

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NATHANIEL ROBINSON and DAVID
EVANS, on behalf of themselves and all others
similarly situated,

Plaintiffs,

-against-

NEW YORK CITY TRANSIT
AUTHORITY; PATRICK J. FOYE, in his
official capacity as Chairman of the New York
City Transit Authority; and SARAH E.
FEINBERG, in her official capacity as Interim
President of the New York City Transit
Authority,

Defendants.

Civ. No. 19-cv-01404

**SETTLEMENT AGREEMENT AND
ORDER**

I. INTRODUCTION

This agreement is made and entered into on this ___ day of _____, 2023 between the New York City Transit Authority (“NYCTA” or “Defendant”) and Plaintiffs Nathaniel Robinson and David Evans on their own behalf and on behalf of all others similarly situated (collectively, “Plaintiffs”; and together with Defendants, the “Parties”).

WHEREAS, Defendant New York City Transit Authority operates the Transit Adjudication Bureau (“TAB”) pursuant to N.Y. Public Authorities Law § 1209-A; and

WHEREAS, on February 13, 2019, in an action entitled *Robinson, et al. v. New York City Transit Authority, et al.*, No. 19 Civ. 1404 (AT)(BM), Plaintiffs filed a putative class action lawsuit alleging that Defendants are in violation of the Fourteenth Amendment of the U.S. Constitution by (1) entering default judgments against them without adequate notice of the transit violation, the default penalties, and/or the judgment itself; (2) denying them meaningful opportunity to contest

the transit violation, the default penalties, default judgment, and/or the tax refund offset; (3) refusing access to documents necessary to challenge any default judgment; (4) not waiving fees for reviewing documents in TAB's possession that are necessary to contest the default judgments entered against them, despite Plaintiffs' indigence; and (5) deliberate indifference to the fact that its formal policies, customs and practices will result in the denial of constitutional rights; and

WHEREAS, on October 11, 2019, Plaintiffs filed an Amended Complaint;

WHEREAS, Defendants filed an Answer to the Amended Complaint on October 25, 2019, denying the allegations and contending that Plaintiffs had failed to state a claim, that Defendants had at all times acted in accordance with applicable federal, state and local constitutions, laws, rules, regulations and procedures, and further asserting that the complaint was barred in whole or in part by *res judicata*, and/or collateral estoppel; and

WHEREAS, on September 30, 2020, the Court adopted Magistrate Judge Moses's Report and Recommendation granting class certification, certifying a class consisting of "[a]ll persons against whom [NYCTA] has obtained or will obtain a default judgment in a New York State court. Excluded from the class are persons whose default judgments are not subject to enforcement because they (1) have been fully satisfied by voluntary payment or (2) fall outside the twenty-year statute of limitations period applicable under CPLR § 211(b)"; and

WHEREAS, on November 11, 2020, Plaintiffs moved for summary judgment on the grounds that (1) Defendants failed to provide class members the requisite constitutional notice before seizing their tax refunds, (2) Defendants employed unconstitutional and secret standards for vacating default judgments, and (3) Defendants failed to provide class members with documents necessary to contest default judgments; and seeking (1) that the Court enjoin Defendants from certifying NYCTA/TAB default judgments to the Department of Taxation and

Finance for tax refund offset or wage garnishment, or otherwise enforcing NYCTA/TAB default judgments until such time as they have developed procedures to provide class members adequate notice and an opportunity to be heard; (2) enjoining Defendants from certifying TAB judgments to the Department of Taxation and Finance in cases where they do not possess and/or cannot obtain a copy of the original Notice of Violation (“NOV”); and (3) awarding the Named Plaintiffs a refund of their allegedly improperly seized tax refunds;

WHEREAS, on November 11, 2020, Defendants moved for summary judgment on the grounds that TAB’s policies and processes were in compliance with all applicable laws; and

WHEREAS, on September 30, 2021, the Honorable Barbara Moses issued an Opinion and Order on the Parties’ cross-motions for summary judgment, finding that (1) Defendants provided constitutionally adequate notice to TAB respondents prior to the seizure of their tax refunds in the form of personal delivery of the Notice of Violation, and three further written notices sent by mail to the address on the Notice of Violation, one of which warns that the debt is being referred for a tax offset; (2) the standards applied by Defendants to determine what is good cause to vacate a default judgment are constitutionally adequate, but that Defendants did not adequately disclose those standards; and (3) denying both parties’ motions as to whether TAB has an unconstitutional policy or procedure of refusing to provide copies of NOVs to those seeking to challenge default judgments or has failed to adequately train its personnel on providing such copies;

WHEREAS, the Parties agree that the caption shall be amended to remove Defendants Foye and Feinberg as the relief sought pertains only to Defendant NYCTA;

WHEREAS, the Parties, in order to avoid further litigation, agree to the entry of a final judgment which incorporates the terms of this Settlement Agreement (hereinafter “Agreement”) to resolve the outstanding issues arising from the Court’s decision on summary judgment.

THEREFORE, IT IS ORDERED, that this action is settled, subject to the approval of this Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, upon the stipulation of the Parties to this Agreement and the terms set forth below, as follows:

II. STATEMENT OF AGREEMENT

A. General Provisions

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 as a case arising under the laws of the United States, 28 U.S.C. § 1343(a), for actions under laws providing for the protection of civil rights. Venue in the United States District Court for the Southern District of New York is proper under 28 U.S.C. § 1391(b).

2. This Agreement constitutes a compromise settlement of disputed and contested matters between the Parties. It shall not be construed as an admission of any sort by any of the Parties, nor shall it be used as evidence in a proceeding of any kind, except as necessary to administer and/or enforce its terms.

B. Equitable Relief

3. The Effective Date of this Agreement is defined as the date of the Court's final approval of the Agreement. The provisions in this Section B will be implemented upon the Effective Date, except as otherwise stated below.

4. TAB will post information at the Inquiry Desk window about how to request an NOV, NOV Status Letter, and Payment Status Letter, substantially in the form shown in Exhibit A to this Agreement. TAB will display this information prominently, so that the information is readably visible to the public.

5. TAB will revise and update its “good cause memorandum”, which provides guidance to hearing officers on what constitutes a good cause for vacating a default judgment at proceedings brought by a respondent to vacate a default judgment, as follows:

- a. The revision will consist of instructions to hearing officers that a request to vacate a default judgment within 30 days of default can be weighed favorably in determining whether there is good cause for vacating the default judgment.
- b. The revised good cause memorandum will continue to include the list of “good cause” already contained in the current version of the good cause memorandum: false identification, wrong respondent, lack of service, lack of TAB jurisdiction, no prima facie case, lack of mental/physical capacity.

6. Within 60 days of the date the Court so-orders this Agreement, TAB will amend its Guidelines Governing Proceedings Before the Transit Adjudication Bureau (“TAB Guidelines”) to include:

- a. A complete list of its “good cause” standards, or a list of acceptable excuses, for vacating default judgments in accord with the Court’s ruling in this case. *See* ECF 157 at 21. If the list of legally valid excuses sets forth guidelines and is not exhaustive, then the published standards must so state. *Id.* at 24 n. 17.
- b. That a request to vacate a default judgment made within 30 days of default can be weighed favorably in determining whether there is good cause for vacating the default judgment.

7. Upon a respondent's request for information about an NOV or either of the letters below, TAB will continue to provide the respondent, free of charge, with:

- a. An NOV Status Letter containing information about the status of one or more NOVs (substantially in the form shown in Exhibit B to this Agreement, subject to amendments required by this paragraph and paragraph 18); and/or
- b. A Payment Status Letter containing information about a respondent's NOV(s) and the outstanding balance(s) due thereon, including any payments made and any penalties/charges accrued (substantially in the form shown in Exhibit C to this Agreement, subject to amendments required by this paragraph and paragraph 18).

Where the respondent does not specifically request an NOV Status Letter or Payment Status Letter, TAB will make reasonable, good-faith efforts to determine if a respondent is seeking information contained in the NOV Status Letter and/or Payment Status Letter and will provide a respondent with a NOV Status Letter and/or Payment Status Letter, as appropriate, in response. TAB will amend the NOV Status Letter and Payment Status Letter to include the date of judgment for each NOV listed on the letter.

8. TAB will continue its policy of charging no more than \$1 per copy of an NOV requested by a respondent for the period of five years following the date the Court grants final approval of this Agreement.

9. TAB will continue its policy and practice of retaining the NOV underlying a default judgment for as long as TAB is permitted by law to enforce that default judgment.

- a. If a respondent requests an NOV for a default judgment that is enforceable by TAB and TAB is unable to locate that NOV within 60 days of the completed request, TAB will promptly cease any enforcement of that NOV, vacate the default judgment associated with that NOV, and dismiss the NOV. TAB will inform any respondent seeking to request an NOV of the minimum information TAB requires to process the respondent's request, Pursuant to the Transit Adjudication Bureau (TAB) Operations Manual – Inquiry Unit, and deem the respondent's request completed once TAB has that information.
- b. If, prior to the respondent's request for an NOV, TAB had sent that NOV to SWOP and garnished the respondent's tax refund for that NOV, TAB will return to the respondent the garnished funds within 60 days of when the respondent provides verification of their identity and address for the refund to be sent to, unless the respondent has an outstanding balance(s) on any other NOV that TAB had previously sent to SWOP, in which case TAB will apply the garnished funds to that outstanding balance(s).

10. In accordance with all applicable laws, TAB will continue its policy and practice of not enforcing any default judgments older than 20 years.

11. TAB will update the NOV to include TAB's website URL, beginning with the next printing of NOVs after the Effective Date of this Agreement.

12. TAB will update its website to conspicuously include the following information on its website, substantially in the form of a "frequently asked questions" section or similar:

- a. How to request an NOV Status Letter and Payment Status Letter, free of charge, a description of the information set forth in those letters, a sample NOV Status Letter and a sample Payment Status letter;
- b. How to request a copy of an NOV, and a sample NOV, both front and back;
- c. The methods that TAB may use to enforce a default judgment, including but not limited to wage garnishment, garnishment of tax refunds, assignment to a collection agency, and assignment to a Marshal or Sheriff;
- d. How to request to vacate or stay the entry of a default judgment;
- e. How to update a respondent's address with TAB, and a statement that timely updates to respondents' mailing addresses are necessary for any mailings from TAB to reach the respondent; and
- f. A link on TAB's main webpage, currently located at <https://new.mta.info/agency/transit-adjudication-bureau>, to the revised TAB Guidelines.

13. As part of the revision to the Transit Adjudication Bureau (TAB) Operations Manual – Inquiry Unit completed by TAB's contractor, the manual will be updated to include instructions to Inquiry Unit staff about how to provide a copy of an NOV to a respondent and how to attend to a respondent who requests a copy of an NOV. The manual will also be updated to include instructions to Inquiry Desk staff to: a) provide an NOV Status Letter and/or Payment Status Letter, as identified in Paragraph 7, in response to a respondent's request for one or both of those letters; b) make reasonable, good-faith efforts to determine if a respondent is seeking information contained in either of those letters; and c) to provide a respondent with a NOV Status Letter and/or Payment Status Letter, as appropriate, in response.

14. By the later of either July 31, 2023 or 90 days after the Court grants final approval of this Agreement, TAB will provide in-person training to its staff and contractors on the practices and updated instructions set forth herein in paragraphs 5-10 and 13.

15. Defendants will provide counsel for the Plaintiffs with the training materials described in Paragraph 14, and the revised Transit Adjudication Bureau (TAB) Operations Manual – Inquiry Unit, when they are finalized pursuant to this Agreement. If additional material changes are made to the training materials or Transit Adjudication Bureau (TAB) Operations Manual – Inquiry Unit during the Monitoring Period, Defendant will again provide counsel for the Plaintiffs with the revised document(s).

III. RELEASE

15. As of and subject to final Court approval, this Agreement resolves in full any and all claims or rights of action of Class Members (other than the Named Plaintiffs) that exist against Defendants and their predecessors, successors, or assignees together with past, present, and future officials, employees, representatives, and agents of NYCTA and any of its past or present affiliates or subsidiaries now or as they and/or their successors may be constituted in the future, including but not limited to, MTA Bus Company, the Metropolitan Transportation Authority, the Manhattan and Bronx Surface Transit Operating Authority, Metro-North Commuter Railroad Company, Long Island Rail Road, Metropolitan Suburban Bus Authority (Long Island Bus), Triborough Bridge and Tunnel Authority, Staten Island Rapid Transit Operating Authority, and MTA Capital Construction Company (the “Released Persons”), contained in or arising from the Complaint or Amended Complaint in this action. As of and subject to final Court approval, Class Members hereby release and waive any and all claims and rights of action that exist as of the Effective Date, to pursue, initiate, or prosecute any and all causes of action, claims, awards, equitable relief, legal

and administrative relief, interest, demands, or rights, before any court, administrative agency, or other tribunal, or to file any complaint with regard to acts of commission or omission by the Released Persons related to, connected with, arising out of, or based upon, the allegations contained in, or arising from, the Complaint or Amended Complaint in this action. This release does not prevent Plaintiffs from enforcing the terms of this Agreement.

16. As of and subject to final Court approval, this Agreement resolves in full any and all claims or rights of action that exist by the Named Plaintiffs against the Released Persons, contained in or arising from the Complaint or Amended Complaint in this action. As of and subject to the date of final Court approval, the Named Plaintiffs hereby release and waive any and all claims and rights of action that exist as of the Effective Date to pursue, initiate, or prosecute any and all causes of action, claims, awards, equitable relief, legal and administrative relief, interest, demands, or rights, before any court, administrative agency, or other tribunal, or to file any complaint with regard to acts of commission or omission by the Released Persons related to, connected with, arising out of, or based upon, the allegations contained in, or arising from, the Complaint or Amended Complaint in this action. The Named Plaintiffs shall each provide a Release, releasing and waiving their claims as set forth in this Agreement. This release does not prevent Plaintiffs from enforcing the terms of this Agreement.

V. MODIFICATION OF AGREEMENT

17. The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties with approval of the Court, provided however, that the Parties may effect such amendments, modifications or expansions of this Agreement and their implementing documents (including any exhibits to them) without notice to or approval by the

Court if such changes are consistent with the Court's Order Approving Settlement and Final Judgment.

V. MONITORING

18. On August 15, 2023, Defendants shall certify to Plaintiffs' counsel that it has effectuated the changes specified above in this Agreement. Such certification shall include the updates to the training manuals, the dates on which any in-person trainings required by this Agreement were held, and a certification that (i) TAB's Inquiry Desk prominently displays a notice to the public that they can obtain a copy of an NOV; (ii) the NOV Status Letter and Payment Status Letter have been updated to include the Judgment Date, and (iii) TAB's website has been updated in compliance with this Agreement.

- a. If Defendants are unable to certify by August 15, 2023, counsel for Defendants shall write to counsel for Plaintiffs to seek an extension and provide a reason for the inability to so certify.

19. One year after the Effective Date of the Agreement, Defendants shall again certify to Plaintiffs' counsel that it has continued to effectuate the changes specified above in this Agreement. Such certification shall include the same information as required by paragraph 18.

VI. JURISDICTION OF THE COURT

20. Subject to the right of Plaintiffs to seek extension of the Court's jurisdiction, the Court shall retain jurisdiction over this Agreement for a period of fifteen (15) months from the date this Agreement is approved and so-ordered by the Court, at which time the Court's jurisdiction shall end and the claims against Defendants shall be dismissed with prejudice.

21. Plaintiffs may file a motion seeking an order extending the term of this Agreement up to an additional six months in the event the monitoring provided for by this

Agreement shows systemic non-compliance with the obligations set forth herein or if Defendants have failed to provide monitoring required by this Agreement. If the Court determines there is a systemic non-compliance with the obligations as set forth in this Agreement, the Court may extend the term of this Agreement up to an additional six months and order such other and further relief as may be appropriate against Defendants.

22. Prior to bringing any such motion described in the paragraph above, the party will be required to make reasonable efforts to resolve the dispute with the other party. In the event such reasonable efforts fail to resolve the dispute, the party shall serve written notice on the other party of any claim of non-compliance, and the other party will have fourteen (14) days from date of service of the written notice of non-compliance in which to respond to the claim of non-compliance. If the matter is not resolved during the fourteen (14) day period, then the party may serve upon the other party, within ten (10) days from receipt of the response to the claim of non-compliance, a notice of intent to file a motion with this Court alleging either a claim of non-compliance or seeking a protective order. No such motion shall be filed until at least ten (10) days from the date of service of the notice of intent. The time periods set forth in this paragraph may be extended by mutual agreement of the parties.

23. The Parties agree that non-systemic individual and isolated violations of this Agreement shall not form a basis for a finding that Defendants have acted in violation of this Agreement.

VI. MISCELLANEOUS

24. Approval of this Agreement is subject to the provisions of Rule 23(e) of the Federal Rules of Civil Procedure, including without limitation, the direction of notice, the consideration of

any objections filed by any class members, and a hearing or finding by the Court that the Agreement is fair, reasonable and adequate.

25. This Agreement constitutes the entire agreement between the Parties relating to the issues raised in the Complaint and Amended Complaint, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party prior, that is not contained in this Agreement, shall be enforceable, with the exception of individual General Releases from the Named Plaintiffs.

26. *Construction:* For purposes of construction, this Agreement shall be deemed to have been drafted by each of the parties and shall not, therefore, be construed against either party in any subsequent dispute.

27. The Parties agree that this Agreement was drafted by counsel for the Parties at arm's length.

28. *Severability:* If any provision of this Agreement is hereafter determined to be invalid for any reason, the balance of this Agreement shall remain in full force and effect.

29. *Authorized Representatives:* The undersigned signatories represent that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind to this document the party that they represent.

30. Whenever this Agreement requires or contemplates that one Party will or may give notice to the other, notice will be provided by e-mail and next-day (excluding weekend days) overnight delivery service as follows:

a. If to Defendants, then to:

Mariel Thompson
New York City Transit Authority
Office of the General Counsel
130 Livingston Street, 12th Floor

Brooklyn, NY 11201
Mariel.Thompson@nyct.com

b. If to Plaintiffs, then to:

Claudia Wilner
National Center for Law and Economic Justice
50 Broadway, Suite 1500
New York, NY 10004
wilner@nclej.org

31. This Agreement may be signed in counterparts, each of which will constitute a duplicate original.

VII. ATTORNEYS' FEES AND COSTS

32. Plaintiffs and Defendants shall make a good faith effort to negotiate an amount of reasonable attorneys' fees, costs and disbursements to be awarded to Plaintiffs' counsel pursuant to 42 U.S.C. § 1988.

33. To facilitate negotiations, no later than 45 days after the so-ordering of this Agreement, Plaintiffs' counsel shall forward to counsel for Defendants their time and billing records and statements of costs incurred in this action for which recovery is sought

34. If the Parties are unable to agree to an attorneys' fee settlement within 60 days of the date on which Plaintiffs' counsel provides their billing records to counsel for Defendants, either Party may notify the Court that the Parties have reached an impasse. Plaintiffs' counsel will then have 30 days to make an application to the Court for an award of reasonable attorneys' fees, costs and disbursements pursuant to 42 U.S.C. § 1988 (unless extended by mutual agreement of the parties). Defendants' counsel may oppose such application.

SO ORDERED,

This ___ day of _____, 2023.

Hon.
United States District Court
Southern District of New York