

**CLASS SETTLEMENT AGREEMENT & RELEASE OF ALL CLAIMS**

**June 1, 2021 (Effective Date)**

## **CLASS ACTION SETTLEMENT AGREEMENT & RELEASE OF ALL CLAIMS**

The Parties to this Settlement Agreement and Release of All Claims (Agreement) are a CLASS OF PLAINTIFFS THAT INCLUDE ALL PERSONS AND ENTITIES THAT PAID FEES IMPOSED PURSUANT TO THE KANSAS UNIFORM SECURITIES ACT, K.S.A. 17-12a101, *et seq.* (ACT), DURING THE TIME PERIOD OCTOBER 1, 2016 TO THE PRESENT (PLAINTIFFS) and the STATE OF KANSAS (STATE).

WHEREAS PLAINTIFFS have alleged certain claims against the STATE arising from the statutory transfer of moneys received in the form of fees, charges, deposits, and penalties collected under the Act from the securities act fee fund ("Fund") to the state general fund pursuant to K.S.A. 17-12a601(a) and K.S.A. 75-3170a ("Sweep"); and

WHEREAS PLAINTIFFS filed a lawsuit alleging such claims against the State in the District Court of Shawnee County, Kansas, Case No. 2019-CV-000720 (the "Lawsuit"); and

WHEREAS the STATE disputes those claims; and

WHEREAS the Parties now wish to resolve the dispute between them.

NOW, THEREFORE, in consideration of the promises set forth in this Agreement and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Release and Covenant Not to Sue by PLAINTIFFS. In consideration of the promises set forth herein, PLAINTIFFS hereby agree to dismiss and otherwise forego litigation of the Lawsuit and release and forever discharge the STATE and all of its past, present and future employees, legislators, officers, agents, contractors, representatives, agencies, servants, volunteers, and affiliates from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of services, losses, expenses, attorneys fees, prejudgment interest, class action status, amounts claimed for refund, wages, rights to appeal, interest, or other compensation of any nature which PLAINTIFFS now have, or which may hereafter accrue in any way arising out of, related to, or which could have been asserted arising from the Sweep up to the effective date of this agreement, whether known or unknown, suspected or unsuspected. PLAINTIFFS further covenant and agree not to assert against the STATE, including any of its past, present, or future employees, legislators, officers, agents, contractors, representatives, agencies, servants, volunteers, or affiliates any claim, demand, action, cause of action, right, or obligation which is released and discharged by this Agreement.

The claims released and discharged include, but are not limited to, all claims asserted or which could have been asserted under federal or state or local constitution, statute, law, regulation, ordinance or common law that in any way relate to the Sweep, up to the effective date of this agreement, regardless of the type of relief sought and whether for declaratory relief, class action status, injunctive relief, damages, return of funds, reversal of funds, transfer of funds, improper charge against funds, attorneys fees, interest, prejudgment interest, costs or any other type of relief, including but not limited to claims pursuant to:

- (a) Any and all claims related to the Sweep;
- (b) Conversion;
- (c) Any and all claims asserting a wrongful transfer, misappropriation, breach of trust, breach of fiduciary duty, or unlawful appropriation of funds;
- (d) Any and all claims that the STATE or Kansas Legislature acted in excess of its authority;
- (e) Any and all claims that the STATE'S or Kansas Legislature's actions constituted an unlawful or unconstitutional tax;
- (f) Any and all claims that the Kansas Legislature's actions were unconstitutional, including but not limited to claims that they amounted to an unconstitutional tax or unconstitutional taking or that they violated Article 11, § 5 of the Kansas Constitution, the Commerce Clause of the United States Constitution, the Fifth Amendment to the United States Constitution, the Fourteenth Amendment to the United States Constitution, or PLAINTIFFS' Equal Protection rights.
- (g) Any and all tort claims, including but not limited to alleged retaliation, conspiracy, libel, slander, or intentional or negligent infliction of emotional distress.

2. Consideration. In exchange for PLAINTIFFS waiving their right to have their claims adjudicated and to seek prejudgment interest, and in exchange for PLAINTIFFS dismissing all claims in the Lawsuit as outlined in paragraph 1, the STATE agrees to grant the following relief to the PLAINTIFFS as follows, which will need to be accomplished by legislative and regulatory action:

- (a) The STATE will request and recommend that the Kansas Legislature enact legislation preventing the Sweep of all unencumbered funds over \$50,000 from the Fund effective before the STATE Fiscal Year 2021 transfer required by K.S.A. 17-12a601(a)(4) would otherwise be made and will request and

recommend that the Kansas Legislature enact legislation repealing the statutory provisions requiring the Sweep before it is required for future years;

- (b) The Kansas Insurance Department and Office of the Kansas Securities Commissioner will place a moratorium on fees assessed pursuant to the Act for STATE Fiscal Year 2022, and continuing as long as necessary to analyze and adjust the fee structures under the Act to correspond to the constitutionally permissible reasonable costs incurred in administering the Act, as described in the letter of intent attached hereto as Exhibit A. This will result in immediate fee relief to the PLAINTIFFS of approximately thirteen million dollars (\$13,000,000.00) and an additional approximately thirteen million dollars (\$13,000,000.00) each year the moratorium remains in place;
- (c) The STATE agrees to transfer the total amount of three million dollars (\$3,000,000.00) to be distributed to the Investor Education Fund administered by the Office of the Kansas Securities Commissioner, a division Kansas Insurance Department;
- (d) PLAINTIFF'S counsel waives its right to argue that it is entitled to thirty-five percent (35%) of the total benefit to the class. The STATE agrees, subject to court-approval, to pay three million dollars (\$3,000,000.00) for Plaintiff's attorney's fees and costs. The STATE will not oppose a request to the Court by Plaintiff's counsel for attorney's fees and costs of three million dollars (\$3,000,000.00); and
- (e) The STATE and the PLAINTIFFS will submit a joint motion to certify a class in the Lawsuit and approve this Agreement;

The above transfers are made in full and final settlement of any and all claims and in return for the promises set forth herein.

The Parties further agree and acknowledge that this Agreement is contingent upon and subject to the legislative action set forth in Paragraph 2(a), the legislative transfer of the payment set forth in Paragraph 2(c) and (d), and imposition of the moratorium set forth in Paragraph 2(b). This Agreement shall not be considered accepted, approved, or otherwise effective until the STATE satisfies the conditions in the foregoing paragraphs. In addition, this agreement is contingent upon the court certification of the class and approval of the settlement. In the event that these conditions are not satisfied, the Lawsuit shall proceed as if no settlement agreement had ever been reached.

3. Costs and Fees. Each Party shall bear its own costs and attorneys fees arising out of this claim with the exception of those fees and costs paid as outlined in paragraph 2, above.

4. Hold Harmless Agreement and Setoff. PLAINTIFFS represent and warrant that no part of their claims herein released have ever been assigned and that no person, firm, partnership nor corporation other than PLAINTIFFS and their counsel has any interest therein. PLAINTIFFS state that they, through their representatives, are authorized to sign this Agreement. PLAINTIFFS further warrant that no other person or entity has asserted or is able to assert any lien, claim or other entitlement to any portion of the Agreement which has not been satisfied. PLAINTIFFS further agree to indemnify and hold harmless the STATE (including its officers, employees, agents, contractors and any other affiliated party) against all claims, demands, actions, or causes of action, including but not limited to attorneys' fees, should any portion of the settlement funds or any subsequent transfer of funds related to the Lawsuit in any way be subject to setoff by the Kansas Department of Administration (KDOA), as set forth in K.S.A. 75-6201, *et seq.* Any such setoff by the KDOA shall not constitute a breach of this agreement.

5. No Admission. The settlement between the Parties and this Agreement shall not be construed as an admission of the truth of any claim or defense by either party or of any liability or wrongdoing. The STATE expressly denies any such liability or wrongdoing except as reflected in paragraph 2. The Parties acknowledge that this shall not constitute a waiver of any future defenses or immunities to the extent they exist with respect to future cases.

6. Binding Effect. This Agreement shall be binding upon and benefit PLAINTIFFS, their heirs and assigns, as well as the STATE and its successors and/or assigns.

7. Reading of and Consultation about the Agreement. The named PLAINTIFF and proposed class representative represents that he has completely read all the terms set forth in this Agreement and that such terms are fully understood and voluntarily accepted by him. The named PLAINTIFF and proposed class representative further represents that he has been adequately and fully advised by counsel prior to entering this Agreement.

8. Future Cooperation. All Parties to this Agreement will cooperate fully to execute any and all supplementary documents and take additional actions which may be necessary or appropriate to give full force and effect to the terms of this Agreement. PLAINTIFFS and their counsel shall take whatever actions are necessary to ensure that the pending Lawsuit is dismissed in its entirety with prejudice and without costs or fees within 14 days after the transfers of funds outlined in paragraph 2, above.

9. Choice of Law for Dispute Resolution. This Agreement shall be construed and interpreted in accordance with the laws of the State of Kansas. Any action arising from the execution of or compliance with this Agreement shall be brought in a Kansas State Court and shall not be brought in a United States District Court.

10. No Other Representations. The named PLAINTIFF and proposed class representative acknowledges that no promise or agreement not expressed in this Agreement

has been made. In executing this Agreement, the named PLAINTIFF and proposed class representative avers that he is not relying upon any statement or representation made by the STATE or any person employed by or representing the STATE other than the statements contained in this Agreement itself. The terms of this Agreement are contractual and not merely recitals.

11. Counterparts. This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12. Severability. In the event that one or more of the provisions of this Agreement shall for any reason be held to be illegal or unenforceable, this Agreement shall be revised only to the extent necessary to make such provision(s) legal and enforceable.

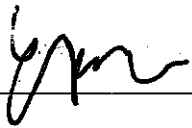
13. Sovereign Immunity. While sovereign immunity and the Eleventh Amendment to the United States Constitution are an inherent and incumbent protection of the State of Kansas and need not be reserved, prudence requires the State to reiterate that nothing related to this agreement shall be deemed a waiver of sovereign immunity or Eleventh Amendment immunity.

14. Responsibility for Taxes. The STATE and its agencies and/or employees shall not be responsible for, nor indemnify PLAINTIFFS for, any federal, state, or local taxes which may be imposed or levied upon the subject matter of this agreement.

15. Entire Agreement. The terms of this Settlement Agreement and Release constitute the entire agreement between and among the Parties and may not be altered, amended, modified, or otherwise changed in any manner, except by writing executed by the Parties.

**PLEASE READ CAREFULLY BEFORE SIGNING. THIS AGREEMENT INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS.**


PLAINTIFF THOMAS EDWARD BLUMER  
ON BEHALF OF HIMSELF AND THE CLASS

By: 

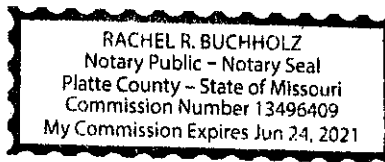
Date: 5/28/21

State of: Missouri  
County of: Jackson ) ss:

On this 28<sup>th</sup> day of May, 2021, before me the undersigned Notary Public personally appeared Thomas Blumer, known to me to be the person described herein and who executed the foregoing document and acknowledged that he/she did so of his/her own free will. In witness whereof I have hereunto set my hand and seal.

  
Notary Public

(Seal)  
My appointment expires: June 24, 2021

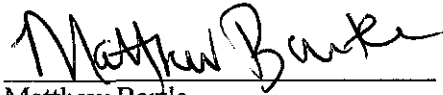






**Attorney Approval of Agreement**

The undersigned counsel, as attorney for PLAINTIFFS, hereby states that he has read the above and foregoing Settlement Agreement and Release and that he approves its terms. The undersigned further states that he explained all terms of the Agreement to PLAINTIFFS, and that, to the best of his knowledge, PLAINTIFFS understand the terms of the Agreement. The undersigned hereby waives any claim to attorneys' fees and costs against the State of Kansas and its past, present and future employees, officers, agents, contractors, representatives, agencies, servants, volunteers, and affiliates. All such fees and costs will be satisfied by virtue of the promises described herein. The undersigned shall be responsible for any attorneys' fees, liens, or costs claimed by anyone else who may have performed legal services for PLAINTIFFS in their alleged claims against the STATE.



Matthew Bartle  
Attorney for Thomas Blumer