their representatives, including the attached Schedules;

(ggg) "**Settlement Funds**" means the Common Experience Fund and the Serious Harms Fund, which British Columbia has agreed to pay to settle the Action, inclusive of compensation for Approved Claims, Honorarium, interest, legal costs and disbursements, Counsel Fees, the Additional Counsel Disbursements and Administration Costs.

(hhh) "**SMI Class**", "**SMI Class Member**", or "**SMI Class Members**" means those Class Members who were involuntarily subjected to Separate Confinement and/or Segregation when BC Corrections knew or ought to have known the person suffered from a Mental Illness;

- (iii) **"Statute-Barred Claim"** means a claim in relation to a Statute-Barred Placement;
- (jj) **"Statute-Barred Claim Form"** means the form to be completed by a Claimant who wishes to make a claim for a Statute-Barred Placement pursuant to the Statute-Barred Claims Process;
- (kk) **"Statute-Barred Claims Process"** means the process, described in Schedule "A", by which Claimants with Statute-Barred Placements may seek to rebut the presumption that a Statute-Barred Claim is statute-barred; and
- (ll) **"Statute-Barred Placement"** means any Placement in Separate Confinement and/or Segregation that ended prior to November 26, 2016, or occurred between December 23, 2020 and July 30, 2022.

Settlement Funds

2. The Settlement Funds consist of:
 - (a) The Common Experience Fund in the amount of \$30,000,000; and
 - (b) The Serious Harms Fund in the amount of:
 - (i) \$25,000,000; and
 - (ii) An additional \$5,000,000 if there are more than 2,500 Eligible SHF Claimants.
3. The Settlement Funds shall be used to pay—the compensation for Approved Claims, Honorarium, interest, legal costs and disbursements, Counsel Fees, Additional Counsel Disbursements and Administration Costs, in accordance with this Settlement Agreement in full and final settlement of the Action. British Columbia shall hold the Settlement Funds from the Court Approval Date until such time as all payments required by this Settlement Agreement have been made.
4. For greater clarity, the maximum amount that British Columbia shall pay under this Agreement is \$60,000,000.

5. The Settlement Funds shall be paid out as follows:

- (a) Payments shall be made, first, from the Settlement Funds to satisfy Counsel Fees and Honorarium, as approved by the Court;
- (b) Payments shall be made, second, from the Common Experience Fund, as follows:
 - (i) First, to satisfy Additional Counsel Disbursements and Administration Costs for the distribution of the Common Experience Fund; and
 - (ii) Second, to all Eligible Claimants in the form of Common Experience Payments as set out in clause 13;
- (c) If any amount remains in the Common Experience Fund after it is distributed according to clauses 5(a) and 5(b) above, such amount shall flow into the Serious Harms Fund.
- (d) Payments shall be made, third, from the Serious Harms Fund, as follows:
 - (i) First, if there are more than 2,500 Eligible SHF Claimants, to satisfy Counsel Fees on the additional amount of \$5,000,000, as approved by the Court;
 - (ii) Second, to satisfy Additional Counsel Disbursements and Administration Costs for the distribution of the Serious Harms Fund;
 - (iii) Third, to all Eligible SHF Claimants as set out in clause 18.
- (e) Any amounts remaining in the Serious Harms Fund after the payments in clauses 5(a) to 5(d) have been made shall be distributed for the benefit of inmates in British Columbia, including Class Members, specifically, to the British Columbia Inmate Benefit Funds at the BC Correctional Centres.

6. British Columbia shall pay to Class Counsel the Counsel Fees and Honorarium described in 5(a), as approved by the Court, in trust within thirty (30) days after the Court Approval Date.
7. An Eligible Claimant or an Excluded Claimant who is paid any amount of compensation under this Settlement Agreement in error is liable to repay that amount to British Columbia who shall apply it to the Inmate Benefit Fund.

Segregation Reform

8. The Parties agree that it is in the best interests of the Class, and the in custody population of BC Corrections generally, to work toward improvements on the conditions of separate confinement. Counsel for the Parties shall meet quarterly for the two years following the Court Approval Date to discuss and implement additional policy reforms in order to: a) allow meaningful and constitutionally compliant time out of cell for persons placed in separate confinement; b) ensure the decision-making process for segregation reviews is constitutionally compliant; and, c) improve screening mechanisms for seriously mentally ill prisoners. The Parties shall file a report with the Court within two years of the date of the Court Approval Date which outlines any reforms that have been implemented by British Columbia Corrections, including any reforms already underway at the time this Agreement is executed.

Eligible Claimants

9. A Claimant must have at least one Eligible Placement in order to receive a Common Experience Payment.
10. If all of a Claimant's otherwise-eligible Placements are Statute-Barred Placements, the Claimant may only receive a Common Experience Payment or a Serious Harms Award pursuant to the Statute-Barred Claims Process in Schedule "A".
11. If an Eligible Claimant has both Eligible Placements and Statute-Barred Placements, the Claimant may only receive a Serious Harms Award that is based

on their Statute-Barred Placements, in whole or in part, under the Statute-Barred Claims Process in Schedule "A".

12. For Deceased Claimants:

- (a) A Claimant who was deceased prior to the date of the Certification Order is not an Eligible Claimant.
- (b) A Claimant who was deceased prior to the date of the execution of the Agreement, but who was alive on the date of the Certification Order, may receive a Common Experience Payment but is not eligible to apply for or receive any Serious Harms Award.
- (c) A Claimant who was alive on the date of the execution of the Agreement, but who dies prior to the determination of their Claim for a Serious Harms Award is not entitled to receive any Serious Harms Award but remains eligible to receive a Common Experience Payment.

Common Experience Payments

13. Common Experience Payments shall be made to Eligible Claimants from the Common Experience Fund as follows:

- (a) The amount remaining in the Common Experience Fund after the application of clauses 5(a) and 5(b)(i), above, shall be divided on a capped *pro rata* basis among all Eligible Claimants;
- (b) The Common Experience Payment made to each Eligible Claimant that is a member of the SMI Class shall be twice the amount of the Common Experience Payment made to each Eligible Claimant that is a member of the Prolonged Class;
- (c) The Common Experience Payment made to each Eligible Claimant that is a member of the SMI Class shall not be more than \$6,000;
- (d) The Common Experience Payment made to each Eligible Claimant that is a member of the Prolonged Class shall not be more than \$3,000;

- (e) An Eligible Claimant may only receive one Common Experience Payment, even if they qualify as members of both the SMI Class and the Prolonged Class; and
- (f) No further deductions shall be made from any Common Experience Payment paid to an Eligible Claimant.

14. Within sixty (60) days of the final determination of the Common Experience Payments to be made to each Eligible Claimant, pursuant to the Claims Process in Schedule "A", British Columbia shall pay to the Claims Administrator an amount equal to the total of all Common Experience Payments to be made to Eligible Claimants.
15. The Administrator shall distribute Common Experience Payments to Eligible Claimants as soon as practicable after clause 14 is satisfied and, for greater certainty, prior to the determination of Claims to the Serious Harms Fund.
16. Where, for any reason, additional Common Experience Payments must be made after the Common Experience Fund is distributed, such payments shall be made from the Serious Harms Fund and calculated based on the Common Experience Payments determined by the Claims Administrator under clause 13 of this Agreement.

Serious Harms Awards

17. Eligible Claimants shall be eligible to receive a Serious Harms Award from the Serious Harms Fund if:
 - (a) Subject to clause 18, the Eligible Claimant was subject to Eligible Placements of a cumulative total length of:
 - (i) 30 days or more, for Eligible Claimants that are members of the SMI Class; or
 - (ii) 45 days or more, for Eligible Claimants that are members of the Prolonged Class; or

(b) The Eligible Claimant suffered from one of the following specific and recorded harms:

- (i) New diagnosis of a Mental Illness during or within 90 days after an Eligible Placement;
- (ii) Attempted suicide during or within 60 days after an Eligible Placement;
- (iii) Self-Injury while alone or in the presence of BC Corrections staff during or within 60 days after an Eligible Placement; or
- (iv) Transfer to a Designated Mental Health Facility during or within 60 days after an Eligible Placement that is not court-ordered, a term of probation or sentence, or related to addiction recovery, rehabilitation or detox.

18. For the purpose of applying clause 17(a), the following shall not be counted in calculating the cumulative total length of the Claimant's Eligible Placements:

(a) Any Section 19 Placement; and

(b) For all other Eligible Placements:

- (i) any day of an Eligible Placement on which it is apparent from the records available that the Claimant shared their cell with one or more other inmates; and
- (ii) any day on which the Claimant was subject to COVID-19 Protocols.

19. The total quantum of each Eligible SHF Claimant's Serious Harms Award shall be determined according to the Serious Harms Grid in Schedule "A", subject to clause 20.

20. No Eligible SHF Claimant may receive a Serious Harms Award of more than \$85,000.

21. Subject to clause 20, no further deductions shall be made from any Eligible SHF Claimant's Serious Harms Award.
22. If the Serious Harms Awards of all Eligible SHF Claimants, together with any additional Common Experience Payments and other amounts payable from the Serious Harms Fund as described in clause 5, exceed the total amount of the Serious Harms Fund, each Eligible SHF Claimant's Serious Harms Award shall be reduced *pro rata* to the extent required such that all payments from the Serious Harms Fund shall not, in aggregate, exceed the total amount of the Serious Harms Fund.
23. The Claims Administrator may pay fees to the Claims Adjudicators in a fair and reasonable amount.
24. The Claims Administrator shall provide to British Columbia and Class Counsel a monthly accounting of amounts paid to Claims Adjudicators pursuant to clause 23, and of costs incurred by the Administrator to distribute the Settlement Funds.
25. Within thirty days of the final determination of all Claims, British Columbia shall pay to the Claims Administrator an amount equal to the total of all additional Common Experience Payments, subsequent to the Common Experience Payments paid under clause 14, and all Serious Harms Awards to be paid to Eligible SHF Claimants.
26. The Claims Administrator shall distribute all additional Common Experience Payments and all Serious Harms Awards as soon as practicable after clause 25 is satisfied.
27. British Columbia agrees the Minister of Public Safety and Solicitor General will recommend that payments received in accordance with this settlement agreement do not render class members ineligible to receive income assistance under:
 - (a) *Employment and Assistance Act* [SBC 2002] c. 40; or

(b) *Employment and Assistance for Persons with Disabilities Act* [SBC 2002] c. 41.

27.1. The Class members acknowledge and agree that any efforts to legally achieve the intention at paragraph 27 are confidential and privileged, and the commitment to make such a recommendation does not constitute a waiver of privilege. The Class members will not seek, support or participate in any effort to examine the content of the recommendations or related decision making, regardless of whether the recommendation is accepted.

Steps Prior to the Approval Hearing

28. The Parties shall move before the Court as soon as possible for an order, on consent, extending the Class Period to the date of the execution of this Agreement, and for approval of the Phase 1 Notice Plan.
29. The Parties agree to file motion materials, as necessary, with respect to the motion to extend the Class Period and to approve the Phase 1 Notice Plan and counsel shall act reasonably and in good faith on the content of such motion materials.
30. The Opt-Out Deadline and the Opt-Out Form shall be mutually agreed upon by the Parties and approved by the Court.
31. The Phase 1 Notice Plan shall be mutually agreed upon by the Parties and approved by the Court. Any disputes relating to the design, content or dissemination of the Phase 1 Notice Plan shall be resolved by the Court. Neither Party shall appeal the Court's decision on the Phase 1 Notice Plan.
32. The Claims Administrator shall be mutually agreed upon by the Parties and approved by the Court.
33. The Claims Adjudicators shall be mutually agreed upon by the Parties and approved by the Court.

34. The Phase 2 Notice Plan shall be mutually agreed upon by the Parties and approved by the Court. Any disputes relating to the design, content or dissemination of the Phase 2 Notice Plan shall be resolved by the Court. Neither Party shall appeal the Court's decision on the Phase 2 Notice Plan.
35. The Claim Form shall be mutually agreed upon by the Parties and approved by the Court. Any disputes relating to the design or content of the Claim Form shall be resolved by the Court. Neither Party shall appeal the Court's decision on the design or content of the Claim Form.
36. The Parties agree that when commenting publicly on the Action or this Settlement, they shall:
 - (a) Inform the inquirer that the Action has been settled to the satisfaction of all Parties;
 - (b) Inform the inquirer that it is the view of the Parties that the Settlement of the Action is fair, reasonable and in the best interests of the Class; and
 - (c) Decline to comment in a manner that casts the conduct of any Party in a negative light or reveals anything said during the settlement negotiations.

Court Approval

37. The Parties agree to adjourn all steps in the Action pending a determination by the Court on whether to approve the Settlement.
38. It is understood and agreed that the Court's approval of this Settlement Agreement and Claims Process is required. The Parties shall arrange for the Settlement Approval Hearing to be heard as soon as possible following the execution of this Settlement Agreement.
39. The Parties shall move before the Court with dispatch to have the Settlement and all necessary advance steps approved by the Court at the earliest possible opportunity.

40. The Parties agree to file motion materials, as necessary, with respect to the motion to approve the Settlement and counsel shall act reasonably and in good faith on the content of such motion materials.
41. Class Counsel shall bring a motion for approval of their requested Counsel Fees by the Court at the time of the Settlement Approval Hearing. British Columbia shall take no position on Class Counsel's motion to approve their requested Counsel Fees.
42. On the Court Approval Date, each Class Member, including each member of the Extended Class, whether or not he or she or they submits a Claim or otherwise receives compensation in accordance with the Claims Process, shall be deemed by this Settlement Agreement to have completely and unconditionally released, remised and forever discharged the Releasees of and from any and all actions, counterclaims, causes of action, claims, whether statutory or otherwise and demands for damages, indemnity, contribution, costs, interest, loss or harm of any nature and kind whatsoever, known or unknown, whether at law or in equity, and howsoever arising which they may heretofore have had, may now have or may hereafter have whether commenced or not in connection with all claims relating to the matters raised in the Action, except for any Claimant's entitlement to be paid in respect of an Approved Claim pursuant to the terms hereof.
43. On the Court Approval Date, each Class Member, including each member of the Extended Class, shall be forever barred and enjoined from commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively, or derivatively, asserting against the Releasees any claims relating to the matters raised in the Action.
44. On and after the Court Approval Date, in the event that a Class Member, including a member of the Extended Class, commences, institutes or prosecutes any action, litigation, investigation or other proceeding in any Court of law or equity,

arbitration, tribunal, proceeding, governmental forum or any other forum, directly, representatively, or derivatively, relating to the matters raised in the Action, against any person, firm, corporation, or administrative entity or regulator who may claim contribution or indemnity from the Releasees under the provision of any statute or otherwise, and the Releasees or any of them are added to such proceeding in any manner whatsoever, whether justified in law or not, such Class Member shall immediately discontinue the proceedings and claims or otherwise narrow the proceedings and claims to exclude the several liability of the Releasees. This Settlement Agreement shall operate conclusively as an estoppel in the event of any claim, action, complaint, or proceeding which might be brought in the future by such Class Member with respect to the matters covered herein. This Agreement may be pleaded in the event that any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection shall be raised by such Class Member in any subsequent action that the parties in the subsequent action were not privy to the formation of this Agreement.

No Admission, No Use

45. This Settlement Agreement, whether or not approved by the Court, and any proceeding taken pursuant to this Settlement Agreement are for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement or the schedules hereto, or any action taken hereunder, shall be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind by the Parties of the truth of any fact alleged or the validity of any claim or defence that has been, could have been, or in the future might be asserted in any litigation, court of law or equity, proceeding, arbitration, tribunal, government action, administrative forum, or any other forum, or of any liability, responsibility, fault, wrongdoing or otherwise of any Parties except as may be required to enforce or give effect to the Settlement and this Settlement Agreement. For greater clarity, British Columbia denies the truth

of the allegations in the Action, and denies any and all liability whatsoever. This Settlement is agreed to with an express denial of liability.

Termination

46. This Settlement Agreement shall, without notice, be automatically terminated if the Court declines to approve this Settlement Agreement and all appeals from that order are disposed of. In the event of termination, this Settlement Agreement shall be deemed to be a without prejudice settlement discussion and shall have no further force or effect, save and except for this clause and clause 45, which shall survive termination.

General

47. This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of the Province of British Columbia.
48. This Settlement Agreement constitutes the entire agreement between the Parties and may not be modified or amended except in writing, on consent of the Parties, and with Court approval.
49. Notwithstanding clause 48, the Claims Process for the submission, review and determination of Claims set out in Schedule "A" may be modified by the Court or on the consent of the Parties, in writing.

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50. This Settlement Agreement may be signed (including electronic signatures) by the Parties in counterpart, and delivered electronically, which shall have the same effect and enforceability as a single executed document.

IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of April 9, 2025.

KOSKIE MINSKY LLP

April 9, 2025

Y

Date

Counsel for the Plaintiff and the Class

McEWAN COOPER KIRKPATRICK LLP

Date

Counsel for the Plaintiff and the Class

HUNTER LITIGATION CHAMBERS

April 14, 2025

Clair Hunter

Date

Counsel for the Defendant, His Majesty the King in right of the Province of British Columbia

PETER AMEERALI

April 9, 2025

Counsel for the Defendant, His Majesty the King in right of the Province of British Columbia

50. This Settlement Agreement may be signed (including electronic signatures) by the Parties in counterpart, and delivered electronically, which shall have the same effect and enforceability as a single executed document.

IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of April 9, 2025.

KOSKIE MINSKY LLP

April 9, 2025

Date



Counsel for the Plaintiff and the Class

McEWAN COOPER KIRKPATRICK LLP

April 19, 2025

Date



Counsel for the Plaintiff and the Class

HUNTER LITIGATION CHAMBERS

Date

Counsel for the Defendant, His Majesty the King in right of the Province of British Columbia

PETER AMEERALI

Date

Counsel for the Defendant, His Majesty the King in right of the Province of British Columbia

SCHEDULE "A" – CLAIMS PROCESS

Definitions

1. All capitalized terms used in this document have the same meaning as in the Settlement Agreement.

Overview

2. Subject to the detailed requirements provided in this Schedule, the Claims Process shall have the following general features:
 - (a) **Settlement Funds:** Claimants can receive compensation from up to two funds: the Common Experience Fund (\$30,000,000) and the Serious Harms Fund (a minimum of \$25,000,000 and a maximum of \$30,000,000 to be determined by applying clause 2 of the Settlement Agreement).
 - (b) **Common Experience Fund:** The Administrator shall determine the distribution of Common Experience Payments from the Common Experience Fund.
 - (i) **SMI Class:** Eligible Claimants that are found by the Administrator to be members of the SMI Class can receive a Common Experience Payment of up to **\$6,000**.¹
 - (ii) **Prolonged Class:** Eligible Claimants who are not members of the SMI Class can receive a Common Experience Payment of up to **\$3,000**² if the Administrator determines that the Claimant has at least one Eligible Placement of 15 days or more.
 - (iii) **Serious Harms Fund:** An Eligible SHF Claimant may be awarded up to **\$85,000** from the Serious Harms Fund, in addition to their Common Experience Payment, to compensate for lengthy Eligible

¹ In the event of oversubscription, this payment shall be reduced on a pro-rata basis.

² In the event of oversubscription, this payment shall be reduced on a pro-rata basis.

Placements and/or specific and recorded harms. Serious Harms Awards shall be determined according to the Serious Harms Grid at paragraph 75.

(c) **Claimant Reviews:** Claimants may only seek a review of the Administrator's determination of the number, length and eligibility of their Placements, or of the Administrator's determination that they are not a member of the SMI Class or the Prolonged Class:

- (i) Reviews may only be brought through Class Counsel; Class Counsel may decline to bring a review.
- (ii) Reviews shall be determined by an Adjudicator.
- (iii) Subject to this paragraph, the determinations of the Administrator are final. All determinations of the Adjudicator are final. There is no appeal of any decision of the Administrator or Adjudicator.

(d) British Columbia shall provide correctional records to the Administrator, Class Counsel, and/or the Claimant to facilitate the determination of Claims in accordance with Appendix "A" to this Schedule.

(e) Claimants with Statute-Barred Claims may seek compensation by filing evidence establishing incapacity, which evidence will only postpone the running of the limitation period for the duration of incapacity established by the evidence.

(f) The Administrator may accept a Claim submitted after the Claims Deadline in certain circumstances.

(g) Any money remaining in the Common Experience Fund after all Common Experience Payments determined by the Administrator are made shall flow into the Serious Harms Fund.

(h) Any additional Common Experience Payments that become payable after the distribution of the Common Experience Fund shall be paid from the Serious Harms Fund.

- (i) Any money remaining in the Serious Harms Fund after all Common Experience Payments and Serious Harms Awards are made shall be distributed to British Columbia Inmate Benefit Funds.

Initiation of Claims

- 3. The Claims Deadline shall be 12 months from the date of publication of the Notice of Settlement Approval.
- 4. Any person who wishes to claim compensation from the Settlement Funds shall deliver to, or otherwise provide, the Claims Administrator with a completed Claim Form by the Claims Deadline. If the Claims Administrator does not receive a completed Claim Form from a Class Member by the Claims Deadline, then the Claimant shall not be eligible for any compensation whatsoever, subject to paragraphs 94 and 97.
- 5. The Claims Administrator shall review each Claim Form for completeness and shall advise a Claimant, no later than seven (7) business days after receipt of the Claim Form if their Claim Form is incomplete. The Claimant shall rectify an incomplete Claim Form within the later of (i) thirty (30) days from the date that the Claims Administrator advises them that their Claim Form is incomplete, or (ii) the Claims Deadline.
- 6. The Claim Form shall require the Claimant to provide:
 - (a) Their name and all aliases or previously used names;
 - (b) Their date of birth;
 - (c) Their contact information including mailing address, email address, and phone numbers, if any;
 - (d) Their CORNET number (if known);
 - (e) To the best of their knowledge, the dates and BC Correctional Centres at which they were incarcerated during the Extended Class Period;

- (f) Any other information agreed upon by the Parties and the Administrator to verify whether the Claimant is an Eligible Claimant, and whether the Claimant is a member of the SMI Class or the Prolonged Class;
- (g) An acknowledgement that the Administrator is authorized to contact the Claimant to obtain further information;
- (h) An authorization that British Columbia is authorized to provide relevant information and documents in the Claimant's correctional file to the Administrator, counsel for British Columbia, and Class Counsel; and
- (i) A declaration that the information submitted in the Claim Form is true and accurate.

7. The Claim Form shall require the Claimant to indicate:

- (a) Whether they are making a claim as a member of the SMI Class;
- (b) Whether they are making a claim for a Box 2 Award and, if so, to provide a brief description of the specific and recorded harms they experienced;
- (c) Whether they are making a claim through the Statute-Barred Claims Process;
- (d) Whether they are making a claim as a Claimant's SDM; and
- (e) Whether they are making a claim on behalf of a Deceased Claimant.

8. A Claim Form shall require a Claimant who indicates that they are making a claim as a member of the SMI Class to:

- (a) Provide a signed declaration that, at the time that they were placed in Segregation and/or Separate Confinement, they suffered from a Mental Illness; and
- (b) Identify the Mental Illness or Mental Illnesses that they suffered from.

9. The Claim Form shall require a Claimant who indicates that they are making a claim as a member of the SMI Class and/or that they are making a claim for a Box 2 Award to provide an authorization to allow the release of their healthcare

records, including records held by the Provincial Health Services Authority – Correctional Health Services ("PHSA-CHS") division, to the Administrator, counsel for British Columbia, and Class Counsel for the purposes of administering their Claim.

10. In the event that it is unclear to the Claims Administrator whether a Claimant is making a Claim under paragraph 9, the Claims Administrator may seek such clarification from the Claimant as soon as possible after receiving the Claim.
11. The Claim Form shall require a Claimant who indicates that they are making a claim as a SDM to provide evidence to satisfy the Claims Administrator that the SDM has authority to act on behalf of the Claimant in respect of financial affairs, such as a power of attorney, court order, or such other document as the case may be, as prescribed by the applicable legislation.
12. The Claim Form shall require a Claimant who indicates that they are making a claim on behalf of a Deceased Claimant (the "**Estate**") to provide evidence to satisfy the Claims Administrator that the Estate has authority to act on behalf of the Deceased Claimant in respect of financial affairs, including: (i) Letters of Administration; (ii) Letters of Administration with Will Annexed; (iii) Grant of Probate; (iv) Will; or (v) any other document of like import purporting to be issued by any court or government authority in Canada.
13. The Claims Process is intended to be expeditious, cost effective, "user-friendly", and to minimize the burden on Class Members. The Claims Administrator shall, in the absence of reasonable grounds to the contrary, assume a Claimant to be acting honestly and in good faith.
14. Where a Claim Form contains minor omissions or errors of a typographical nature, the Claims Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Claims Administrator.

Process for the Assessment and Determination of Claims

Provision of Claimant Information and Records

15. As complete Claim Forms are received, the Claims Administrator shall review each complete Claim Form and verify that the Claimant is not an Excluded Claimant.
16. The Claims Administrator shall refuse, without delay, any Claim made by an Excluded Claimant and shall copy the Parties on the refusal of the Claim.
17. The Administrator shall create and maintain a Claimant List, which shall include the personal details of each Claimant (other than Excluded Claimants) and the elections made in their Claim Form.
18. The Administrator shall create and maintain an Excluded Claimant List, which shall include the personal details of each Excluded Claimant and the elections made in their Claim Form.
19. The Administrator shall add a Claimant to the Claimant List or Excluded Claimant to the Excluded Claimant List within thirty (30) days of receiving a complete Claim Form.
20. The Administrator shall ensure that a current copy of the Claimant List and Excluded Claimant List is available to the Parties throughout the Claims Period.
21. Within sixty (60) days of the Claims Deadline, the Administrator shall provide a complete and final Claimant List to the Parties.
22. Within sixty (60) days of the two (2) month period after the Claims Deadline, the Administrator shall provide a subsequent complete and final Claimant List to the Parties, which will include any Claimant whose Claim Form was submitted and accepted after the Claims Deadline pursuant to paragraph 94.

Claimant Correctional Records and PHSA-CHS Records

23. Upon pronouncement of the Approval Order and the appointment of the Administrator, British Columbia shall provide, to the Administrator and Class Counsel, a copy of the Master Segregation Roster for the Extended Class Period.
24. For each Claimant on the Claimant List who indicates that they are making a claim as a member of the SMI Class and/or that they are making a claim for a Serious Harms Award based on one or more of the specific and recorded harms, Class Counsel may obtain copies of the Claimant's PHSA-CHS records. British Columbia shall co-operate with Class Counsel as necessary for Class Counsel to obtain these Claimants' PHSA-CHS records, and shall consent to any Orders necessary for that purpose.
25. For each Claimant on the Claimant List, British Columbia shall provide to Class Counsel and the Administrator, on a "counsel's eyes only" basis, copies of the correctional records ("**Claimant Correctional Records**") listed at Appendix "A".
26. British Columbia shall endeavour to provide Claimant Correctional Records to Class Counsel and the Administrator on a rolling basis as the names of the Claimants are added to the Claimant List and provided to British Columbia.
27. British Columbia shall designate one or more representative(s) to assist Class Counsel, the Administrator, and the Claims Adjudicator by acting as a consultant on the Claimant Correctional Records and the Master Segregation Roster on an as-needed basis throughout the administration of the Settlement Agreement and Claims Process.
28. Where a Claimant requests to review their Claimant Correctional Records, Class Counsel shall abide by the following process before providing such records:
 - (a) Class Counsel shall redact all of the Claimant's Correctional Records to exclude any information that:

- (i) Identifies the names or identities of any person other than the Claimant,
- (ii) May put BC Corrections staff or any member of the public at risk,
- (iii) Contains security information that may put the safety and security of a BC Correctional Centre at risk, and
- (iv) Is protected by privilege, including confidential informant privilege; and

(b) Class Counsel will provide the Claimant's redacted Claimant Correctional Records to British Columbia for verification and approval in writing.

29. In the event that Claimant Correctional Records are not dispositive, the absence of information or evidence in Claimant Correctional Records will apply to the benefit of the Claimant, for the purposes of the following determinations only:

- (a) Whether and for how many days the Claimant shared a cell with one or more other inmates while placed in Separate Confinement and/or Segregation;
- (b) Whether a placement in Separate Confinement and/or Segregation was a Section 19 Placement;
- (c) Whether an individual was subject to COVID-19 Protocols while placed in Separate Confinement and/or Segregation; and
- (d) Whether a Claimant who was released from Separate Confinement and/or Segregation and placed back in Separate Confinement and/or Segregation on the same day was released from Separate Confinement and/or Segregation for six (6) or more hours.

Class Counsel Review of Claimant Correctional Records

30. Upon receipt of Claimant Correctional Records and any PHSA-CHS Records, for each Claimant, Class Counsel shall review the Claimant's records to assess the

following information for the purposes of the distribution of the Common Experience Fund:

- (a) The dates of each of the Claimant's Placements that ended after November 26, 2016, and that did not occur between December 22, 2020 and July 30, 2022;
- (b) Any dates on which the Claimant was subject to COVID-19 Protocols while in Segregation and/or Separate Confinement;
- (c) Any dates on which the Claimant was released from Segregation and/or Separate Confinement and was placed in Segregation and/or Separate Confinement again within 6 hours; and
- (d) For each Claimant making a Claim as a member of the SMI Class, the specific excerpts of the records, if any, that may assist the Administrator in determining the Claimant's membership in the SMI Class.

31. For each Claimant, Class Counsel shall provide this assessment for the purposes of the distribution of the Common Experience Fund to the Administrator, together with references to the specific sections of the records relied upon in that assessment. British Columbia shall be entitled to a copy of this assessment from Class Counsel or the Administrator upon request.

32. For each Claimant who may be eligible to receive an award from the Serious Harms Fund, Class Counsel shall review the Claimant's records to assess the following as necessary for the purposes of the distribution of the Serious Harms Fund:

- (a) Whether each Placement was or was not a Section 19 Placement;
- (b) Whether any dates of their Placements were ones on which the Claimant shared their cell with one or more other inmates; and
- (c) For each Claimant making a claim for a Box 2 Award, the specific excerpts of the records, if any, that may assist the Adjudicator in determining the Claimant's entitlement to a Serious Harms Award based on specific and recorded harms.

33. For each Claimant that may be eligible to receive an award from the Serious Harms Fund, Class Counsel shall provide this assessment for the purposes of the distribution of the Serious Harms Fund to the Administrator, together with references to the specific sections of the records relied upon in that assessment. British Columbia shall be entitled to a copy of this assessment from Class Counsel or the Administrator upon request.
34. Where a Claimant makes a claim for a Box 2 Award, Class Counsel may receive, assess, and provide to the Administrator additional evidence or records, within Class Counsel's discretion, for the purposes of the adjudication referred to in paragraph 65.

Determination of Eligibility for Common Experience Payments

35. Where a Claimant makes a claim as a member of the SMI Class, relying on Class Counsel's assessments, Claimant Correctional Records, and the PHSA-CHS records of the Claimants, the Claims Administrator shall determine the Claimant to be a member of the SMI Class if either (a) or (b) applies:
 - (a) Prior to an Eligible Placement, there is both:
 - (i) A clear note in the Claimant's Correctional Records of a Mental Illness, including but not limited to the presence of a mental health needs flag; and
 - (ii) The Claimant's PHSA-CHS records indicate a diagnosis of a Mental Illness prior to at least one Placement of at least twenty-two (22) hours;
 - (b) There is both:
 - (i) A mental health needs flag in the Claimant's Correctional Records; and
 - (ii) The Claimant's Correctional Records indicate that the Claimant, while in a BC Correctional Centre, had previously attempted suicide,

been placed on the suicide watch list, or attempted significant self-harm while alone or in the presence of BC Corrections staff.

36. The following evidence, in the Claimant's PHSA-CHS records, will satisfy paragraph 35(a)(ii):

(a) A record of the prescription of a drug for treatment of a particular Mental Illness; or

(b) Any of the following terms, in combination with a reference to a Mental Illness, including a short form of the name of a Mental Illness:

- (i) Diagnosis or Dx
- (ii) Diagnostic établi / Established Diagnosis
- (iii) Impression diagnostique / Diagnostic Impression ou Imp. dx.
- (iv) Diagnostic(s) différentiel(s) / Differential diagnosis
- (v) Évaluation diagnostique / Diagnostic Evaluation
- (vi) Diagnostic provisoire ou diagnostic de travail / Provisional or Working Diagnosis
- (vii) Diagnostic avec mention "non spécifié" / Diagnosis "Not otherwise specified"
- (viii) Diagnostic d'exclusion / Diagnosis of Exclusion
- (ix) Diagnostic pour la planification du traitement / Diagnostic Diagnosis for treatment planning
- (x) Symptômes ou présentation clinique compatible avec un diagnostic, diagnostic clinique/ Symptoms or clinical presentation compatible with a diagnosis or clinical diagnosis
- (xi) Répond aux critères d'un diagnostic / Meets the criteria for a diagnosis
- (xii) « A » des Notes SOAP/ "A" from SOAP notes
- (xiii) Diagnostic probable/ Probable diagnosis.

37. Relying on Class Counsel's assessments and Claimant Correctional Records, the Claims Administrator shall determine the Claimant to be a member of the Prolonged Class if:

(a) the Claimant had at least one Placement of 15 consecutive days or more that was not a Statute-Barred Placement, not counting days on which the Claimant was subject to COVID-19 Protocols; and

(b) the Claimant is not a member of the SMI Class.

38. Relying on Class Counsel's assessments and Claimant Correctional Records, the Claims Administrator shall determine:

- (a) For all Eligible Claimants,
 - (i) The dates and calculated length of each Placement, and
 - (ii) Whether each Placement is an Eligible Placement, based on the Claimant's membership in either the SMI Class or the Prolonged Class, and
- (b) For all Claimants that have opted to make a claim through the Statute-Barred Claims Process, the length and dates of all Statute-Barred Placements.

39. In calculating the length of a Placement, for any purpose in applying this Claims Process, the Administrator shall:

- (a) Count the day that the Claimant was first placed in Separate Confinement and/or Segregation as day "0";
- (b) Consider a Placement to be continuous:
 - (i) where a Claimant was released from Segregation and/or Separate Confinement and placed back in Segregation and/or Separate Confinement within 6 hours; or
 - (ii) where the Claimant was subjected to COVID-19 Protocols, the days for which the Claimant was subject to COVID-19 Protocols should be excluded in calculating the length of the Placement.

40. For clarity, Common Experience Payments shall be made out of the Serious Harms Fund in only the following circumstances:

- (a) a Claimant's late Claim is accepted by the Administrator and the Claimant is determined to be an Eligible Claimant pursuant to paragraphs 94 to 96;

- (b) a Claimant's Statute-Barred Claim is determined by the Adjudicator pursuant to paragraphs 73 and 74, and the Claimant is determined to be an Eligible Claimant; and
- (c) a Claimant successfully establishes membership in the Prolonged Class or the SMI Class on review in accordance with paragraph 51(b) below.

Distribution of the Common Experience Fund

- 41. Based on the determinations made under paragraphs 35 and 37, the Administrator shall determine the quantum of the Common Experience Payment to be made to each Eligible Claimant in the SMI Class and each Eligible Claimant in the Prolonged Class in accordance with clause 13 of the Settlement Agreement.
- 42. The Administrator shall provide to the Parties the determinations in paragraphs 35, 37 and 38, within 90 days of receiving Class Counsel's assessments under paragraph 31. The Parties shall review the calculations and determine whether the Administrator ought to proceed to distribute the Common Experience Payments to Eligible Claimants.
- 43. Prior to the distribution of the Common Experience Payments in accordance with clause 13 of the Settlement Agreement, the Administrator shall advise the Parties of:
 - (a) the total number of Eligible Claimants that are Prolonged Class Members;
 - (b) the total number of Eligible Claimants that are SMI Class Members; and
 - (c) the total quantum of Common Experience Payments that are to be paid out of the Common Experience Fund to the Eligible Claimants.
- 44. Within 30 days of the Parties directing the Administrator to proceed with the distribution of Common Experience Payments, British Columbia shall transfer, to the Administrator, the total quantum of all Common Experience Payments to be made to Eligible Claimants.

45. When the Parties have directed the Administrator to proceed with the distribution of Common Experience Payments, the Administrator shall provide to each Eligible Claimant the Claimant's Common Experience Payment and shall, at the same time, notify each Claimant of its determinations:

- (a) For all Claimants:
 - (i) Whether they were found to be an Eligible Claimant; and
 - (ii) A list of the Placements identified by the Administrator, including the calculated length and dates of each Placement, and an indication of whether the Placement was determined to be an Eligible Placement for the purpose of the Common Experience Payment and Box 2 Awards;
- (b) For Eligible Claimants only, whether they were found to be an Eligible Claimant as part of the Prolonged Class or the SMI Class; and
- (c) For Claimants that made claims in the Statute-Barred Claims Process only:
 - (i) An additional list of Statute-Barred Placements, including the length and dates of each Placement; and
 - (ii) An indication that Statute-Barred Placements have not been counted in determining eligibility or in determining the cumulative total length of their Eligible Placements but may subsequently be counted subject to the Statute-Barred Claims Process.

British Columbia Review Process

46. In calculating Box 1 Awards, the Administrator shall exclude, for Eligible Placements after August 31, 2019 only, any day on which the Claimant spent more than four hours out of their cell as identified by the Province and established by Claimant Correctional Records.

47. Within 120 days of receiving the Administrator's determinations referred to in paragraphs 35, 37 and 38, pursuant to paragraph 42, British Columbia may, for Eligible Placements after August 31, 2019 only, identify any day on which, according to Claimant Correctional Records, the Claimant spent more than four hours out of their cell.
48. Identifications made by British Columbia under paragraph 47 shall be accompanied by the excerpts of each Claimant's Claimant Correctional Records that establish that the Claimant spent more than four hours out of their cell.

Claimant Review Process

49. The Administrator shall inform each Claimant of the opportunity to seek a review of the Administrator's determinations, which review shall be determined by an Adjudicator.
50. A Claimant may only seek review through Class Counsel, and Class Counsel may accept or decline the request to seek a review.
51. Claimants may seek a review of the Administrator's determinations as follows:
 - (a) Any Claimant may seek a review of the determination of the number and length of Placements identified by the Administrator.
 - (b) Claimants that self-identified as members of the SMI Class and were found not to be members of the SMI Class may seek a review of the determination that the Claimant is not a member of the SMI Class.
52. A review must be initiated using a form, to be created by the Administrator and agreed upon by the Parties. The form shall be provided to Claimants alongside the Administrator's determinations. Claimants shall have 60 days from the date that the Administrator notifies the Claimant of their determinations to submit a Review Form to the Administrator.

53. The Administrator shall provide any Review Forms received from Claimants by the Administrator to Class Counsel, for Class Counsel to determine whether to proceed with a review.
54. Any further Common Experience Payments found payable upon review (including, for Eligible Claimants previously deemed eligible as members of the Prolonged Class and later found to be eligible as members of the SMI Class, the difference in quantum between Common Experience Payments for members of the SMI and Prolonged Classes), shall be paid from the Serious Harms Fund.

Claims Adjudicators

55. The Parties shall retain one or more Claims Adjudicators and shall determine the fees to be paid to Claims Adjudicators. The Claims Adjudicators shall be experienced legal professionals or retired legal professionals agreed to by the Parties.
56. The Claims Adjudicators shall be paid by the Administrator from the Settlement Funds.
57. Claims Adjudicators shall determine:
 - (a) Reviews from the Administrator's determinations of:
 - (i) The number and length of Eligible Placements;
 - (ii) Membership in the Prolonged Class; and
 - (iii) Membership in the SMI Class;
 - (b) Whether a Claimant suffered specific and recorded harms; and
 - (c) Claims referred to the Adjudicator in the Statute-Barred Claims Process.
58. In each case, the Adjudicator shall render a decision in writing of no more than one page. The Adjudicator's decision shall be provided to the Administrator, Class Counsel and British Columbia.

59. Where multiple determinations are required with regards to one Claimant, all determinations shall be made by the same Claims Adjudicator, in one decision, with one set of reasons.
60. No review or appeal may be brought from any determination of a Claims Adjudicator.
61. Each Claims Adjudicator shall be provided with a copy of the Master Segregation Roster.

Placement Disputes

62. A Claimant seeking a review of the number and length of Placements identified by the Administrator or a finding that the Claimant is not a member of the Prolonged Class ("Placement Disputes") shall provide a signed declaration detailing the Claimant's recollection of the dates and lengths of each of the disputed Placements.
63. Where Class Counsel agrees to seek a review, the Placement Dispute shall be referred to a Claims Adjudicator to be determined as follows:
 - (a) The Administrator shall provide to the Adjudicator:
 - (i) The Claimant's Correctional Records;
 - (ii) Class Counsel's assessment for the purposes of the CEP;
 - (iii) A copy of the Administrator's initial determination of the number and length of Placements; and
 - (iv) A copy of the Claimant's signed declaration.
 - (b) In addition, Class Counsel shall provide to the Adjudicator written submissions not exceeding one page in length;
 - (c) Based on the documents provided to the Adjudicator and the Master Segregation Roster, the Adjudicator shall determine the date that each Placement

started and ended, and the total length of the Placement, considering paragraph 39.

Review of Membership in the SMI Class

64. Where Class Counsel agrees to seek review of a finding that a Claimant was not a member of the SMI Class, the Administrator shall provide to the Adjudicator:

- (i) The Claimant's Correctional Records and PHSA-CHS records;
- (ii) Class Counsel's assessment for the purposes of the Common Experience Payment;
- (iii) A copy of the Administrator's initial determination of the Claimant's membership in the SMI Class;
- (iv) A copy of the Claimant's Claim Form; and
- (v) Any additional records or evidence provided by the Claimant.

b) In addition, Class Counsel shall provide to the Adjudicator written submissions not exceeding one page in length.

c) Based on the documents provided to the Adjudicator and the Master Segregation Roster, the Adjudicator shall determine whether the Claimant is a member of the SMI Class, considering paragraphs 35 and 36.

Specific and Recorded Harms

65. Where a Claimant seeks an award for specific and recorded harms from the Serious Harms Fund, the Administrator shall refer that part of the Claimant's Claim to a Claims Adjudicator to be determined as follows:

- (a) The Administrator shall provide to the Adjudicator:
 - (i) A copy of the Claimant's Claim Form;
 - (ii) The Claimant's PHSA-CHS and Claimant Correctional Records; and

- (iii) Class Counsel's assessment.
- (b) In addition, Class Counsel shall provide to the Adjudicator written submissions not exceeding one page in length.
- (c) The Adjudicator shall determine whether the documents provided and the Master Segregation Roster establish, on a balance of probabilities, that the Claimant:
 - (i) Was diagnosed with a new Mental Illness during or within 90 days after an Eligible Placement;
 - (ii) Attempted suicide during or within 60 days after an Eligible Placement;
 - (iii) Engaged in self-injurious behaviour while alone in custody of the Defendant or in the presence of BC Corrections staff during or within 60 days after an Eligible Placement; or
 - (iv) Was transferred to a Designated Mental Health Facility during or within 60 days after an Eligible Placement, excluding any transfer that was court-ordered, a term of probation or sentence, or related to addiction recovery, rehabilitation or detox.

Statute-Barred Claims Process

66. A Claimant who wishes to make a Statute-Barred Claim must complete, in addition to the Claim Form, a Statute-Barred Claim Form. A Statute-Barred Claim will only be considered where the Claimant also provides some evidence of:

- (a) Residency in a Designated Mental Health Facility or similar institution;
- (b) Lengthy (three weeks or longer) hospitalization for a serious physical condition that affected the Claimant's ability to comprehend information, make decisions, or communicate;

- (c) Certification under the *Mental Health Act*, R.S.B.C. 1996, c. 288, or a similar finding under equivalent legislation in another province;
- (d) A court finding that the Claimant was not criminally responsible for a charged offence, or that the Claimant was unfit to stand trial for a charged offence;
- (e) A certification of incapability under the *Adult Guardianship Act*, R.S.B.C. 1996, c. 6, or a similar finding under equivalent legislation in another province;
- (f) A finding made by a healthcare provider that the individual was incapable of giving, refusing, or revoking consent to health care; or
- (g) A declaration of incompetence or incapability by another quasi-judicial decision-maker or tribunal.

67. For the purpose of applying paragraph 66, the evidence provided by the Claimant must take one or more of the following forms:

- (a) Medical records;
- (b) A document from a court or tribunal recording a finding or referring to a finding previously made;
- (c) A document from an institution that provided care to the individual, such as a record of admittance or discharge from the institution;
- (d) A record of the Public Guardian and Trustee or another SDM acting for the Claimant; or
- (e) A letter from a professional healthcare provider, e.g. doctor, registered nurse or licensed nurse practitioner, or psychiatrist, confirming that the Claimant is or was incompetent or incapable for a specific time.

68. If no evidence is provided in accordance with paragraphs 66 and 67, above, the Administrator shall reject the Statute-Barred Claim.

69. If any evidence is provided in accordance with paragraphs 66 and 67, the Administrator shall refer the Statute-Barred Claim to Class Counsel, and shall

provide Class Counsel with a copy of the Statute-Barred Claim Form and supporting documents.

70. Class Counsel shall assess the Statute-Barred Claim to determine:
 - (a) Whether the placement would, if not Statute-Barred, be an Eligible Placement;
 - (b) Whether the evidence establishes a possibility that the Claimant may have been a person under disability; and
 - (c) Whether the information provided in the Statute-Barred Claim Form suggests that the limitation period for that Claimant may have been tolled for a sufficient time to prevent the Claim from being statute-barred.
71. If, based on this assessment, Class Counsel is of the view that the Statute-Barred Claim is not viable, Class Counsel shall direct the Administrator to reject the Statute-Barred Claim.
72. If, based on this assessment, Class Counsel is of the view that the Statute-Barred Claim may be viable, Class Counsel shall direct the Administrator to refer the Statute-Barred Claim to the Adjudicator.
73. A Statute-Barred Claim referred to the Adjudicator shall be determined as follows:
 - (a) The Administrator shall provide to the Adjudicator:
 - (i) A copy of the Claimant's Statute-Barred Claim Form and any documents provided by the Claimant; and
 - (ii) The Claimant's PHSA-CHS records and Claimant Correctional Records.
 - (b) In addition, Class Counsel shall provide to the Adjudicator written submissions not exceeding one page in length.

(c) The Adjudicator shall determine, based on the evidence before the Adjudicator, on a balance of probabilities, whether the Claimant was a person under disability for a relevant period, such that the Claim is not statute-barred.

74. Where the Adjudicator determines that a Claim for a Statute-Barred Placement is not statute-barred, the Statute-Barred Placement shall be deemed an Eligible Placement, and the Claimant's eligibility for a Common Experience Payment and an award from the Serious Harms Fund shall be determined by the Administrator and/or Adjudicator accordingly.

Distribution of Awards from the Serious Harms Fund

75. Awards from the Serious Harms Fund shall be determined based on the following Serious Harms Grid:

BOX 1: LENGTHY AND REPEATED PLACEMENTS		
Cumulative Total Length of All Eligible Placements	Prolonged Class	SMI Class
30-44 days	n/a	\$8,000
45-74 days	\$5,000	\$12,000
75-104 days	\$9,000	\$16,000
105-134 days	\$13,000	\$18,000
135-164 days	\$17,000	\$22,000
165-199 days	\$21,000	\$26,000
200 or more days	\$25,000	\$30,000

BOX 2: SPECIFIC AND RECORDED HARMS		
New diagnosis of a Mental Illness during or within 90 days of an Eligible Placement OR Transfer to a Designated Mental Health Facility during or within 60 days after an Eligible Placement that is not court-ordered, a term of probation or sentence, or related to addiction recovery, rehabilitation or detox.	\$35,000	
Self-injurious behaviour while alone or in the presence of BC Corrections staff during or within 60 days after an Eligible Placement.	\$10,000	
Suicide attempt during or within 60 days of an Eligible Placement.	\$40,000	

Calculation of Box 1 Awards

76. Each Eligible SHF Claimant may either receive:

- (a) one (1) award from Box 1, to be calculated by the Administrator based on the Claimant's membership in the SMI Class or the Prolonged Class, and the Administrator's determination of the cumulative total length of all of the Claimant's Eligible Placements; or
- (b) in circumstances where the Administrator determines that the Claimant had an Eligible Placement as a member of the Prolonged Class and determines that the Claimant later became a member of the SMI Class with a subsequent Eligible Placement:
 - (i) one (1) award from Box 1, to be calculated by the Administrator based on the Claimant's earlier membership in the Prolonged Class, and the Administrator's determination of the cumulative total length of all of the Claimant's Eligible Placements while a member of the Prolonged Class only, and
 - (ii) one (1) further award from Box 1, to be calculated by the Administrator based on the Claimant's later membership in the SMI Class, and the Administrator's determination of the cumulative total length of all of the Claimant's Eligible Placements while a member of the SMI Class, which calculation must not include any Eligible Placement(s) considered in paragraph 76(b)(i) above.

77. In determining the cumulative total length of all of the Claimant's Eligible Placements, the Administrator shall exclude:

- (a) Any Section 19 Placement; and
- (b) For all other Eligible Placements:

- (i) any day of an Eligible Placement on which it is apparent from the records available that the Claimant shared their cell with one or more other inmates;
- (ii) any day on which the Claimant was subject to COVID-19 Protocols; and
- (iii) for Eligible Placements after August 31, 2019 only, any day on which the Claimant spent more than four hours out of their cell, as identified by the Province and established by Claimant Correctional Records.

78. The cumulative total length of a Claimant's Eligible Placements shall only be determined after the determination, by the Claims Adjudicator, of any Placement Dispute placed before the Claims Adjudicator, and after British Columbia has made any identifications under paragraph 77(b)(iii).

79. For the purpose of determining an Eligible Claimant's Box 1 Award, if any, the Administrator shall be bound, subject to any determinations of reviews by the Adjudicator under paragraph 51, by their finding of membership in either the Prolonged Class or the SMI Class for that Eligible Claimant made in relation to the Common Experience Payment, set out in paragraphs 35 to 37.

Calculation of Box 2 Awards

80. The Adjudicator shall calculate the Claimant's total Box 2 Award based on the Adjudicator's findings regarding specific and recorded harms, as follows:

- (a) A Claimant may only receive a Box 2 Award where the Adjudicator has determined that the Claimant had suffered a specific and recorded harm; and
- (b) A Claimant may receive up to one Box 2 Award per category in Box 2.

Calculation of Total Serious Harms Award

81. The Administrator shall determine each Claimant's total Serious Harms Award, if any, by adding together the Claimant's Box 1 Award(s), if any, and Box 2 Award, if any.
82. For greater certainty, an Eligible SHF Claimant may receive up to one award from Box 1 (subject to paragraph 76(b)), and up to one award from each category in Box 2 of the Serious Harms Grid.
83. No Claimant may receive a total Serious Harms Award of more than \$85,000. Any Claimant with a calculated total Serious Harms Award that exceeds \$85,000 shall receive a Serious Harms Award of \$85,000.
84. Once the number of Eligible SHF Claimants is determined by the Administrator and Adjudicator, and the timeline to review such determinations has passed, the Administrator shall advise the Parties of the total number of Eligible SHF Claimants and provide to the Parties a list of the Eligible SHF Claimants.
85. Within 30 days of receiving the list of the Eligible SHF Claimants, the Parties shall advise whether the list of Eligible SHF Claimants is approved.
86. If the number of Eligible SHF Claimants exceeds 2,500, British Columbia shall pay an additional \$5,000,000 into the Serious Harms Fund in accordance with clause 2(b)(ii) of the Settlement Agreement, to be distributed in accordance with clause 5(d).
87. When all of Class Counsel's assessments for the purposes of the Serious Harms Fund under paragraph 33, and all of the Adjudicators' determinations regarding membership in the SMI Class, Placement Disputes, specific and recorded harms, and Statute-Barred Claims, have been made and communicated to the Administrator, the Administrator shall within 90 days:
 - (a) Determine any additional Common Experience Payments to be made to Eligible Claimants; and

(b) Calculate the total of all awards from the Serious Harms Fund payable to Eligible SHF Claimants.

88. If there are insufficient funds remaining in the Serious Harms Fund, after the payment of Counsel Fees and Administration Costs, to satisfy all additional Common Experience Payments and all awards from the Serious Harms Grid, each Eligible SHF Claimant's Serious Harms Award shall be reduced *pro rata* to the extent required such that all payments from the Serious Harm Fund do not, in aggregate, exceed the total amount of the Serious Harms Fund.

89. After applying paragraph 88, the Administrator shall provide to Class Counsel and British Columbia details of the additional Common Experience Payments and Serious Harms Awards to be paid from the Serious Harms Fund.

90. Upon review of the summary provided by the Administrator, the Parties shall:

- (a) Direct the Administrator to proceed with the distribution of the Serious Harms Fund; or
- (b) Query the Administrator's determinations and direct the Administrator to revisit those determinations.

91. Within 30 days of the Parties directing the Administrator to proceed with the distribution of the Serious Harms Fund, British Columbia shall transfer, to the Administrator, the total quantum of additional Common Experience Payments and Serious Harms Awards to be paid from the Serious Harms Fund.

92. When the amount in paragraph 91 is received by the Administrator, the Administrator shall, as soon as practicable:

- (a) Provide each Eligible Claimant receiving an initial or additional Common Experience Payment with that payment;
- (b) Provide each Eligible SHF Claimant with their Serious Harms Award, together with an explanation of how the Serious Harms Award was calculated;

- (c) Where no additional payment is made, provide an explanation of why the Claimant is not eligible for an initial or additional Common Experience Payment, or a Serious Harms Award, as the case may be; and
- (d) Provide each Claimant subject to a determination of the Claims Adjudicator with a copy of the Claims Adjudicator's determination and reasons.

93. Any errors in the calculation of awards from the Serious Harms Fund will be considered and responded to by the Parties.

Claims Submitted After the Claims Deadline

- 94. Subject to paragraph 97, the Claims Administrator may consider a Claim Form submitted after the Claims Deadline if the completed Claim Form and all necessary supporting documentation are received by the Claims Administrator within two (2) months after the Claims Deadline and if:
 - (a) the Claimant has provided written reasons for failing to submit the Claim Form and is able to demonstrate that he/she intended to submit the Claim Form before the applicable deadline and has described special circumstances that would justify the consideration of the Claim Form in the interests of justice;
 - (b) the Parties consent to have such Claim Form be assessed by the Claims Administrator; or
 - (c) the Court otherwise orders accordingly.
- 95. For any Claim Forms accepted by the Claims Administrator after the Claims Deadline, in accordance with paragraph 94, such Claim Forms shall be otherwise treated as any other Claim, except as provided in this paragraph, and the Claims Administrator shall make an assessment of the Claim Form as filed. Notwithstanding paragraph 5, the Claims Administrator shall review each Claim Form accepted by the Claims Administrator after the Claims Deadline for completeness and shall advise a Claimant and Class Counsel, no later than two (2) business days after receipt of the Claim Form if the Claim Form is incomplete. In that event, the Claimant shall complete the Claim Form within ten (10) calendar

days from the date of the written notice of the Claims Administrator advising the Claimant the Claim Form is incomplete.

96. No Claim Form accepted by the Claims Administrator after the Claims Deadline shall delay the distribution of the Common Experience Fund. If required, Common Experience Payments shall be paid from the Serious Harms Fund to Eligible Claimants who filed Claim Forms after the Claims Deadline.
97. No Claim Form may be accepted any later than 90 days after the distribution of the Common Experience Fund.

Claims Made on Behalf of Deceased Claimants

98. A Claimant that was deceased prior to the certification of this Action is not an Eligible Claimant and may not receive a Common Experience Payment or a Serious Harms Award.
99. A Claimant that was deceased prior to the date of the execution of the Agreement, but who was alive at the time of certification, may receive, if eligible, a Common Experience Payment, but cannot apply for or receive a Serious Harms Award.
100. A Claimant that was alive on the date of the execution of the Agreement, but who dies prior to the determination of their claim for an award from the Serious Harms Fund, is not entitled to receive an award from the Serious Harms Fund but may receive, if eligible, a Common Experience Payment.

No Appeals

101. Except as set out herein, all determinations of the Claims Administrator and/or Claims Adjudicators are final and there is no appeal or review of any decision of the Claims Administrator and/or Claims Adjudicator. To be clear, except as specifically set out herein, all decisions of the Claims Administrator and/or Claims Adjudicator relating to *inter alia*, any claims assessment, sufficiency of a claim, sufficiency of the supporting documents, timelines, late delivery of any claim or component of a claim or supporting documentation, or any other matter relating

to the Claims Process are final and the Parties expressly agree that these decisions may not be appealed to or put before the Court for any review or a determination. All decisions of the Claims Adjudicators shall be final.

Appendix "A" to the Claims Process

Claimant Correctional Records

This appendix pertains to records in the possession of BC Corrections only. The Province shall produce the following records and data, in the possession of BC Corrections:

- A full copy of the data in the Master Segregation Roster for the periods between November 26, 2016 and December 23, 2020, and July 30, 2022 and the date of court approval, to include, at minimum, the following columns:
 - Roster date;
 - Client CS#;
 - Inmate Name;
 - Correctional Centre;
 - Internal Location;
 - Mental Health Needs Flag;
 - S/C Start Date;
 - Section;
 - Consec. Days in S/C; and
 - COVID-19.
- Cell logs for all segregation units for periods between November 26, 2016 and December 23, 2020, and July 30, 2022 and the date of court approval, and further cell logs, on request, as necessary to determine, for the purpose of calculating Box 1 awards, which Claimants shared cells with other inmates while in segregation. The Province will endeavour to create a data model to indicate which cells were shared by multiple inmates at which time.
- For all Claimants, a full list of the Claimant's Movement Screens from their CORNET records;
- For Claimants who do not make claims as members of the SMI Class, and do not make claims for Box 2 awards from the Serious Harms Fund:
 - Copies of any of the Claimants' CORNET Log Entries for periods between November 26, 2016 and December 23, 2020, and July 30, 2022 and the date of court approval categorized as a separate confinement log "SPC";
 - Copies of any of the Claimants' CORNET Log Entries for periods between November 26, 2016 and December 23, 2020, and July 30, 2022 and the date of court approval captured by the application of the **Search Terms**.
- For Claimants who make claims as members of the SMI Class, or make claims for awards from the Serious Harms Fund:
 - Copies of any of the Claimants' CORNET Log Entries for periods between November 26, 2016 and December 23, 2020, and July 30, 2022 and the date of court approval,, categorized as a separate confinement log "SPC";
 - Copies of any of the Claimants' CORNET Log Entries for periods between November 26, 2016 and December 23, 2020, and July 30, 2022 and the date of court approval, captured by the application of the **Search Terms**;

- If the Claimant was incarcerated in a BC Correctional Centre prior to September 2017, any copies of the Claimant's Jail Screening Assessment Tools, if available;
- Any Incident Report and/or "Report of Client Injury" forms for the Claimants;
- A list of each instance in which Mental Health Flags were applied to Claimants' files; and
- A list of each instance in which Suicide Watch Alerts were applied to Claimants' files.

In each case, data will be provided in spreadsheet format where possible, and reasonable efforts will be made to ensure that the data can be accessed, manipulated and searched by Class Counsel and the Administrator.

The dates for which documents must be provided may vary for those making Statute-Barred Claims.

The contents and stipulations of this Appendix can be amended by the consent of the parties, or by order of the court.

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