

Gold v. DeKalb County School District,
Civil Action File No. 11-CV-3657-5

STIPULATION AND AGREEMENT OF CLASS ACTION SETTLEMENT

This Stipulation and Agreement of Class Action Settlement (the “**Settlement**”) is entered into between Elaine Gold, Amy Jacobson Shaye, Heather Hunter, and Roderick Benson (collectively, “**Lead Plaintiffs**”), individually and as court-appointed representatives on behalf of all members of the Settlement Class (as that term is defined herein), and the DeKalb County School District and the DeKalb County Board of Education (collectively, the “**School District**”). Lead Plaintiffs, acting on behalf of themselves and on behalf of the Settlement Class members, and the School District are each a “**Party**” and all are “**Parties**” in *Gold v. DeKalb County School District*, Civil Action File No. 11-CV-3657-5 (the “**Action**”), which is currently pending in the Superior Court of DeKalb County, State of Georgia (the “**Superior Court**”). The Parties have reached an agreement providing for the settlement of the Action on the terms and subject to the conditions set forth in this Settlement.

WHEREAS, the Action is a putative class action that Lead Plaintiffs filed on March 21, 2011, alleging that they are entitled to various damages as a result of the School District’s breach of a contract requiring two years’ notice when the School District decided in July 2009 to indefinitely suspend certain employer contributions to the DeKalb County, Georgia Board of Education Tax-Sheltered Annuity Plan;

WHEREAS, Lead Plaintiffs alleged that their claims in the Action are liquidated as a matter of law;

WHEREAS, on June 26, 2017, the Superior Court granted summary judgment to the School District and dismissed Lead Plaintiffs’ case with prejudice;

WHEREAS, on June 1, 2018, the Georgia Court of Appeals held that the Superior Court “erred in granting the [School] District’s motion for summary judgment and in denying the [Plaintiffs’] motion for summary judgment on the issue of liability for breach of the two-years’ notice provision [and,] [c]onsequently . . . reverse[d] the court’s judgment in this respect” and remanded the Action for further proceedings, *Gold v. DeKalb Cty. Sch. Dist.*, 346 Ga. App. 108, 115 (2018);

WHEREAS, on October 21, 2019, the Georgia Supreme Court held that it “disagree[d] with the Court of Appeals’ analysis, [but] agree[d] with the court’s ultimate conclusion . . . that the two-year notice provision became part of [Lead Plaintiffs’] employment contract” and therefore “agree[d] with the Court of Appeals, albeit for somewhat different reasons, that the trial court erred in granting [the School District’s] motion for summary judgment and in denying [Lead Plaintiffs’] motion for summary judgment on the issue of liability for breach of contract.” *DeKalb Cty. Sch. Dist. v. Gold*, 307 Ga. 330, 331, 338 (2019);

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WHEREAS, the Action was remanded for further litigation regarding class certification, damages, or other proceedings;

WHEREAS, on March 26, 2020, the Superior Court certified the following class:

Annual Contract Subclass

Each person – or his or her properly-designated beneficiary or beneficiaries – who was actively employed by the DeKalb County School District or DeKalb County Board of Education before July 27, 2009 on an annual contract basis and who did not receive TSA contributions after July 31, 2009 as a result of the July 27, 2009 elimination of TSA contributions.

At-Will Contract Subclass

Each person – or his or her properly-designated beneficiary or beneficiaries – who was actively employed by the DeKalb County School District or DeKalb County Board of Education before July 27, 2009 on an at-will contract basis or any basis other than an annual contract basis and who did not receive TSA contributions after July 31, 2009 as a result of the [School] District’s suspension of TSA contributions.

(collectively, the “**Settlement Class**”), and ordered that Lead Plaintiffs serve as representatives of the Settlement Class and further ordered that Roy E. Barnes and John F. Salter of The Barnes Law Group, LLC and Michael B. Terry, Jason J. Carter, and Naveen Ramachandrapa of Bondurant, Mixson & Elmore, LLP shall serve as **Class Counsel** for the Settlement Class, reserving the right to appoint additional counsel in the Superior Court’s discretion;

WHEREAS, the Parties agree that there is significant uncertainty as to the outcome of the Action, including, but not limited to, whether liability for all counts of Lead Plaintiffs’ complaint will be established; the amount of any actual damages; the type of any actual damages, i.e., past contributions, liquidated damages, and/or interest; and whether class certification will be upheld on appeal;

WHEREAS, the Parties desire to limit the risks arising from such uncertainty, particularly given the risk of imposing a significant financial burden upon public funds and/or facilitating payment to the Settlement Class without further delays as a result of continued litigation;

WHEREAS, the Parties have engaged in arm’s length negotiations, assisted by a professional mediator, concerning possible settlement of the Action, and the Parties have reached an agreement to settle the Action as described herein;

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WHEREAS, Lead Plaintiffs believe that a settlement of the Action on the terms reflected in this Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class; and

WHEREAS, the Parties believe that the settlement is in the best interest of the Parties and Settlement Class and agree to cooperate fully and to use their reasonable best efforts to effectuate a settlement approved by the Superior Court.

NOW, THEREFORE, subject to the approval of the Superior Court, the Parties hereby stipulate and agree that the Action, and the matters raised by the Action, are settled, compromised, and dismissed on the terms and conditions set forth in this Settlement:

1. Preliminary Approval. As soon as practicable following execution of the Settlement, but in no event later than the agreed upon dates in paragraph 15 of this Settlement, which can be amended upon agreement by counsel for the Parties or for good cause upon motion to the Superior Court before seeking preliminary approval of the Settlement, Lead Plaintiffs will submit, with the approval of the School District, a motion, together with a proposed preliminary approval order, to the Superior Court seeking its entry of a **Preliminary Approval Order** that: (i) preliminarily approves this Settlement; (ii) approves the form, content, and manner of notice of settlement to be provided to the Settlement Class (the “**Class Notice**”), which is attached to this Settlement as Exhibit A; (iii) directs the issuance of the Class Notice within fifteen (15) days after the Preliminary Approval Order is entered; (iv) approves the Claims Administrator selected by Class Counsel; (v) sets a date of no later than thirty (30) days after the issuance of the Class Notice by which any objection must be filed with the Clerk of Court; (vi) sets a date of no later than thirty (30) days after the issuance of the Class Notice by which any opt-out/exclusion from this Settlement by any Settlement Class member must be mailed to the Claims Administrator, who must file with the Clerk of Court and provide copies to the School District’s counsel (the “**Objection/Opt-Out Date**”); (vii) sets forth a plan of distributing payments to the Settlement Class as described below; and (viii) sets a date and time for a hearing that is approximately sixty (60) days after the date that the Class Notice is mailed to the Settlement Class, or as soon thereafter as the Superior Court determines is fair and reasonable (the “**Fairness and Final Approval Hearing**”).

2. Fairness and Final Approval Hearing. At the Fairness and Final Approval Hearing, the Parties will urge the Superior Court to approve this Settlement as fair, reasonable, and adequate; dismiss with prejudice the claims of the Lead Plaintiffs and the Settlement Class against the School District; grant Class Counsel an award of attorneys’ fees and costs; and enter any incentive awards for the Lead Plaintiffs; and the Parties will make any argument concerning how the Superior Court should handle any portion of the Settlement dedicated for payment of Settlement Class members who do not negotiate a settlement payment as provided herein. No later than seven (7) days before the date of the Fairness and Final Approval Hearing, the Parties will:

- (a) File a stipulation that, if required or agreed upon by the Parties, may be redacted of personal and confidential information for the public record and then

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submitted directly to the Superior Court without redaction along with a request for filing under seal (in accordance with Georgia Uniform Superior Court Rule 21.6), that provides the total number and names of Settlement Class members opting out of the Settlement, provides the total number and names of Settlement Class members filing objections, and requests that the Superior Court issue an **Order and Judgment**, in substantially the same form of the order and judgment filed with the Parties' motion for preliminary approval and that: (i) approves the Settlement; (ii) specifies when any appeal rights by class members or prospective class members exhaust; (iii) dismisses the Action on the merits with prejudice as to all claims asserted or which could have been asserted in the Action and without costs to any Party (other than as expressly provided herein); (iv) provides for the releases set forth in paragraph 10 of this Settlement; (v) resolves Class Counsel's request for attorneys' fees, costs, and incentive awards; and (vi) resolves how the Superior Court will handle any portion of the Common Fund (defined herein) that could be unclaimed as described in paragraph 2(b) below.

(b) Each file a brief not to exceed ten (10) pages that explains how each Party believes the Superior Court should handle any portion of the Settlement allocated to members of the Settlement Class who failed to negotiate a settlement payment as defined herein.

3. Final Order and Judgment. The Order and Judgment is not contingent on its approval of the attorneys' fees and expenses or incentive awards referred to in paragraph 6(b)i or 6(b)ii of this Settlement. The Order and Judgment shall become the **Final Order and Judgment** on the latest of the following dates: (i) if no appeal is taken therefrom, ten (10) days after the time to appeal therefrom has expired; (ii) if any appeal is taken therefrom, ten (10) days after the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for certiorari or any other form of review, have been finally disposed of in a manner resulting in an affirmance of the Order and Judgment; or (iii) on a date after entry of the Order and Judgment, which date counsel for the Parties agree to in writing.

In the event that the Settlement is denied by the Superior Court, the Parties will address any concerns or the basis of denial and again move the Superior Court for approval consistent with the terms herein, except if the Superior Court denies the Settlement because the Settlement Amount, as defined herein, is determined to be insufficient, in which case this Settlement shall be rendered null and void and there will be no duty for the Parties to address any concern pertaining to the sufficiency of the Settlement Amount (defined herein). In the event there is a failure to obtain a Final Order and Judgment, the Parties shall not be deemed to have consented to any characterization of the Action and no inferences can be drawn regarding the content of this Settlement.

4. Settlement Payment. In exchange for the full release of claims as set forth in the Action, the School District will pay a total amount of one-hundred, seventeen million, five-hundred thousand dollars (\$117,500,000.00) (the "**Settlement Amount**") over five (5) annual payments as provided for in paragraph 6(a) of this Settlement.

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(a) **Funding Obligation.** Except as provided in paragraph 5(b), the School District's obligation to fund the Settlement Amount is specifically conditioned upon obtaining the Final Order and Judgment.

(b) **Total Payment Obligation.** Other than the School District's own attorneys' fees and expenses of litigation, and subject to paragraph 6(d) of this Settlement, the Settlement Amount shall be a maximum payment by the School District to resolve the Action. Except as specifically set forth in this Settlement, neither the School District nor its releasees either owe or are obligated to pay any other cost, fee, contribution, or payment whatsoever relating to the Settlement, and members of the Settlement Class will receive no other benefits, no other financial consideration or contribution on their behalf made by the School District, or any other consideration or funds of any sort from the School District as a result of the Settlement.

5. Administration of Payments and Claims. Within ten (10) days of the Parties having signed this Settlement, Class Counsel shall select an experienced administrator whose appointment shall be approved by the Superior Court as part of the preliminary approval process (the "**Claims Administrator**").

(a) The Claims Administrator shall receive, process, invest, and distribute the Settlement Amount in accordance with this Settlement as approved by the Superior Court.

(b) Within ten (10) days of the Superior Court's entry of the Preliminary Approval Order, the School District shall make a payment of One-Hundred Thousand Dollars (\$100,000.00), which is part of the Settlement Amount and not in addition thereto, to the approved Claims Administrator to be used by the Claims Administrator for implementing the approved class notice plan and to pay for all claim administration processes as set forth in this Settlement (the "**Notice and Claims Administration Payment**"). Should the Settlement not become final for any reason, the School District will bear the cost of the Notice and Claims Administration Payment, except that, in the event the Claims Administrator has not expended all of the Notice and Claims Administration Payment, the Claims Administrator shall return such unused portion to the School District.

(c) Any reasonable fees, costs, and expenses of the Claims Administrator that exceed the Notice and Claims Administration Payment shall otherwise be paid from the Common Fund (defined herein) following any of the Settlement Funding Payments as described herein. The Claims Administrator shall, at the time it pays such fees, costs, and expenses (including any invoice generated by the Claims Administrator itself), simultaneously provide to Class Counsel a full accounting of all disbursements. If either the Claims Administrator or Class Counsel differ with each other as to the reasonableness of payment or allocation of any expense, such difference shall be submitted to the Superior Court for decision.

(d) Neither the School District, nor the School District's counsel shall have any liability for the administration of the Settlement, and they shall have no liability to the Lead Plaintiffs, any Settlement Class member, or any of Class Counsel in connection with such administration.

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6. Establishment and Distribution of Payment Fund. No later than two (2) days after receipt of the Notice and Claims Administration Payment, the Claims Administrator shall establish an interest-bearing account to be funded entirely by the School District and into which the Claims Administrator shall deposit the Notice and Claims Administration Payment (the “**Common Fund**”). The Claims Administrator shall provide written notice to counsel for the Parties that the account has been established.

(a) Funding of the Common Fund. Subject to paragraphs 6(c)-6(d) and the timeline set forth in paragraph 15 of this Settlement, after obtaining the Final Order and Judgment, the School District shall fund the Common Fund in five (5) annual payments by making each of the following payments (collectively, the “**Settlement Funding Payments**”): (1) no later than ten (10) days after obtaining the Final Order and Judgment, Twenty-Seven Million, Five-Hundred Thousand Dollars (\$27,500,000.00), less the Notice and Claims Administration Payment (the “**First Funding Payment**”); (2) no later than 360 days after the First Funding Payment was due, Two Million, Five-Hundred Thousand Dollars (\$2,500,000.00) (the “**Second Funding Payment**”); (3) no later than 360 days after the Second Funding Payment was due, Twenty-Two Million, Five-Hundred Thousand Dollars (\$22,500,000.00) (the “**Third Funding Payment**”); (4) no later than 360 days after the Third Funding Payment was due, Twenty-Two Million, Five-Hundred Thousand Dollars (\$22,500,000.00) (the “**Fourth Funding Payment**”); and finally (5) no later than 360 days after the Fourth Funding payment was due, Twenty-Two Million, Five-Hundred Thousand Dollars (\$22,500,000.00) (the “**Fifth Funding Payment**”). In no event, however, shall the Settlement Funding Payments exceed the Settlement Amount except in the event of default as described herein.

(b) Distribution of the Common Fund. The Common Fund will pay all Superior Court approved attorneys’ fees and expenses of litigation; all Superior Court approved class representative service awards; all costs of notice and administration by the Claims Administrator; any other cost, fee, expense and/or charge determined by the Superior Court; and all payments of the Settlement Amount as provided herein to and on behalf of the Settlement Class members.

i. Award for Class Counsel. The School District will not oppose an application to the Superior Court for approval of attorneys’ fees for the Settlement Class in an amount not to exceed 33% of the Settlement Amount, to be paid out of the Common Fund. In addition, Class Counsel may apply to the Superior Court for reimbursement for the reasonable expenses of litigation actually incurred to be paid out of the Common Fund. The expenses of litigation and attorneys’ fees will be paid proportionally from each of the Settlement Funding Payments described in paragraph 6(a). Neither Class Counsel nor counsel for the School District are entitled to any other award or payment of attorneys’ fees or costs from the Common Fund beyond what is awarded by the Superior Court.

ii. Payment of Incentive Award. The School District will not oppose an application to the Superior Court for an incentive award to each Lead Plaintiff in recognition of their class representative service in an amount not to exceed twenty-

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five thousand dollars (\$25,000.00) per Lead Plaintiff, which shall be above and beyond whatever share to which Lead Plaintiffs may be entitled as members of the Settlement Class. Any payment of the incentive award shall be made from the Common Fund after the First Funding Payment as approved by the Superior Court.

iii. Payment of Class Notice Costs. The costs of the class notice shall be paid out of the Common Fund and shall include all reasonable expenses incurred by Class Counsel or the Claims Administrator in connection with identifying members of the Settlement Class (including, without limitation, obtaining location records of potential class members), effectuating mail notice, and providing notice by publication to the Settlement Class.

iv. Payment of Administration Costs. The costs of determining and administering the claims shall be paid solely from the Common Fund (including without limitation, the administrative expenses incurred and fees charged by the Claims Administrator but excluding the Parties' attorneys' fees incurred in connection with the class administration, if any).

v. Payments Reserved for Settlement Class Members. After the School District makes any of the Settlement Funding Payments into the Common Fund, and as ordered by the Superior Court, the Claims Administrator shall distribute therefrom any Superior Court approved awards for Lead Plaintiffs; attorneys' fees and expenses to Class Counsel; and the fees, costs, and expenses of the Claims Administrator as provided for herein. The remaining funds shall be the **Net Class Member Funds**, which shall be paid and distributed to the Settlement Class members pursuant to paragraph 7 of this Settlement.

(c) Yearly Decision by School Board. In order to ensure that the School District's obligations to make the Settlement Funding Payments are authorized by each subsequent Board of Education, the full Settlement Amount is due and owing on the date of the First Funding Payment. The School District, however, shall have a unilateral option to pay on that date only the amount of the First Funding Payment described above and extend its obligation to make the remaining payment until the date of the Second Funding Payment without accruing interest. On that date of the Second Funding Payment, all of the remaining Settlement Amount will be due and owing. The School District, however, shall have a unilateral option to pay on that date only the amount of the Second Funding Payment described above and extend its obligation to make the remaining payment until the date of the Third Funding Payment without accruing interest. On that date of the Third Funding Payment, all of the remaining Settlement Amount will be due and owing. The School District, however, shall have a unilateral option to pay on that date only the amount of the Third Funding Payment described above and extend its obligation to make the remaining payment until the date of the Fourth Funding Payment without accruing interest. On that date of the Fourth Funding Payment, all of the remaining Settlement Amount will be due and owing. The School District, however, shall have a unilateral option to pay on that date only the amount of the Fourth Funding Payment described above and extend its obligation to make the remaining payment until the date of the Fifth Funding Payment

without accruing interest. The remaining amount will be due and owing on the date of the Fifth Funding Payment and the School District shall have no further option to extend. The options discussed above, with respect to the Second through Fifth Funding Payments, can be exercised only by a vote of the Board of Education in compliance with then existing law and Board of Education policies, and a vote of final approval should occur no later than thirty (30) days before the date of each Settlement Funding Payment. Notwithstanding any other provision in this Settlement, unless otherwise ordered by the Superior Court, the timing of the School District's funding of the Common Fund will not alter the timing of any payment made to any Settlement Class members. Should the School District fail to exercise its options in this paragraph or otherwise funds the Common Fund at any point earlier than the Settlement Funding Payment dates, the Settlement Class members will still receive payments on the dates set forth in paragraph 7(c) of this Settlement for class member payments.

(d) Default Interest Rate. Should the School District fail to timely pay when due any Settlement Funding Payment outlined in this paragraph 6, then all of the remaining Settlement Amount will be due and owing and, further, default interest will accrue on the remaining, unpaid portions of the Settlement Amount at a rate of ten percent (10%) per year.

(e) No Interest Shall Accrue on Initial Payment of the Settlement Amount. In the event an appeal is filed in connection with the Superior Court's approval of the Settlement in the Order and Judgment, no interest accrues on the Settlement Amount during the pendency of any such appeal. Interest shall accrue only if an event of default occurs as described in paragraph 6(d) of this Settlement.

7. Distribution of Net Class Member Funds. The portion of the Net Class Member Funds paid to each member of the Settlement Class and the manner in which it will be paid will be determined as follows:

(a) Pro Rata Formula. The Net Class Member Funds shall be divided among the Settlement Class members on a pro rata basis, taking into account the value of the alleged general damages for breach of contract, which would include interest and estimated contributions that would have been paid to each Settlement Class member based on his or her salary in each year such contributions would have been made; length and time of employment between August 1, 2009, and January 29, 2016; and his or her applicable contribution percentage under the terms of the Board TSA Plan (defined herein) (the "**Payment Formula**"). The Payment Formula will weight the amount of the alleged damages between July 29, 2009, and June 30, 2012 ("**Alleged Period 1 Damages**"), at three times the value of the alleged damages between July 1, 2012, and January 29, 2016 ("**Alleged Period 2 Damages**").

Within ten (10) business days after obtaining the Final Order and Judgment, the Claims Administrator and Class Counsel shall consult with Karen Fortune ("**Plaintiffs' Damages Expert**") and shall determine the percentage owed to each Settlement Class member based upon the above-described pro rata formula. All amounts charged or costs incurred by Plaintiffs' Damages Expert shall be incurred by Class Counsel and shall be

subject to reimbursement from the Common Fund as part of Class Counsel's expenses and fees, subject to the approval of the Superior Court.

(b) No Other Payments on Behalf of and for the Benefit of the Settlement Class Without Offset. The Parties acknowledge and agree that this Settlement is being made and entered into separate and apart from the DeKalb County, Georgia Tax Sheltered Annuity Plan (the "**Board TSA Plan**"). The Parties further agree that in the event any administrative agency, including but not limited to the United States Internal Revenue Service ("**IRS**"), the United States Department of Labor, any other federal or state agency or plan, or any court (individually, "**Third Party**," and collectively "**Third Parties**"), determines that payments of any kind are due to the Board TSA Plan or otherwise due to or on behalf of the Settlement Class in connection with or because of the Action or this Settlement ("**Possible Future Payments**"), the School District shall be entitled to offset any such Possible Future Payments owed to Lead Plaintiffs or Settlement Class members because of a Third Party determination by the total amount of the Net Class Member Funds received by each Lead Plaintiff or Settlement Class member. No such offset shall impact, lower, hinder, or otherwise diminish the value of, or requirement to make, any payment under this Settlement.

(c) Payment Methodology. The Parties agree that the Settlement resolves claims in the Action that Lead Plaintiffs allege are liquidated as a matter of law and further that the Settlement Amount is otherwise general damages for an alleged claim of breach of contract and violation of the Impairment Clause of the Georgia Constitution and therefore each direct payment to Settlement Class members can be considered other income, for which an IRS Form 1099-MISC could be issued. Because the Action, however, could also be construed (albeit disputed by the Parties) to involve some measure of lost compensation and interest or a measure of interest, the Net Class Member Funds will be paid to the Settlement Class members as seventy-six and 6/10th percent (76.6%) IRS Form 1099 income and twenty-three and 4/10th percent (23.4%) IRS Form W-2 income. Class Counsel or the Claims Administrator will provide to the School District and its counsel the appropriate gross amounts for each Settlement Class member, and pursuant to applicable tax laws, the School District will then calculate the required tax withholdings and payroll deductions for the portion allocated to Form W-2 income and will provide those calculations to the Claims Administrator, who will withhold those amounts from each Settlement Class member's Net Class Member Funds payments for the portion allocated to Form W-2 income and remit the withheld funds to the School District for payment to the appropriate taxing authorities. The Claims Administrator shall be entitled to rely on the accuracy of the School District's calculations under this paragraph. The School District will issue Form W-2s to the Settlement Class members and submit any applicable payroll returns to the relevant authorities. Settlement Class members shall be solely and legally responsible for paying all other applicable taxes on their respective Net Class Member Funds payments.

No later than forty-five (45) days after the First Funding Payment, the Net Class Member Funds will be divided in accordance with the Payment Formula and the 23.4% representing wages will be paid in total to the Settlement Class members in the same year

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(the “**First Class Member Payment Date**”). The subsequent payments of Net Class Member Funds, representing 76.6% of the funds, will represent settlement of the interest and/or general damages and will be made to Settlement Class members in each of the subsequent four (4) years on the annual anniversary of the First Class Member Payment Date.

(d) Payments Made to Every Class Member. There shall be no claims process required in order for a Settlement Class member to be entitled to receive a payment. The Claims Administrator shall attempt to make payments to each Settlement Class member; and shall be obligated to handle each allocated Settlement Class member payment consistent with all applicable laws.

(e) Class Members That Cannot Be Located. If any Settlement Class member payments are returned as undeliverable or not processed within an agreed up on time, the Claims Administrator shall use its best efforts to locate the Settlement Class member, including at least the procedure provided for in paragraph 9 of this Settlement. If, after the attempt to locate that Settlement Class member, a Settlement Class member’s pro rata share of the Net Class Member Funds is not claimed by negotiating the settlement check, then such amount will remain in the Common Fund without any entitlement by the individual Settlement Class member and distributed as Net Class Member Funds in accordance with this paragraph 7 after each subsequent Settlement Funding Payment. Any amounts returned to the Common Fund after the Fourth Funding Payment will be distributed as ordered by the Superior Court.

8. Third Party Claims. The Parties agree that this Settlement resolves disputed issues of fact and law on which the Parties disagree, and this Action involves several types of damages, not limited to claims for lost retirement contributions, for which the School District denies any and all liability. The Parties further agree that the Settlement Amount, and specifically, the payment of Net Class Member Funds to each Settlement Class member and the payment of incentive awards to each Lead Plaintiff: (i) constitute one-time settlement payments (notwithstanding paragraph 6(a)); and (ii) do not constitute a retirement system, plan, or fund contributions that would be maintained by the School District or otherwise constitute a payment for a plan correction. Upon satisfaction of payment of the Settlement Amount, and subject to the Superior Court’s determination of unclaimed Net Class Member Funds, the Parties agree that the School District has no further maintenance or oversight of the Settlement Amount and has no further maintenance or oversight of the Net Class Member Funds or incentive awards, their investment, or their use, which become the sole property of the Lead Plaintiffs and the Settlement Class members. Further, notwithstanding any other provision in this Settlement, no Third Party claims nor any other determination that the School District must make any additional payments or take any additional action as a result of this Settlement shall impact or otherwise affect the amount, enforceability, or timing of any payments owed to the Settlement Class under this Settlement.

9. Class Notice. Within twenty (20) days of this Settlement being executed, the School District and Class Counsel shall agree on a list of Settlement Class members. As soon as practicable thereafter, the School District will provide to Class Counsel and the Claims

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Administrator, for each Settlement Class Member, the Social Security numbers, employee identification numbers, and last known addresses and e-mail addresses as that information is derived from the employment records that the School District maintains in the ordinary course of business. Within five (5) days of the Superior Court's entry of the Preliminary Approval Order, the Claims Administrator shall compile a list of the Settlement Class members to whom Class Notice shall be sent using the data provided by the School District and shall add to that list information obtained in the course of administering notice as well as such additional information Class Counsel and the School District may provide (including but not limited to any updated address information available), with the goal and purpose of providing the most extensive and reliable list for implementing distribution of notice to the Settlement Class.

Within fifteen (15) days after entry of the Preliminary Approval Order, the Claims Administrator shall make best efforts to provide the Class Notice to the Settlement Class members via First-Class Mail. In addition, the School District shall send an e-mail notice, or its equivalent, to current employees of the School District who are members of the Settlement Class and any other members of the class for whom the School District possesses an e-mail address after a reasonable search for e-mail addresses has been conducted.

The Claims Administrator shall: (i) re-mail any First-Class Mail Class Notice returned by the United States Postal Service as undeliverable with a forwarding address; (ii) research addresses for any First-Class Mail Class Notice returned without a forwarding address or retain an address research firm to research such addresses; and (iii) re-mail a First-Class Mail Class Notice to any Class Member for whom an updated address is discovered through such research within seven (7) business days of receiving the updated address; provided, however, that all such re-mailings by the Claims Administrator shall be accomplished no later than twenty (20) days before the Objection/Opt-Out Date.

10. Releases. Upon obtaining the Final Order and Judgment that dismisses the Action with prejudice on the merits, the Lead Plaintiffs and members of the Settlement Class fully, finally, and forever discharge and release all claims, demands, actions or causes of action, rights, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters and issues of any kind or nature whatsoever that have been or could have been asserted, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, accrued or unaccrued, that have been, could have been or in the future can or might be asserted in the Action or in any court, tribunal, administrative agency or proceeding by or on behalf of any of the Lead Plaintiffs and any members of the Settlement Class who do not timely elect to opt out of the Settlement (whether for themselves and for their beneficiaries, assigns, agents, representatives, attorneys, heirs, executors, administrators, and privies), against the School District and its affiliates, agents, employees, officers, directors, attorneys, representatives, advisors, administrators, advisors or anyone acting on its behalf, which (a) arise out of, are based on, or relate in any way to any of the allegations, acts, transactions, facts, events, matters, occurrences, representations, or omissions involved, set forth, alleged, or referred to, in the Action, or which could have been alleged in the Action; (b) arise out of, are based on, or relate to or pertain to the School District's July 2009 decision to suspend certain employees' contributions to the Board TSA Plan; (c) arise out of, are based on, or relate to or pertain to the School District's payment and/or distribution of the Settlement Amount,

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including specifically any claims for contributions to the Teachers Retirement System of Georgia (“TRS”) or the Employees’ Retirement System of Georgia (“ERS”) and any claims against TRS and ERS for failure to demand contribution from the School District. The release shall not, however, include claims to enforce this Settlement.

11. Set Off Against Challenge. To the extent permitted by law, any payments to Settlement Class members pursuant to the terms hereof, shall be credited or counted as a payment toward any and all pending or subsequent inquiry, finding, challenge, determination, or contention by any and all federal or state agency or court, with applicable jurisdiction, which may be reviewing, investigating, assessing, or determining in any manner, now or in the future, whether the School District is obligated to pay or make contribution into the Board TSA Plan because of or relating to the suspension of contributions into the Board TSA Plan for the Settlement Class. Notwithstanding this paragraph or any other provision in this Settlement, no legal requirement or obligations placed on the School District by any third party, and no action by any federal or state agency (e.g., the IRS or TRS/ERS), or any court (other than the Superior Court acting in this Action), shall reduce the School District’s obligations under this Settlement, including but not limited to, the School District’s payment obligations.

12. Communications to Media and Others. The Parties will develop an agreed upon communication strategy for discussing the Settlement in any and all contexts, including Class Notice, that in all circumstances describes the Settlement as steps taken in the best interest of the students and teachers of the School District and that does not disparage the School District in any manner.

13. Blow/Opt-Out Provision. The School District shall have the right to terminate the final settlement agreement if the number of Settlement Class members whom elect to “opt out” of the Parties’ proposed settlement exceed an agreed upon opt-out threshold. In accordance with the accepted practice for class action settlements, the agreed upon threshold is contained in a redacted exhibit to this Settlement, and an unredacted version of the exhibit will be submitted directly to the Superior Court along with a request for filing under seal (in accordance with Georgia Uniform Superior Court Rule 21.6).

14. Obligation for Funds. The payment of the Settlement Amount shall comply with the Superior Court’s determination concerning unclaimed property, and such responsibility, and corresponding liability, if any, shall be the responsibility of the Claims Administrator.

15. Prospective Timetable. The Parties will use their best efforts to complete the following tasks, objectives, or requirements relating to the Settlement on the following dates:

(a) Within twenty (20) days of this Settlement being executed, the School District and Class Counsel shall agree on a list of class members, and as soon as practicable thereafter, the School District will provide to Class Counsel and the Claims Administrator, for each Settlement Class Member, the Social Security numbers, employee identification numbers, and last known addresses and e-mail addresses as that information is derived from the employment records that the School District maintains in the ordinary course of business.

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(b) Within twenty-five (25) days of this Settlement being executed, Plaintiffs, with the School District's approval, shall submit a motion seeking the Preliminary Approval Order.

(c) Within ten (10) days of the Superior Court's entry of the Preliminary Approval Order, the School District shall make the Notice and Claims Administration Payment.

(d) Class Notice to be issued within fifteen (15) days of the Superior Court's entry of the Preliminary Approval Order.

(e) Objections/Opt-Out Date will be no later than thirty (30) days from the issuance of the Class Notice.

(f) Fairness and Final Approval Hearing will be approximately sixty (60) days after the date that the Class Notice is mailed to the Settlement Class, or as soon thereafter as the Superior Court determines is fair and reasonable.

(g) Within ten (10) days after obtaining the Final Order and Judgment, the School District shall make the First Funding Payment as described in paragraph 6(a) of this Settlement.

(h) The Second Funding Payment will be made no later than 360 days after the First Funding Payment was due, as described in paragraph 6(a) of this Settlement.

(i) The Third Funding Payment will be made no later than 360 days after the Second Funding Payment was due, , as described in paragraph 6(a) of this Settlement.

(j) The Fourth Funding Payment will be made no later than 360 days after the Third Funding Payment was due, , as described in paragraph 6(a) of this Settlement.

(k) The Fifth Funding Payment will be made no later than 360 days after the Fourth Funding Payment was due, as described in paragraph 6(a) of this Settlement.

The times set forth herein can be amended upon agreement by counsel for the Parties or for good cause upon motion to the Superior Court.

16. Binding Effect. This Settlement contains all of the material terms necessary to settle this case and it shall be binding upon and inure to the benefit of the Parties and their respective agents, executors, heirs, successors, and assigns.

17. Denial of Liability. In entering into this Settlement to settle any and all disputes among the Parties as described more fully herein, the Parties acknowledge and agree that (i) the School District has denied and continues to deny the allegations made in the Action and any wrongdoing or liability whatsoever with respect thereto, and that it has maintained and continues to maintain that it has committed no breach of contract, violation of any statutory obligation, violation of policy, or other wrongdoing whatsoever; (ii) nothing in the Settlement may be deemed to be an admission of, or evidence of, any fault or omission of any of the School District in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; and (iii) the School District may file the Settlement and/or the Final Order and

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Judgment in any action that may be brought against it to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

18. Conditions. This Settlement shall be rendered null and void and of no force and effect, unless otherwise mutually agreed by the Parties in writing, in the event that the Superior Court declines to enter the Order and Judgment or there is a failure to obtain the Final Order and Judgment, as set forth in paragraph 3 of this Settlement, and providing for the releases, as set forth in paragraph 10 of this Settlement. In such an event, the Parties shall be deemed to be in the position they were in immediately prior to the execution of this Settlement, and the statements made herein shall not be deemed to prejudice in any way the positions of the Parties with respect to the Action, or to constitute an admission of fact or wrongdoing by any Party, and shall not entitle any Party to recover any costs or expenses incurred in connection with the implementation of this Settlement. In such event, and consistent with applicable evidentiary rules, neither the existence of this Settlement nor its contents shall be admissible in evidence or shall be referred to for any purpose in the Action or in any other proceeding. Without limiting the foregoing, if the Settlement does not become final for any reason, the School District reserves the right to oppose certification of any class, and to make any and all other arguments, motions, petitions, and requests, in any future proceedings.

19. Execution. This Settlement will be executed by a representative of the School District and Class Counsel, each of whom represents and warrants that they have the authority to enter into this Settlement. This Settlement may be executed in counterparts, including by signature transmitted by facsimile or e-mail. Each counterpart when so executed shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

This Settlement is hereby agreed to by:

By: _____
[Authorized School District Representative]

By: _____
Roy E. Barnes
John F. Salter

The Barnes Law Group, LLC
31 Atlanta Street
Marietta, Georgia 30060

Michael B. Terry
Jason J. Carter
Naveen Ramachandrappa
Bondurant Mixson & Elmore, LLP

CONFIDENTIAL SETTLEMENT COMMUNICATION
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3900 One Atlantic Center
1201 West Peachtree St, NW
Atlanta, Georgia 30309

Attorneys for Plaintiffs

DATED: _____, 2020.

DATED: _____, 2020.

Gold v. DeKalb County School District,
Civil Action File No. 11-CV-3657-5

SEALED EXHIBIT TO

STIPULATION AND AGREEMENT OF CLASS ACTION SETTLEMENT

Under paragraph 13 of the above-referenced Stipulation and Agreement, the School District shall have the right to terminate the final settlement agreement if the number of Settlement Class members whom elect to “opt out” of the Parties’ proposed settlement exceeds five percent (5%) of the Settlement Class members to whom notice is sent.

By: _____
[Authorized School District Representative]

By: _____
Roy E. Barnes
John F. Salter

The Barnes Law Group, LLC
31 Atlanta Street
Marietta, Georgia 30060

Michael B. Terry
Jason J. Carter
Naveen Ramachandrapa
Bondurant Mixson & Elmore, LLP
3900 One Atlantic Center
1201 West Peachtree St, NW
Atlanta, Georgia 30309

Attorneys for Plaintiffs

DATED: _____, 2020.

DATED: _____, 2020.