

SUPREME COURT OF THE STATE OF NEW YORK  
FOR THE COUNTY OF NEW YORK

STATE OF NEW YORK *ex rel.*  
TOOLEY, LLC

Plaintiff,

-against-

THOMAS E. SANDELL, SANDELL  
ASSET MANAGEMENT  
CORPORATION, and SAMC PARTNERS  
LP.,

Defendants.

Index No. 101494/2018

**STIPULATION AND SETTLEMENT AGREEMENT**

This Stipulation and Settlement Agreement (“Agreement”) is entered into among (i) the State of New York (the “State”); (ii) the City of New York (the “City”); (iii) Tooley, LLC (the “Relator”); (iv) Thomas E. Sandell (“Sandell”); (v) Sandell Asset Management Corporation (“SAMC”); and (vi) SAMC Partners LP (“SAMC Partners”) (Sandell, SAMC, and SAMC Partners collectively referred to as “Defendants”), through their authorized representatives. All of the above-named persons and entities are hereinafter collectively referred to as “the Parties.”

**PREAMBLE**

WHEREAS, on or about October 12, 2018, Relator filed a *qui tam* action (the “Action”) captioned *State of New York ex rel. Tooley, LLC v. Thomas E. Sandell, Sandell Asset Management Corporation, and SAMC Partners LP*, pursuant to the New York False Claims Act, N.Y. State Finance Law §§ 187 *et seq.* (“NYFCA”), alleging that the defendants named in the

cup

Action knowingly made, used, or caused to be made or used, false statements that were material to their obligation to pay or transmit money to the State and to the City; and

WHEREAS, the Office of the Attorney General thereafter commenced an investigation in connection with the allegations of the Relator's complaint; and

WHEREAS, as a result of that investigation, the State and City contend that they have civil claims against Defendants under the NYFCA; and

WHEREAS, as a result of that investigation, the State and City contend that they have tax claims against Defendants; and

WHEREAS, Defendants have agreed to this Agreement in settlement of the violations alleged herein and to avoid the time, expense, uncertainty, inconvenience, and distraction of protracted litigation of the claims alleged herein; and

WHEREAS, the Parties have determined and hereby agree that settlement is in their best interests, and the Office of the Attorney General and the Corporation Counsel of the City of New York have agreed to accept the terms of the Agreement; and

WHEREAS, Relator claims entitlement under State Fin. Law § 190(6) to a share of the proceeds of this Agreement and to Relator's reasonable expenses, attorney's fees and costs; and

WHEREAS, the State has an ongoing investigation into other entities involved in the underlying conduct described herein; and

NOW THEREFORE, in consideration of the mutual promises and obligations of the Agreement, the Parties agree fully and finally to settle this Action pursuant to the Terms and Conditions below:

*CLP*

**COVERED CONDUCT**

1. The conduct described in this paragraph is hereinafter referred to as the “Covered Conduct.”
  - i. Between 1998 and 2008, Sandell, through SAMC, earned deferred management and performance fees from overseeing his offshore hedge funds (“Deferred Fees”). By deferring receipt of those fees, Sandell was also able to defer paying federal, state, and local taxes on those fees. Prior to 2017, except when there were actual distributions, Defendants did not include in the income reported on their federal, state, and local tax returns any of the Deferred Fees.
  - ii. At all times between 1998 and 2008, Sandell was a resident of New York State and New York City. Sandell left New York City and moved to London, England in or around August 2016 and remained there until 2019.
  - iii. SAMC generated all of the Deferred Fees it earned between 1998 and 2008 from investment management services it performed in New York City.
  - iv. In 2008, Congress ended hedge fund managers’ ability to defer indefinitely paying taxes on income earned from offshore funds by enacting Section 457A of the Internal Revenue Code. Section 457A provided that after 2008, taxpayers could no longer defer paying taxes on income received from offshore entities unless that income was subject to “a substantial risk of forfeiture,” and required taxpayers who had been

deferring such income to recognize and pay taxes on it by no later than December 31, 2017.

- v. Two years later, the New York State Legislature amended the State Tax Law to require nonresidents to pay income taxes on income they received “related to a business, trade, profession or occupation previously carried on in this state.” N.Y. Tax Law § 631(b)(1)(F).
- vi. The City Administrative Code was not amended in this way, but it similarly provides that partnerships and other unincorporated businesses must pay taxes on income earned from, among other things, “services provided in” New York City. Admin. Code § 11-508(c).
- vii. As a result of these legislative provisions, individuals and partnerships that earned deferred fees while in New York City were required to pay New York State and New York City taxes on those fees whenever they recognized those fees for federal income tax purposes.
- viii. Between 2012 and 2018, Defendants sought and received advice from tax professionals including certified public accountants and tax lawyers on the taxation of their Deferred Fees.
- ix. The tax professionals, including a principal at a “Big 4” accounting firm (“Accounting Firm A”), advised Defendants that they could reduce or eliminate their New York City tax liability by, among other things, removing SAMC’s presence and operations from New York City prior to the 2017 tax year.

- x. In reliance on Defendants' tax professionals, Defendants took steps with respect to SAMC's New York City presence and operations in an effort to reduce or eliminate its New York City presence and operations prior to 2017. Among other things, Defendants opened a three-person office in Boca Raton, Florida in late-2016. Defendants held out that office as SAMC's principal place of business to the Securities and Exchange Commission ("SEC") and the public. Defendants, on the advice of Accounting Firm A, also arranged for a third-party entity controlled by Sandell to make rent and payroll payments for SAMC, even though SAMC remained ultimately responsible for and made those payments.
- xi. SAMC did, in fact, continue to do business in New York City in 2017. During a 2017 SEC audit, conducted for reasons unrelated to tax concerns about Defendants, the SEC determined that SAMC's principal place of business continued to be in New York City. Defendants agreed to this finding in writing.
- xii. On their 2017 federal tax returns, Defendants, on the advice of their tax professionals, reported and/or paid federal income taxes on Deferred Fees that Defendants earned between 1998 and 2008. However, Defendants, with the assistance of Accounting Firm A, filed, or caused to be filed, 2017 tax returns that claimed that Defendants owed \$0 in New York State personal income tax on the Deferred Fees Defendants reported to the Internal Revenue Service and that Defendants owed \$0 in unincorporated business tax ("UBT") to New York City on those same Deferred Fees.

WD

- xiii. Defendants' state and local returns were prepared and filed by Accounting Firm A. Accounting Firm A told Defendants that it would prepare and file the relevant returns reflecting \$0 in taxes owed to New York State and New York City, despite knowing, among other things, that the SEC had concluded SAMC's principal place of business continued to be in New York City in 2017 and despite being aware that Defendants' then tax return preparer ("Accounting Firm B") had provided contrary advice regarding the elimination of Defendants' New York State and New York City tax liability.
- xiv. Before Accounting Firm A prepared and filed the relevant returns, Accounting Firm B had advised the Defendants that the advice provided by Accounting Firm A (that the 2017 returns could report \$0 in taxes due) was likely to be questioned.
- xv. Accounting Firm B, which had been engaged to prepare Defendants' state and local returns before being replaced by Accounting Firm A, ultimately told Defendants that it would not sign returns reflecting \$0 in taxes owed to New York State and New York City without a written opinion from Accounting Firm A explaining the basis for Accounting Firm A's conclusion that Defendants were not required to pay New York State or New York City taxes on the Deferred Fees. Accounting Firm B also told Defendants that they were at risk of being assessed penalties by the New York tax authorities if they proceeded to file returns reflecting \$0 in taxes owed and if the return position was not sustained.

xvi. Accounting Firm A had already told Defendants the position Accounting Firm A would take on the 2017 returns. Defendants did not request a written opinion from Accounting Firm A, and Accounting Firm A did not provide such an opinion. Instead, Defendants followed Accounting Firm A's view and approved the filing of the 2017 returns.

2. Defendants neither admit nor deny the Covered Conduct contained herein, including any alleged liability under the NYFCA and any liability for tax claims.

## TERMS AND CONDITIONS

### Settlement Amount

3. Defendants, jointly and severally, agree to pay the sum of one hundred five million (\$105,000,000) in U.S. dollars (the "Settlement Amount") to resolve the Action, the Office of the Attorney General's investigation, and claims that are the subject of separate closing agreements ("Closing Agreements") that are to be executed by Defendants on or before the date of execution of this Agreement, between Defendants and the New York Department of Taxation and Finance ("DTF") and New York City Department of Finance ("NYCDOF"), to resolve claims for taxes, penalties, and interest under the State Tax Law and the City Administrative Code. The Settlement Amount comprises damages sought by the State and City for alleged violations of the NYFCA, along with taxes, penalties, and interest under the State Tax Law, taxes, penalties, and interest owed to NYCDOF for unpaid UBT, the Relator's share, *i.e.*, the share to which the Relator is entitled under New York State Finance Law § 190(6), as well as the State and City's respective attorney's fees and costs.

4. The Settlement Amount is divided into three portions: a portion paid to the State ("State's Share"), a portion paid to the City ("City's Share"), and a portion paid to the Relator

(“Relator’s Share”). The Relator’s Share is the portion to which the Relator is entitled under New York State Finance Law § 190(6).

5. Within thirty (30) days of the execution of this Agreement by the parties, Defendants agree to pay \$57.03 million to the State by certified check or wire transfer pursuant to instructions provided by the State; \$25.92 million to the City by certified check or wire transfer pursuant to instructions provided by the Office of the Corporation Counsel; and \$22.05 million to Relator by certified check or wire transfer pursuant to instructions provided by Relator’s counsel.

6. Defendants agree that they will not claim, assert, or apply for a tax deduction or tax credit on any New York State or New York City tax return, for any portion of the amount due under this Agreement or the Closing Agreements.

7. In consideration of the obligations of Defendants as set forth in this Agreement, Relator, the State, and the City, within thirty (30) days after the receipt of all payments due under this Agreement, shall file, pursuant to CPLR 3217(a), a Notice of Discontinuance with respect to the claims against Defendants, subject to the exceptions set forth in this Agreement. Such dismissal shall, however, expressly preserve the Court’s jurisdiction over Defendants’ obligation to pay reasonable attorney’s fees, expenses, and costs to Relator pursuant to State Fin. Law § 190.

#### **Releases**

8. Subject to the exceptions in the next Paragraph, in consideration of the obligations of Defendants set forth in this Agreement, conditioned upon the full payment by Defendants and subject to Paragraph 16 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment to the State under the

*ced*



Agreement, whichever is later), the State and City release each of THOMAS E. SANDELL, SANDELL ASSET MANAGEMENT CORPORATION, and SAMC PARTNERS LP and their respective owners, members, partners, heirs, and successors from any civil or administrative monetary claim the State or City has or may have for (a) the Covered Conduct, (b) the allegations contained in the *qui tam* complaint filed by Relator in the Action, and (c) the other acts and omissions with respect to deferred compensation income earned between 1998 and 2008 described in the undated Internal Revenue Service form 886-A transmitted by Defendants to the Office of the New York Attorney General on August 17, 2020, under the New York False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.* Claims by the State and City against Defendants arising out of state or municipal tax laws shall be subject to the Closing Agreement between Defendants and DTF and the Closing Agreement between Defendants and NYCDOF.

9. This Agreement specifically does not release any person or entity from any of the following liabilities:

- a. Any civil, criminal, or administrative liability arising under state or municipal tax laws;
- b. Any criminal liability;
- c. Any civil liability that Defendants have or may have under any state or city statutes, regulations, or rules not covered by this Agreement;
- d. Any liability to the State (or its agencies) or City (or its agencies) for any conduct other than the Covered Conduct or other conduct described in Paragraph 8 above;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

ad

- g. Any liability for personal injury or property damage arising from the Covered Conduct or other conduct described in Paragraph 8 above;
- h. Any liability for failure to deliver goods or services due; and
- i. Any civil or administrative liability of individuals, except as provided for herein.

10. Nothing herein affects the obligations, duties or rights prescribed by the Closing Agreement executed by Defendants with NYCDOF or the Closing Agreement executed by Defendants with DTF.

11. In consideration of the obligations of Defendants in this Agreement, conditioned upon the full payment by Defendants of the Settlement Amount, Relator, for itself, and for Relator's owners, members, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, releases each of THOMAS E. SANDELL, SANDELL ASSET MANAGEMENT CORPORATION, and SAMC PARTNERS LP, and their respective owners, members, partners, heirs, and successors, from any civil monetary claim Relator has on behalf of the State or any local governments within the State for the Covered Conduct and the conduct described in Paragraph 8 above under the New York False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*; provided, however, that nothing in this Agreement shall preclude Relator from seeking to recover Relator's expenses or attorney's fees and costs from Defendants, pursuant to N.Y. State Fin. Law § 190.

12. Defendants, for themselves and their respective owners, members, partners, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally release the State and City, their agencies, officers, employees, servants, attorneys, and agents from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in

00

the future against the State or City, their agencies, officers, employees, servants, attorneys, agents and assigns, related to the Covered Conduct, the conduct described in Paragraph 8 above and/or the State and City's investigation and prosecution thereof.

13. Defendants for themselves and their respective owners, members, partners, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns fully and finally release Relator, Relator's owners, members, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the Relator, Relator's owners, members, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, related to the Covered Conduct, the conduct described in Paragraph 8 above and/or Relator's and the State and City's investigations and prosecution concerning the Action.

14. The Relator, for itself individually, and for Relator's owners, members, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally releases the State and City, their agencies, officers, employees, servants, attorneys, and agents from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Relator has asserted, could have asserted, or may assert in the future against the State or City, arising out of any claim for a share of the settlement proceeds from Defendants. Relator accepts the payment described in Paragraphs 3 and 5 in full settlement of any claims Relator may have against the State or City under this Agreement. This Agreement does not resolve or in any manner affect any claims the State or City has or may have against Relator arising under State or City tax laws, or any claims arising under this Agreement. Relator, and each of its owners, members, heirs, personal representatives, legal representatives,

successors, attorneys, agents and assigns, agrees not to object to this Agreement and agrees and confirms that this Agreement is fair, adequate, and reasonable pursuant to New York State Finance Law § 190(5)(b)(ii).

15. The State and City have agreed to the terms of this Agreement based on, among other things, representations made to the Office of the Attorney General by Defendants and their counsel. To the extent that any material representations are later found by a court of competent jurisdiction to be inaccurate or misleading, this Agreement is voidable by the Office of the Attorney General in its sole discretion. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Defendants in agreeing to this Agreement. Defendants acknowledge that they have entered this Agreement freely and voluntarily and upon due deliberation with the advice of counsel.

#### **Bankruptcy and Non-Payment**

16. If within ninety-one (91) days after the Effective Date of this Agreement or of the date of any payment made under this Agreement, any of the Defendants or a third party commences against any of the Defendants any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of its or their debts, or seeking to adjudicate any of the Defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for any of the Defendants or for all or any substantial part of its or their assets, each of the Defendants agrees as follows:

- a. Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Defendants shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Defendants' obligations under this

Agreement may be avoided under 11 U.S.C. § 547; (ii) Defendants' were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment of the Settlement Amount; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Defendants.

- b. If any of the Defendants' obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State or City, at their sole option, may rescind the releases in this Agreement insofar as they affect the State or City and bring any civil and/or administrative claim, action, or proceeding against Defendants for the claims that would otherwise be covered by the releases provided above, and Defendants agree that (i) any such claims, actions, or proceedings brought by the State or City are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Defendants shall not argue or otherwise contend that the State's or City's claims, actions, or proceedings are subject to an automatic stay; (ii) they shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the State or City within 60 calendar days of written notification to Defendants that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of the Agreement; and (iii) the State or City has a valid claim against Defendants in the

amount of treble damages plus penalties under the New York False Claims Act, and may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

- c. Defendants acknowledge that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

17. In the event of the failure by Defendants to make any or all payments of the Settlement Amount, including the State's Share, the City's Share, and the Relator's Share, when due according to Paragraphs 3 and 5 the State or City will provide written notice of the non-payment to the Defendants. Such notice shall be given to the person and address designated in Paragraph 29 by (i) delivery in person, (ii) a nationally recognized next-day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first.

Defendants shall have an opportunity to pay the unpaid balance within five (5) calendar days from the effective date of the notice. If Defendants fail to pay the overdue unpaid balance of its payment obligations under this Agreement within five (5) calendar days from the effective date of the notice of non-payment ("Default"), the State or City, in their sole discretion, may declare or do any or all of the following or may exercise, without limitation, any remedies available under law, including:

- a. The State and/or City may declare the entire Settlement Amount, less any payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Default until payment of the remaining Settlement Amount is made in full; and/or

and

- b. Pursue all available remedies to enforce this Agreement and for violations of the Agreement. In the event of a Default as described above, the Defendants agree not to contest any action to enforce this Agreement or any other collection action undertaken by the State and/or City pursuant to this Paragraph or pursuant to law, and Defendants agree to pay the State and/or City all reasonable costs of collection and enforcement of this Agreement, including without limitation attorney's fees, expenses and court costs; and/or
- c. Rescind its agreement to this Agreement as to Defendants and reinstitute an action or actions against Defendants in this Court. In the event the State and/or City reinstates such action, the Defendants: (1) expressly agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (i) are filed by the State and/or City after the written notification of Default to Defendants, and (ii) relate to the Covered Conduct, and (2) further waive and will not assert any defenses Defendants may have to any civil or administrative action relating to the Covered Conduct.

18. In the event of the failure by Defendants to make payment of the Relator's Share when due according to Paragraphs 3 and 5, the Relator will provide written notice of the non-payment to Defendants. Such notice shall be given to the person and address designated in Paragraph 29 by (i) delivery in person, (ii) a nationally recognized next day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. Defendants shall have an opportunity to pay the unpaid balance within five (5) calendar days

*ad*

from the effective date of the notice. If Defendants fail to pay the overdue unpaid balance of its payment obligations for the Relator's Share under this Agreement within five (5) calendar days from the effective date of the notice of non-payment ("Relator's Share Default"), the Relator, in its sole discretion, may declare or do any or all of the following:

- a. The Relator may declare the entire Relator's Share, less any payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Relator's Share Default until payment of the remaining Relator's Share is made in full; and/or
- b. Institute an action or actions against Defendants in this Court to collect the unpaid amounts of the Relator's Share plus applicable interest. Defendants agree not to contest any action to enforce this Agreement with respect to the Relator's Share or any other collection action undertaken by the Relator pursuant to this Paragraph, and Defendants agree to pay the Relator all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses.

#### **Additional Terms**

19. To the extent further investigation or litigation relating to the Covered Conduct proceeds against individuals or entities that are not Parties to or released by this Agreement, Defendants agree to use best efforts to make their current and former agents, representatives, and employees available, upon reasonable notice, to meet with attorneys or other representatives of the State, City, or of the Relator either in person or by telephone, and to answer questions related to the Covered Conduct. The Defendants agree that to the extent such investigation or litigation



proceeds, if so requested or demanded by the State, the City, or Relator, they will use best efforts to make their current and former agents, representatives, and employees available for the same. Each Defendant also agrees to make available to the State, the City or Relator, upon reasonable notice, documents or other materials relevant to any such investigation or litigation and agrees to use best efforts to make their current and former agents, representatives, and employees do the same.

20. Each Defendant represents and warrants, through the signatures below, that the terms and conditions of this Agreement are duly approved, and that execution of this Agreement is duly authorized.

21. The undersigned counsel and any other signatories represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below. Hodgson Russ LLP represents and warrants that they have full authority to enter into and execute this agreement on behalf of each of the Defendants.

22. Defendants shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or expressing the view that this Agreement is without factual basis. Nothing in this Paragraph affects Defendants' testimonial obligations or their rights to take legal or factual positions in defense of litigation or other legal proceedings to which the State or City is not a party.

23. The Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any Party that may be found to have been the drafter.

24. Except as provided in Paragraphs 7 and 11 above, each Party shall bear its own legal and other costs incurred in connection with this matter.

0-8

25. This Agreement constitutes the complete agreement between and among the Parties and may not be amended except by an instrument in writing signed on behalf of all the Parties to this Agreement.

26. This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their respective successors and assigns, provided that no Party, other than the Office of the Attorney General or the Corporation Counsel of the City of New York, may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Office of the Attorney General and the Corporation Counsel of the City of New York.

27. In the event that any one or more of the provisions contained in this Agreement, other than provisions concerning payment and release, shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

28. Any failure by the State or City to insist upon the strict performance by Defendants and/or Relator of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State and/or City, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by the Relator and/or Defendants. Any failure by Relator to insist upon the strict performance by Defendants of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and Relator, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by any or all of the Defendants.

29. All communications from any Party concerning the subject matter of this Agreement shall be addressed as follows:

If to the State of New York:

Joshua B. Dugan, Esq.  
Assistant Attorney General  
Office of the New York Attorney General  
Taxpayer Protection Bureau  
28 Liberty Street, 21st Floor  
New York, NY 10005  
(212) 416-8030

If to the City of New York:

Gail Rubin, Esq.  
Chief  
Affirmative Litigation Division  
New York City Law Department  
100 Church Street, 20<sup>th</sup> Floor  
New York, NY 10007  
(212) 356-2030

If to Relator:

Randall M. Fox, Esq.  
Kirby McInerney LLP  
250 Park Avenue, Suite 820  
New York, NY 10177  
(212) 371-6600

If to Defendants:

Christopher Doyle, Esq.  
Hodgson Russ LLP  
140 Pearl Street  
New York, NY 14202  
(716) 848-1458

30. Except for written notices as provided in Paragraphs 17 and 18 of Defendants' non-payment issued by the State, City, or Relator, the sending and receipt of which shall be governed by the provisions in Paragraphs 17 and 18 respectively, all communications from any Party to another Party concerning this Agreement shall be sent by United States mail with return receipt requested or overnight delivery service with signature required to the signatory counsel

ad

for each Party, unless such communications are sent by email and a reply is written without objection to the electronic means of communication.

31. In any subsequent investigation, civil action, or proceeding by the City, State, or Relator to enforce this Agreement, or for violations of the Agreement, Defendants expressly agree and acknowledge that any statute of limitations or other time-related defenses are tolled from and after the effective date of this Agreement, and that the City, State, or Relator may use statements, documents or other materials produced or provided by the Defendants prior to or after the effective date of this Agreement.

32. If a court of competent jurisdiction determines that Defendants have breached this Agreement other than by failing to pay amounts owed under the Agreement, the remedy for which is described above in Paragraphs 17 and 18, Defendants shall pay to the Office of the Attorney General, the Corporation Counsel of the City of New York, and/or to Relator the cost, if any, of obtaining such determination and of enforcing this Agreement, including, without limitation, legal fees, expenses, and court costs.

33. Any headings, titles and subtitles contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement.

34. This Agreement shall be governed by the laws of the State of New York without regard to any conflict of laws principles. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the Supreme Court of the State of New York, New York County.

*ew*

35. This Agreement is effective on the date of signature of the last signatory of the Agreement (the "Effective Date"). Facsimiles and .pdfs of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

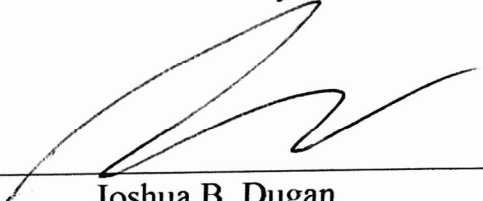
36. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Agreement is executed by the Parties hereto.

THE STATE OF NEW YORK

Dated: 2/19/2021

LETITIA JAMES  
New York State Attorney General

BY:   
Joshua B. Dugan

Assistant Attorney General  
Office of the New York Attorney General  
Taxpayer Protection Bureau  
28 Liberty Street, 21st Floor  
New York, New York 10005  
(212) 416-8030

THE CITY OF NEW YORK

Dated: \_\_\_\_\_

JAMES E. JOHNSON  
Corporation Counsel of the City of New  
York

BY: \_\_\_\_\_  
Gail Rubin

Chief  
Affirmative Litigation  
Corporation Counsel  
100 Church Street, Room 20-83  
New York, New York 10007  
(212) 356-2030

IN WITNESS WHEREOF, the Agreement is executed by the Parties hereto.

THE STATE OF NEW YORK

Dated: \_\_\_\_\_

LETITIA JAMES  
New York State Attorney General


BY: \_\_\_\_\_  
Joshua B. Dugan

Assistant Attorney General  
Office of the New York Attorney General  
Taxpayer Protection Bureau  
28 Liberty Street, 21st Floor  
New York, New York 10005  
(212) 416-8030

THE CITY OF NEW YORK

Dated: 2/19/2021

JAMES E. JOHNSON  
Corporation Counsel of the City of New  
York

BY: 

Chief  
Affirmative Litigation  
Corporation Counsel  
100 Church Street, Room 20-83  
New York, New York 10007  
(212) 356-2030

TOOLEY, LLC

Dated: 1/19/2021

BY:

  
Randall M. Fox

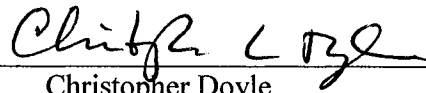
Kirby McInerney LLP  
250 Park Avenue  
New York, NY 10177  
(212) 371-6600

*Attorney for Relator*



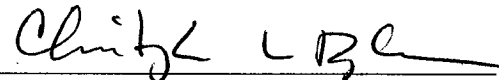
DEFENDANTS

Dated: 02/19/2021

  
\_\_\_\_\_  
Christopher Doyle

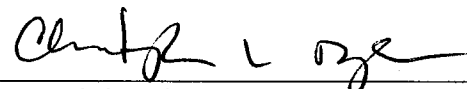
Hodgson Russ LLP  
140 Pearl Street  
New York, NY 14202  
(716) 848-1458  
*Attorney for Defendants*

Dated: 02/19/2021

  
\_\_\_\_\_  
Christopher Doyle

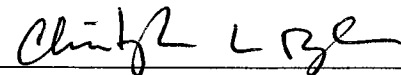
On behalf of Thomas E. Sandell  
*Defendant*

Dated: 02/19/2021

  
\_\_\_\_\_  
Christopher Doyle

On behalf of Sandell Asset Management  
Corporation  
*Defendant*

Dated: 02/19/2021

  
\_\_\_\_\_  
Christopher Doyle

On behalf of SAMC Partners LP  
*Defendant*

end