

**UNITED STATES OF AMERICA
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW ORLEANS FIELD OFFICE**

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Roberta M. Gabaldon, et al.,)	EEOC No. 460-2024-00001X
Complainants,)	
)	Agency No. HS-CBP-00258-2017
v.)	
)	Before: Hon. Nancy E. Graham
Alejandro Mayorkas, Secretary,)	
U.S. Dept. of Homeland Security, (CBP),)	
Agency.)	
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SETTLEMENT AGREEMENT

I. INTRODUCTION

This is a class action, styled as *Roberta Gabaldon, et al. v. Alejandro Mayorkas*, Secretary, U.S. Dept. of Homeland Security (“the Case”), brought by Roberta Gabaldon and Courtney Schilling (“Class Agents”) against the Secretary of Homeland Security, alleging that the United States Customs and Border Protection Agency (“CBP”) has violated the Pregnancy Discrimination Act by compelling pregnant Officers and Agriculture Specialists to submit to Temporary Light Duty because of their pregnancy, without regard to whether they could continue working in their positions of record either with or without a reasonable accommodation.

In the interest of resolving this dispute between the Parties without the significant expense, delay and inconvenience of further litigation of the collective and individual issues raised in this complaint, and in reliance upon the representations, mutual promises, covenants, and obligations set out in this Settlement Agreement, and for good and valuable consideration also set out in this Settlement Agreement, the Parties, through their undersigned counsel of record, hereby stipulate and agree as follows.

II. DEFINITIONS

The following terms, as they are used in this Settlement Agreement, shall have the meanings defined below:

A) “Agency Counsel” are all counsel of record, singly or collectively. They are as follows: Russ Wardlow and Davi Williams of U.S. Customs and Border Protection, 9434 Viscount Blvd., El Paso, TX 79925.

- B) “CBP” or “the Agency” is the United States Customs and Border Protection Agency, which is ultimately headed by the Secretary of the Department of Homeland Security in his official capacity.
- C) “Class Agents” are Roberta Gabaldon and Courtney Schilling.
- D) “Class Counsel” are all counsel of record, singly or collectively, who are signatories to this Settlement Agreement on behalf of the Class and are signatories to demonstrate their consent to the payment(s) required by Section V and Section VI of this Settlement Agreement. They are as follows: Joseph Sellers of Cohen Milstein Sellers & Toll PLLC, 1100 New York Ave. NW, Suite 500, Washington, DC 20005; and Gary Gilbert of Gilbert Employment Law, P.C., 8403 Colesville Rd Suite 1000, Silver Spring, MD 20910.
- E) “Class Definition” as defined by the Office of Federal Operations in its August 30, 2023 Decision on Appeal, includes “all women who were employed as CBP Officers and Agriculture Specialists and placed on temporary light duty pursuant to the Agency’s Temporary Light Duty policy due to their pregnancy, at any time after July 18, 2016.” The end date is June 26, 2024. This term includes the Class Agents.
- F) “Class Fund” is the Total Settlement Amount, less all amounts paid for attorneys’ fees and costs, service awards, and costs of settlement administration, that shall be distributed to Class Members through payment of Settlement Shares. It shall total Thirty-Five Million Five Hundred Sixty-Two Thousand Five Hundred Dollars (\$35,562,500) unless otherwise modified by Section VIII.B) of this Agreement.
- G) “Class List” is the list of pregnant Officers and Agriculture Specialists who were identified as Class Agents or identified as members of the class by CBP. It also includes names of women who contacted class counsel claiming to be members of the class. Their membership is subject to verification. This list is attached as Exhibit A.
- H) “Class Member” includes any person who fits the Class Definition named in the list attached as Exhibit A.
- I) “Class Member Pregnancies” are the total number of pregnancies for which Class Members were placed on Temporary Light Duty during the class period.
- J) “Class Period” is July 18, 2016 to June 26, 2024.
- K) “Declarant” is any Class Member who submitted a declaration in this case but who was not examined in a deposition or listed as a witness in this case. The names of these Declarants are Lilia Camacho Garcia, Tiffany Vallery, Sonja Velasco, Sarah Bringle, Brittany Simon, Melissa Calvillo, Diana Cifuentes, Edna Torres, Samantha Solis, Angel Salazar, Clara Delpech, Andrea Saenz, Catherine Lamar, Whitney Ellis, and Carolyn Ricks.

- L) “Distribution Plan” is the plan utilized to distribute Settlement Shares and Service Awards to Class Members, as set forth in Section V of this Agreement.
- M) “EEOC” is the Equal Employment Opportunity Commission.
- N) “Effective Date of the Settlement Agreement” is the date, pursuant to Section III.G)2, upon which the Settlement Agreement becomes effective after Final Approval of the Settlement is granted and either no appeals of that order were taken or any such appeals were denied.
- O) “Final Approval Date” is the date on which Administrative Judge enters an order that, after considering any objections to the Settlement, nonetheless finds that the Settlement is fair, adequate, and reasonable pursuant to the provisions of 29 C.F.R. 1614.204(g)(4).
- P) “Lost Leave” is the leave due to pregnancy used by any Class Member during their placement on Temporary Light Duty within the class period.
- Q) “Notice of Final Agency Action” is the Notice issued by CBP to Class Members that it adopts the ruling by the Administrative Judge granting Final Approval of the Settlement Agreement.
- R) “OFO” is the Equal Employment Opportunity Commission’s Office of Federal Operations.
- S) “Party” or “Parties” is CBP, Agency Counsel, Class Counsel, Class Agents, and Class Members.
- T) “Potential Testifying Witness” is any person who was listed as a testifying witness on the Class Hearing Witness List, but who ultimately did not testify. The names of these Potential Testifying Witnesses are Lizette Hopper, Elvira La Pierre, Kassandra Reyna, Jowana Green-Williams, Heather Perez, Delanie Carey, Sandra Kozak, and Sarah McCallister.
- U) “Preliminary Approval Date” is the date on which the Administrative Judge enters an order finding the Settlement appears fair and reasonable to the class as a whole and directs issuance of the Settlement Notice of Resolution which provides to members of the class notice of the terms of the Settlement and the opportunity to object to the settlement.
- V) “Remainder Fund” means any portion of the Class Settlement Fund funds distributed to Class Members pursuant to Section V and which are not negotiated, and which become void within the time period prescribed in Section V.D)7.
- W) “Service Award” means the additional amounts paid to the Class Agents, Declarants, Potential Testifying Witnesses, and Testifying Witnesses for their service in this litigation.

X) “Settlement Administrator” is the firm, Settlement Services, Inc. (“SSI”), which has been retained by Class Counsel to perform the distribution of Settlement Shares and related administrative functions required by this Settlement Agreement, including but not limited to establishing a Qualified Settlement Fund and Bank Account, and distribution of Settlement Share and Service Award checks and applicable tax forms.

Y) “Settlement Agreement” or “Settlement” or “Agreement” is this Settlement Agreement.

Z) “Settlement Notice of Resolution” or “Notice” is the notices summarizing the Settlement Agreement to be sent to all Class Members pursuant to Section IV of this Settlement Agreement, *see* Exhibits B and C.

AA) “Settlement Share” is the portion of the Class Fund computed pursuant to the Distribution Plan in Section V.D) that will be distributed to each Class Member.

BB) “Temporary Light Duty” is the limited duty status on which pregnant Officers and Agriculture Specialists at CBP were placed due to their pregnancy during the class period, pursuant to the CBP Temporary Light Duty Policy.

CC) “Testifying Witness” is any person who was examined in a deposition in this case, not including the Class Agents. The names of these Testifying Witnesses are Lauren Coy, Antonela Simko, Nikki Speed, Sunita Fonseca, Serena Guarino, Claudia Kaminska, Hartley Garza, Leah Novosel, Korina Peraza, Laura Lacy, Michele Struiksma, LaDonna Powell, Ashley Reyes, Jessica Sandoval, Keli Kuikahi, Liana Plummer, Clauria Vargas, Cynthia Herrera, Kimberly Truong, Jaycee Santana, and Lee Gilson.

DD) “Total Settlement Amount” is Forty-Five Million Dollars (\$45,000,000), as described in Section III.B).

EE) “Unclaimed Funds” are any funds for which distribution to one or more members of the class was attempted but was unsuccessful after 90 days of the date on which the distribution was initiated.

III. **GENERAL TERMS**

A) Scope of the Settlement Agreement: This Settlement Agreement resolves the Claims of all Class Members. Pursuant to the EEOC’s regulations, there is no right to “opt out” of this class. *See* 29 C.F.R. § 1614.204(g)(4).

B) Total Settlement Amount: In full settlement of all Class Members’ Claims, the Parties agree that CBP will pay the Complainant Class, through class counsel, a total of \$45 million. The payment is comprised of: (1) a Class Fund of \$35,562,500 (hereinafter the “Class Fund”), unless otherwise modified by Section VIII.B) of this Agreement, which shall be distributed to Class Members through the payment of Settlement Shares;

(2) \$9,000,000 in attorney's fees paid to Class Counsel, (3) \$150,000 for costs paid to Class Counsel including a maximum of \$30,000¹ to cover the estimated cost of SSI's settlement administration and processing of claims, *see* Section V.D)9; (4) \$287,500 for Service Awards. The Agency will also compute the leave used by former class members and compensate them separately for the value of the lost leave, as provided in Section VI.

C) **Qualified Settlement Fund:** The Settlement Administrator will establish a Qualified Settlement Fund, consistent with the requirements of Treas. Reg. § 1.468B-1(c), to disburse the payments required by this Settlement Agreement. Within forty-six days of the Effective Date of the Settlement Agreement, CBP will transfer \$45 million into the Qualified Settlement Fund established by the Settlement Administrator.

D) **Denial of Liability:** CBP expressly denies any wrongdoing or liability with regard to the allegations contained in the Administrative Class Complaint. This Settlement Agreement and the payment of Settlement Shares, Service Awards, and Attorneys' Fees and Costs under the Settlement Agreement do not constitute an admission by either Party as to the merits, validity, or accuracy, or lack thereof, of any of the allegations or claims in This Case. This Settlement Agreement represents a compromise of disputed claims. It reflects the Parties' recognition that further litigation of these claims would severely burden all concerned, require an extraordinary commitment of time and resources and delay considerably the recovery that members of the class seek.

No part of this Settlement Agreement may be used by anyone in any proceeding of any kind as evidence of discrimination or prohibited retaliation, or as evidence of any violation of the Pregnancy Discrimination Act, the common law of any jurisdiction, or any other federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity including collective bargaining agreements. Similarly, none of the communications made concerning this Settlement Agreement, nor information and statements submitted during its negotiation or related mediation, nor any action taken to implement it, may be used by anyone to establish a violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity including collective bargaining agreements.

Documents, data, and information prepared for negotiations and/or mediation and exchanged by the Parties in connection with this Case may not be used for any purpose other than in connection with fairness proceedings or in any manner by anyone other than the Counsel who created such documents, data or information, in this or in any other case, except that documents or information specifically relating to the intent of the Parties in crafting a particular provision in this Settlement Agreement may be used for the interpretation and enforcement of that provision if a court or Administrative Judge determines that such use is necessary to resolve a dispute over its meaning.

¹ In the event the Settlement Administrator's costs are less than \$30,000, the remainder shall be added to the Remainder Fund. *See* Section II.V) .

In the event that Final Approval of this Settlement Agreement is not obtained or it is deemed null and void for any other reason, nothing herein shall be deemed to waive any of the Class Members' claims or CBP's objections and defenses, and neither this Settlement Agreement nor the Preliminary Approval or Final Approval hereof shall be admissible in any court regarding any issue of subject in this Case.

E) Approval of Settlement Agreement as Written: It is an express condition of this Settlement Agreement that the Settlement Agreement be approved by the Administrative Judge (and the EEOC if any appeal is made) as written, except to the extent expressly provided otherwise in this Settlement Agreement. The Parties have bargained for the terms in this Settlement Agreement. Except as provided in Section X.G)-X.H) below, no section or subsection of this Settlement Agreement may be modified, and no section or subsection may be added to this Settlement Agreement.

F) Interpretation of Settlement Agreement: This Settlement Agreement is a contract and shall, upon issuance of the Final Approval of the Settlement Agreement by the Administrative Judge, also constitute an order of the EEOC.

G) Annulment and/or Stay:

1. Judicial or Administrative Annulment: This Settlement Agreement shall be null and void in the event that: (1) the Administrative Judge fails to issue Final Approval of the Settlement Agreement; or (2) the OFO, the EEOC, or any federal court of competent jurisdiction finds that this Settlement Agreement is void or not enforceable.

2. Effective Date & Stay: In the event an appeal of Final Approval is filed, then the Effective Date will be postponed until the appeal is resolved, and the time for which further review in any forum of competent jurisdiction as to the effectiveness of the Agreement has expired. The Effective Date will be the day after the expiration of the time for review in any forum of competent jurisdiction relating to any final order resolving the appeal. If no appeal is taken from the Order granting final approval of this Settlement or if the parties agree that any appeal does not implicate the validity of the Settlement, then the Effective Date will be 30 days after the mailing of the Notice of Final Agency Action.

3. In the event an appeal is taken of the Order granting Final Approval of the Settlement, delaying its Effective Date and the distribution of settlement funds, interest will accrue on the settlement amount until it is paid to the Settlement Administrator at a rate of 6%.

H) Coordination With the Settlement Administrator: The Parties agree to cooperate with each other to facilitate the implementation of this Settlement Agreement. CBP and Class Counsel will assist the Settlement Administrator as needed to ensure that the distribution process described in Section V below is completed in an efficient manner. In performing all duties expressly assigned to the Settlement Administrator under this

Settlement Agreement, and any other duties that are necessary to administer this Settlement Agreement, the Settlement Administrator shall act at the direction of Class Counsel.

I) Procedures Governing Approval of This Settlement Agreement: The following procedures and dates shall govern the process by which the parties will seek approval of this Settlement Agreement, unless Judge Graham specifies otherwise:

1. The Agency shall distribute Notice to Class Members via email and/or mail, as applicable, on August 12, 2024, pursuant to Section IV of this Agreement and will notify Judge Graham and Class Counsel when the Notice to Class Members has been issued.
2. Pursuant to 29 CFR 1614.204(g)(1), any objections to this Settlement Agreement must be submitted no later than September 11, 2024 (if notice was received by email) or September 16, 2024 (if notice was received by mail) to Judge Graham and to Agency Counsel and Class Counsel. *See Exhibits B and C.*
3. Counsel for the parties may submit to Judge Graham responses to any objections to the Settlement on September 19, 2024.
4. If no objections to the Settlement are received, then Judge Graham may issue an order granting Final Approval of the Settlement at any time after the deadline to receive objections has passed.
5. In the event any objections to the Settlement are received, then Judge Graham may convene a hearing remotely on or before September 24, 2024 to determine, after considering any such objections whether the Settlement is fair, adequate, and reasonable to the class as a whole.

IV. **NOTICE TO CLASS MEMBERS**

A) Distribution of Notice: No later than August 12, 2024, the Agency shall distribute Notice via email to all Class Members for whom an email address is known. For all Class Members for whom an email address is not known, the Agency shall distribute Notice by First Class Mail.

To ensure that all Class Members fully understand their rights under this Settlement Agreement, Class Members who are known by the parties to be Class Members shall receive the Settlement Notice of Resolution attached hereto as Exhibits B and C, which will provide a summary of the terms of the Settlement and inform them how and when any objections to the settlement must be lodged and the date on which the Final Fairness hearing will be conducted.

B) **Notice of Final Agency Action:** Within two business days of the Final Approval date, the Agency will distribute the Notice of Final Agency Action to all Class Members at the email or mailing address where the Notice of Resolution was previously sent.

C) **Toll-Free Number and Website:** Class Counsel have established a toll-free telephone number for Class Members to contact Class Counsel. Class Counsel have also established a website on which a copy of the Notice of Resolution, the Settlement Agreement and any other information about the Settlement Agreement will be posted until 45 days after all Settlement Share checks and Service Award checks have been mailed and, if necessary, re-mailed. The Final Approval of the Settlement Agreement and Notice of Final Agency Action will be posted on the website when the Notice of Final Agency Action to the Class Members is distributed. The website will also provide information about how to submit objections.

V. **CLAIMS PROCESS & DISTRIBUTION PLAN**

A) **Class Members:** As set forth in Section II.G), each Class Member known to the parties as listed in Exhibit A will receive a Settlement Share.

B) **Mailing Addresses:** Within 45 days of the execution of this Settlement Agreement, the parties shall jointly prepare a database containing the last-known addresses for all Class Members. That database must also contain all known Social Security Numbers for Class Members. The database must also contain the number of placements on light duty due to pregnancy during the class period for each Class Member. This database will only be available to counsel for the parties and to the Settlement Administrator.

C) **Verification of Emotional Harm Damages:** Class Counsel shall provide to the Settlement Administrator the information analyzed by Class Counsel in determining the Emotional Harm damages tier into which each Class Member should be placed. *See* Section V.D)3. The Settlement Administrator will review the information upon which Class Counsel relied to confirm it provides an adequate basis for the tier of emotional harm damages for each class member. The Settlement Administrator will notify counsel for the parties of the results of its review before any Settlement Shares are distributed.

D) **Determination of Settlement Shares:** The Settlement Shares will be computed as a composite for each Class Member of her a) compensatory damages for loss of opportunity to earn overtime and differential/premium pay categories, and b) compensatory damages for emotional harm. Each Settlement Share payment will be determined by Class Counsel in the following manner:

1. First, Class Counsel will total the number of Class Members and the number of total Class Member Pregnancies.
2. **Compensatory Damages for Loss of Opportunity to Earn Overtime and Differential/Premium Pay Categories:** A total of \$10,352,638.89 is attributable to

this category of compensatory damages (unless otherwise modified by Section VIII). Class Counsel will divide the total settlement amount attributable to this category by the number of Class Member Pregnancies. Each Class Member shall receive a pro rata amount per pregnancy.

3. Compensatory Damages for Emotional Harm: A total of \$25,209,861.12 is attributable to emotional harm damages suffered by Class Members (unless otherwise modified by Section VIII). The Settlement Administrator will distribute these funds attributable to compensatory damages for emotional harm according to a tiered system. Each Class Member has been assigned to a tier based on the evidence of the severity of harm each presented to Class Counsel. *See* Exhibit D (detailing the number of Class Members assigned to each tier). The assignment of each Class Member to a Tier, and the amounts payable to Class Members assigned to each tier are subject to modest revision depending on the total number of Class Members and their final distribution within the tiers. It is anticipated that the members of each tier will be paid approximately the amounts set forth below:

- a) Tier 1. Approximately \$7,000: These Class Members did not timely supply any evidence of particularized harm attributed to placement on Temporary Light Duty. Their eligibility to receive awards of damages is based on their general exposure to the requirement of being placed on temporary light duty while they were pregnant.
- b) Tier 2. Anticipated to be no less than \$23,000: These Class Members provided evidence of mild-to-moderate emotional distress from their placement on temporary light duty while they were pregnant, which included stress, humiliation, short-term anxiety, depression, or sleeplessness, with no or minimal medical treatment documented.
- c) Tier 3. Anticipated to be no less than \$50,000: These Class Members provided evidence of moderate-to-severe emotional distress from their placement on temporary light duty while they were pregnant, such as moderate-term anxiety or depression, significant changes in career trajectory, relationship difficulties, and/or some required medical treatment.
- d) Tier 4. Anticipated to be no less than \$80,000: These Class Members provided evidence of serious emotional distress from their placement on temporary light duty while they were pregnant, such as long-term anxiety or depression requiring treatment, significant relationship difficulties, career consequences, and/or some physical symptoms.
- e) Tier 5. Anticipated to be no less than \$100,000: These Class Members provided evidence of the most severe emotional distress from their placement on temporary light duty while they were pregnant, including significant physical symptoms requiring medical treatment,

long-term anxiety or depression requiring therapy and/or psychotropic medication.

f) The compensatory damages for emotional harm allocations will be based upon the tier to which each Class Member is assigned. Each Class Member within the same tier will receive an equal share of compensatory damages for emotional harm.

4. Taxation: The Settlement Administrator will issue IRS Forms 1099 to each Class Member receiving a Settlement Share. For each Class Member's Settlement Share, 100% shall be deemed compensatory damages reported on a Form 1099. Service Award Payments will also be reported on a Form 1099.

5. Distribution of Checks and Tax Forms: Within 10 business days of receipt of the funds in the QSF, the Settlement Administrator will mail a check with each Class Member's Settlement Share and Form 1099 to each Class Member at the address provided in the Joint Database.

6. Re-mailing: If the Settlement Share check sent to any Class Member is returned undeliverable, the Settlement Administrator will first confirm the mailing address information with the Agency. If the Agency supplies a corrected address, the Settlement Administrator will re-mail the Settlement Share check to the corrected address. If the current mailing address remains unknown, the Settlement Administrator will make a single attempt to determine the Class Member's current address via a Social Security number search using credit bureau data. If a more current address is located, the Settlement Administrator will re-mail the Settlement Share check to that address.

7. Tracking: The Settlement Administrator will track the status of payment of Settlement Shares to all Class Members and Service Awards pursuant to Section V. The Settlement Administrator will provide the Parties with this information in an updated Excel workbook on a weekly basis.

8. All Settlement Awards shall be made by check with "Void after 90 Days" printed on the check. Any Settlement Awards not negotiated within ninety (90) days of their issuance shall become void. Any funds payable in unnegotiated checks that become void shall become part of the Remainder Fund.

9. Within forty-five (45) days after unnegotiated Settlement Payment checks become void, the Settlement Administrator may deduct from the unclaimed funds an amount not to exceed \$4,500 to defray costs of settlement administration that exceed the cap of \$30,000 presumed for the cost of those services. From any unclaimed funds that remain, the Settlement Administrator will redistribute *pro rata* any Remainder Fund to the Class Members who retrieved their Settlement Shares. If the Settlement Administrator determines there are not sufficient funds in the Remainder Fund to justify incurring the costs of redistributing such funds to

Class Members, the Settlement Administrator shall remit the Remainder Fund equally between the National Women’s Law Center and National Partnership for Women and Families as *cy pres*.

10. Timeline: Based on a Settlement Notice of Resolution distribution date of August 12, the timeline shall be as follows:

Event	Elapsed Days (as provided in the Agreement)	Date
Inform Current Class Members on TLD of the Remedial Measures described in Section VII.B)	Within 10 business days of the execution of the Settlement Agreement	
Preparation of Joint Database	Within 45 days of execution of the Settlement Agreement	
Preliminary Approval Order		August 12, 2024
Settlement Notice of Resolution		August 12, 2024
Deadline for objections (for those who received notice by email)		September 11, 2024
Deadline for objections (for those who received notice by first class mail)		September 16, 2024
Deadline to file the executed Settlement Agreement, Deadline to file Motion for Approval of Settlement, Deadline to respond to any objections		September 19, 2024
Status conference to plan hearing if any objections to settlement received		September 23, 2024
Hearing on any petition(s) or objection(s) to settlement or, in absence of objections, issuance of Final Approval Order		September 24, 2024
Notice of Final Agency Action	2 business days after Final Approval	September 26, 2024
Effective Date	32 days after Notice of Final Agency Action (due to weekend)	October 28, 2024
CBP will transfer \$45 million into the QSF	46 days after the Effective Date	December 13, 2024

Settlement Administrator shall transfer attorneys' fees and costs to Class Counsel	5 business days after CBP's payment into the QSF	December 20, 2024
Distribution of Payments	10 business days after CBP's payment into the QSF	December 27, 2024
Agency Payments for Lost Leave to Former Employees	30 days after the Effective Date	November 27, 2024
Void Date on Settlement Checks	90 days from Distribution of Payments	March 27, 2025
Redistribution or Cy Pres	45 days from Void Date on Settlement Checks	May 11, 2025
Deadline to implement Programmatic Relief	180 days from Effective Date	April 28, 2025

VI. THE VALUE OF LOST LEAVE

A) For Class Members who are currently employed by CBP, the Agency shall restore up to 160 hours of leave taken while on Temporary Light Duty for each pregnancy. This restored leave will be placed in a separate leave category not subject to the standard use or lose requirements and will not expire until at least two years after it is restored. *See e.g., Janel B. v. Lynch* EEOC App. No. 0120132683 (requiring the Agency to place the leave in a separate category from accrued leave).

B) For Class Members no longer employed by CBP, the Agency will separately pay those Class Members the value of the leave they used while on Temporary Light Duty, up to 160 hours per pregnancy. These payments will be issued individually by the Agency to each Class Member and shall be separate from the Settlement Share payments distributed by the Settlement Administrator. These payments shall be made by the Agency within 30 days of the Effective Date of the Agreement. The Agency shall issue the appropriate tax documents accompanying these payments.

VII. PROGRAMMATIC RELIEF AND CONFIRMING COMPLIANCE WITH THE PREGNANCY DISCRIMINATION ACT AND THE PREGNANT WORKERS FAIRNESS ACT

A) Policy and Training

No later than 180 days from the Effective Date of this Settlement Agreement, the Agency will undertake the following actions:

1. The Agency will provide a minimum of 60 minutes of live, interactive, and comprehensive training for all managers and supervisors regarding the rights of pregnant law enforcement Officers and Agriculture Specialists. This training may be conducted virtually via online applications such as Microsoft Teams. The training will include, but not be limited to, the following topics:

- a) The lawful treatment of pregnancy for Officers and Agriculture Specialists, generally;
- b) How to lawfully implement the Temporary Light Duty Policy;
- c) How to implement the Reasonable Accommodations Policy with regard to pregnant Officers and Agriculture Specialists;
- d) Examples of reasonable accommodations that will be available to pregnant Officers and Agriculture Specialists that would permit them to remain in their position of record for part or the entirety of their pregnancy;
- e) Rights and responsibilities of pregnant Officers and Agriculture Specialists, supervisors, and managers under the Pregnant Workers Fairness Act;
- f) How to deal with EEO complaints regarding pregnancy;
- g) How to implement the waiver of the firearms recertification requirement waiver and less lethal training waiver during pregnancy;
- h) How to provide accurate information to pregnant Officers and Agriculture Specialists who may be under the misapprehension that Temporary Light Duty is required when they are pregnant.

2. The Agency will draft a policy that will require that the Agency presume pregnant CBP Officers and Agricultural Specialists can continue to serve in their positions of record with or without accommodations unless medical evidence is presented from the Officer or Specialist that warrants a different result. As an element of the Policy, the Agency will identify appropriate accommodations that may enable pregnant Officers and Specialists to continue to perform their assigned duties if they elect to do so.

- a) Accommodations identified within the Policy will include, but are not limited to:
 - (1) Appropriate or expandable utility/duty belts designed to accommodate pregnant employees, or other methods of carrying the items normally carried on the duty belts, including but not limited to pancake holsters and thigh holsters;
 - (2) Uniforms that are appropriate for pregnant employees;

- (3) The provision of waivers or tolling of re-qualifications on firearms or adjustments to mandatory firearms qualifications that allow for the use of nonlead bullets;
- (4) Compliance with existing policy that allows for less lethal training waivers for pregnant Officers and Agriculture Specialists;
- (5) The ability to swap discrete duties or rotations with other employees that will not require management approval;
- (6) Excusal from mandatory overtime requirements; and
- (7) Other similar accommodations as appropriate.

b) To identify all possible accommodations the Agency can provide pregnant employees, the Agency shall conduct research and consider policies of other law enforcement organizations and agencies throughout the country that provide accommodations of the needs of pregnant employees. This research will include, but not be limited to, the International Association of Chiefs of Police March 2021 Considerations Document on Pregnancy, (Exhibit E) and the State of New Jersey Attorney General Guidelines, “Protocols Regarding Pregnant Officers” (Exhibit F).

c) Per the Agency’s Reasonable Accommodation Policy, the Agency will also consider other reasonable accommodations that are raised by pregnant workers in the course of the iterative reasonable accommodations process.

3. The Policy will also provide that, wherever possible, pregnant Officers and Agriculture Specialists placed on Temporary Light Duty may: retain their full duty shift schedule; retain the ability to work overtime; attend trainings; and participate in the bid cycle.

4. Discussion of the Policy identified in Section VII.A)2 will be included in all annual EEO and/or anti-discrimination training that all employees, including supervisor and non-supervisory employees, receive from the Agency.

5. The Agency will disseminate the Policy identified in Section VII.A)2 to all supervisors and managers and incorporate it into training for new supervisors and managers. Dissemination shall include FAQs or similar practical guidance concerning implementation of the Policy.

6. The Agency will disseminate the Policy to all pregnant Officers and Agriculture Specialists as soon as managers become aware of their pregnancy. The dissemination will include FAQs or similar, practical guidance concerning

implementation of policy and guidance to the pregnant Officers and Agriculture Specialists that the default expectation is that they will remain in their position of record on full duty, including with a reasonable accommodation, unless and until the pregnant employee chooses to request otherwise.

B) Remedial Measures

For those pregnant workers who are currently on Temporary Light Duty, within 10 business days of the execution of this agreement, the Agency will inform those pregnant workers of:

1. The opportunity to resume full duty (with a reasonable accommodation if necessary), if they choose;
2. The opportunity to retain or revert back to their usual shift (if Temporary Light Duty placement resulted in a shift change), if they choose;
3. The opportunity to work overtime, if they are eligible and so choose;
4. The opportunity to attend trainings, if they choose;
5. The opportunity to participate in the bid cycle.

C) Monitoring Period

1. Class Counsel shall retain the right to monitor the Agency's compliance with this Settlement Agreement for a period of three years from the Effective Date. In the event Class Counsel alleges the Agency failed to comply with any terms of the Agreement, Class Counsel may notify the Agency's EEO Director for Compliance and Agency Counsel of the alleged noncompliance. In the event the parties are unable to resolve the alleged noncompliance, Class Counsel will have the right to petition the Office of Federal Operations to compel such compliance. *See* 29 CFR § 1614.504.
2. The Agency agrees it will provide a draft of any proposed policy to Class Counsel and consider any comments from them prior to finalizing such policy.
3. The Agency agrees to provide drafts to Class Counsel of training materials produced to comply with this Agreement and will consider any comments from them prior to finalizing such training materials.
4. In the event Class Counsel believe the policy or training materials do not meet the requirements of this Agreement, the Class may petition the Agency's EEO Director and OFO as described in Section VII.C)1., *supra*.

VIII. ATTORNEYS' FEES & SERVICE AWARDS FOR CLASS AGENTS & OTHER CLASS MEMBERS WHO ACTIVELY PARTICIPATED IN DISCOVERY

A) Payment of Attorneys' Fees and Costs: The Agency agrees that, on behalf of the Class, Class Counsel may seek an award of attorneys' fees in the amount of 20% of the total settlement amount. In addition, the Agency agrees that Class Counsel may apply for reimbursement of costs associated with this matter, including the costs of the Settlement Administrator, in a total amount of \$150,000.

1. In the event that Class Counsel's actual litigation costs (including the Settlement Administrator costs, capped at \$30,000) are less than \$150,000, the remainder will be used by Class Counsel to help defray the attorney fees and costs of monitoring the Agency's compliance with the Agreement, as provided described in Section VII, *supra*. Any remaining funds will be donated to the *cy pres* recipients.

2. Within 5 business days of receipt of the QSF funds, the Settlement Administrator shall transfer from the Qualified Settlement Fund to the bank account(s) designated by Class Counsel the amount that is awarded in attorneys' fees and costs payable under this Agreement.

B) Service Awards: In recognition of the service that the Class Agents have performed on behalf of the class and the service of 46 other Class Members who agreed to be identified as hearing witnesses for the Class, those who also were examined in deposition, and those who submitted declarations, the Agency does not oppose payment of the following Service Awards, subject to approval of Judge Graham.:

1. Roberta Gabaldon will be awarded \$50,000 in recognition of her invaluable role initiating this action and as a Class Agent, the substantial time she expended in leading the class and guiding Class Counsel in the prosecution of this matter as well as the risk she undertook to be publicly associated with this matter. This Service Award is in addition to the Settlement Share to which she is eligible as a member of the Class pursuant to the terms of this Agreement.

2. Courtney Schilling will be awarded \$25,000 in recognition of her invaluable role as a Class Agent, the substantial time she expended in leading the class and guiding Class Counsel in the prosecution of this matter as well as the risk she undertook to be publicly associated with this matter. This Service Award is in addition to the Settlement Share to which she is eligible as a member of the Class pursuant to the terms of this Agreement.

3. Class members who were designated as witnesses for the hearing and who were examined in deposition ("Testifying Witnesses") will each receive payments of \$7,500 in recognition of their valuable contributions to the Class and the substantial time they expended in preparation for and their examination in their depositions. These Service Awards are in addition to their Settlement Shares to

which each is eligible as a member of the Class pursuant to the terms of the Agreement.

4. Class members who were designated as witnesses for the hearing (“Potential Testifying Witnesses”) will each receive payments of \$5,000 in recognition of their valuable contribution to the Class. These Service Awards are in addition to their Settlement Shares to which each is eligible as a member of the Class pursuant to the terms of the Agreement.

5. Class members who executed sworn statements and whose declarations were disclosed to the Agency will each receive payments of \$1,000 in recognition of their valuable contribution to the Class. These Service Awards are in addition to their Settlement Shares to which each is eligible as a member of the Class pursuant to the terms of the Agreement.

IX. DISMISSAL OF ABOVE-CAPTIONED CASE WITH PREJUDICE AND WAIVER AND RELEASE OF CLAIMS

A) In consideration of the obligations undertaken by the Agency that are set forth in this Settlement Agreement, Class Members, including their heirs, agents, executors, successors, and assigns, release and forever discharge the Agency and any officers, employees, agents, or successors of the Agency from:

1. Any and all claims and causes of action that have been or could have been asserted in the Above-Captioned Case within the class period that challenge placement on Temporary Light Duty because of pregnancy

B) Upon the Effective Date of this Settlement Agreement, Class Members agree to withdrawal or dismissal with prejudice of the Above-Captioned Case, any and all claims asserted therein, and any and all individual claims or causes of action that could fall within the certified class claim, including as described in Sections I.A)1-I.A)1 of this Settlement Agreement, and including in any administrative process, grievance, or State, or Federal forum.

C) Consistent with 29 C.F.R. § 1614.204(g)(4), this Settlement Agreement binds all Class Members upon the Effective Date of this Settlement Agreement. Any Class Member who already has filed a claim or complaint in any forum alleging that she was subjected to pregnancy discrimination because of her placement on Temporary Light Duty that allegedly occurred within the class period will be determined to have consented to the withdrawal of such action with prejudice by virtue of this Settlement Agreement.

D) The terms of this Settlement Agreement will not establish any precedent. Neither Class Agents nor the Class will use or allow this Settlement Agreement to be used in any capacity, including any administrative or judicial proceeding, as evidence of discrimination, retaliation, wrongdoing or any prohibited personnel practice by the

Agency or any employee, officer, agent, representative, or component thereof, with the exception of any action to enforce this Settlement Agreement.

E) By entering into this Settlement Agreement, the Agency does not admit any wrongdoing, fault, or liability of any kind. Specifically, the Agency does not admit that it engaged in wrongdoing or discrimination or that it violated any Federal, State, or local statutes, regulations, rules, policies, collective bargaining agreements, or guidelines.

F) Nothing in this Settlement Agreement prevents the disclosure of any terms or conditions of this Settlement Agreement, the allegations set forth in the Complaint and the evidence adduced in this proceeding, or any other information necessary to enforce this Settlement Agreement, or as required by law, in a court or administrative body with appropriate jurisdiction.

G) The provisions set forth in this Settlement Agreement are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this Settlement Agreement and are controlling.

X. **APPLICABLE CONTRACT PRINCIPLES**

A) Dispute over Effectuation of Agreement: In the event there is a material dispute as to the effectuation of this Agreement, either party may apply to Judge Graham for a ruling on the proper interpretation and implementation of the Agreement.

B) Counterparts: This Settlement Agreement may be executed in one or more counterparts, and each executed copy shall be deemed an original, which shall be binding upon all Parties to this Settlement Agreement.

C) Headings: The headings in this Settlement Agreement are for the convenience of the parties only, and shall not limit, expand, modify, amplify, or aid in the interpretation or construction of this Settlement Agreement.

D) Entire Agreement: This Settlement Agreement, including Exhibits, comprises the full and exclusive agreement and understanding of the Parties with respect to this Settlement Agreement, and supersedes all prior written or oral agreements. No representations or inducements to compromise this action have been made, other than those recited in this Settlement Agreement. This Settlement Agreement does not impose any obligations on the Parties beyond the terms and conditions stated herein.

E) No Waiver. The waiver of any Part of any term, condition, covenant, or representation of this Settlement Agreement or the breach of any term, condition, covenant, or representation herein in any one instance, shall not operate as, or be deemed to be a waiver of, the right to enforce any other term, condition, covenant, or representation. The failure by any Party at any time to enforce, or require performance of, any provision of this Settlement Agreement shall not operate as a waiver of, or limit such Party's right at a later time, of the right to enforce or require performance of such provisions or of any other provisions of this Settlement Agreement, subject to the limits of EEOC's jurisdiction. In the event that Final Approval of this Settlement Agreement is not obtained or it is deemed null and void for any other reason, nothing herein shall be deemed to waive any of the Class Members' claims or CBP's objections and defenses, and neither this Settlement Agreement nor the Preliminary Approval or Final Approval of this Settlement Agreement shall be admissible in any court regarding any issue or subject of This Case.

F) Notice to Parties: Whenever this Settlement Agreement provides for notice to be given to the Parties, such notice shall be served on the Parties as follows:

Joseph Sellers
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave. NW, Suite 500
Washington, DC 20005

Gary Gilbert
Gilbert Employment Law, P.C.
8403 Colesville Rd Suite 1000
Silver Spring, MD 20910

Russ Wardlow, Davi Williams
U.S. Customs and Border Protection
9434 Viscount Blvd.
El Paso, TX 79925

G) Modifications: Except as provided in Section X.H), this Settlement Agreement may not be amended or modified except with the express, prior written consent of CBP and Class Counsel and the approval of the Administrative Judge.

H) Modifications by Agreement: The Parties may modify, by joint written agreement, the sequences and timing of the notice and payment processes outlined in Sections IV-V above, to effectively deal with issues that may arise under this Settlement Agreement (i.e., unforeseen circumstances, etc.).

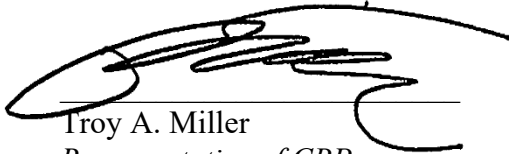
I) Binding Agreement: This Settlement Agreement is binding on all Parties and their successors, assigns, representatives, and trustees.

J) Computation of Time: References in this Settlement Agreement to time and mailing shall be construed in the following manner.

1. Calendar Days: All time periods in this Settlement Agreement that are stated in terms of days are calendar days unless specified otherwise.
2. Verification of Timely Mailing: Unless otherwise specified in this Settlement Agreement, a document shall be deemed timely if it is received, postmarked, or bears a similar verification of delivery before the expiration of the applicable period.
3. Calculation of Time: The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included, unless it falls on a Saturday, Sunday, or Federal holiday, in which case the period shall be extended to include the next business day.

K) Counterparts: This Settlement Agreement may be executed in counterparts.

IT IS HEREBY AGREED by the undersigned.



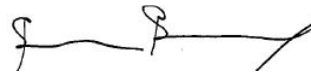
Troy A. Miller
Representative of CBP

Dated: August 16, 2024



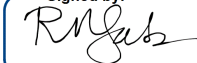
Joseph M. Sellers
Counsel for the Class
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave. NW, Suite 500
Washington, DC 20005

Dated: 8/16/2024



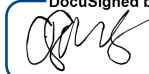
Gary Gilbert
Counsel for the Class
Gilbert Employment Law, P.C.
8403 Colesville Rd Suite 1000
Silver Spring, MD 20910

Dated: 8/16/2024

Signed by:

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Roberta Gabaldon
Class Agent

Dated: 8/17/2024 | 4:03 PM PDT

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22E63CE9E72E491...

Courtney Schilling
Class Agent

Dated: 8/16/2024 | 7:11 PM CDT