

reserved for persons with disabilities. See Tex. Rev. Stat. 6675a-5e.1, *et seq.* (Recodified at Tex. Transp. Code §502.253, 681.001, *et seq.*) At the time this lawsuit was commenced in 1997, the State required the payment of a \$5.00 fee for a five year Placard. Placards are renewable every five years.

II. Procedural History

Representative Plaintiffs filed suit challenging the Placard fee requirement in state court. In September of 1997, the State removed the case to the United States District Court for the Western District of Texas. The federal court then *sua sponte* remanded the action to state court on the ground that the Placard fee is a state tax, and that federal jurisdiction was therefore barred by the Tax Injunction Act, 28 U.S.C § 1341.

Back in state court, class certification was granted, and the State's claim that the case was barred by sovereign immunity was rejected by the state trial court. The State appealed these rulings to Texas' Third District Court of Appeals, where the case was briefed and oral argument scheduled. Before oral argument, on July 17, 2000, the State again removed the case to federal court. The basis asserted for the second removal was generally a ruling by the Fifth Circuit Court of Appeals in a separate lawsuit that the Placard fee is not a tax.

Upon removal, State moved to dismiss Plaintiffs' claims as barred by the Eleventh Amendment to the Constitution of the United States. Plaintiffs moved for remand, arguing State's second removal of a previously removed and remanded case, over three years after suit was filed based on events external to the litigation, was improper. On April 16, 2001, the Federal District Court granted State's motion to dismiss.

On May 19, 2005, the Fifth Circuit Court of Appeals reversed, relying on the holding in Lapides v. Bd. of Regents, 535 U.S. 613 (2002), that Eleventh Amendment immunity from suit in federal court is waived by a state's decision to remove. The Fifth Circuit Court of Appeals rejected the State's argument that Lapides, should be narrowly limited to state law claims for which the state has waived its immunity.

In September, 2006, the State filed a Petition for Writ of Certiorari in the Supreme Court of the United States. State was able to gather *amici curiae* support from the Commonwealth of Virginia, 27 other states, and the Territory of Puerto Rico. The United States, through its Solicitor General, joined by the Attorney General and the Department of Justice, opposed the Defendants' Petition for Writ of Certiorari. On April 30, 2007, the United States Supreme Court denied the State's Petition for Writ of Certiorari in *Texas, et al., v. Meyers, Marjorie, et al.*, No. 06-642. On July 7, 2008, Judge Sparks entered an Order (hereinafter "Order") granting Plaintiffs' Motion for Summary Judgment and denying Defendants' Motion for Summary Judgment. In the Court's Order the Defendant State of Texas was immediately enjoined "from requiring payment from future applicants for placards allowing the use of parking spaces reserved for persons with disabilities". Compliant with the Order, the State immediately ceased requiring the aforescribed payment and directed the return of all payments inadvertently collected after July 7, 2008. Judge Sparks further Ordered the parties "to confer and attempt to reach agreement on the issue of calculation of damages and interest and the procedures for filing and paying claims." Through extensive dialog since September, 2008, and two (2) full days of mediation the parties have reached a

settlement of all issues, with the approvals of the appropriate parties, as detailed hereinafter.

III. Settlement Agreement Terms and Conditions

NOW, THEREFORE, the Plaintiffs and State (collectively hereinafter referred to as "Parties") hereto stipulate this litigation is being compromised and settled pursuant to the recitals in the Introduction and Procedural History set forth hereinabove and pursuant to the terms and conditions set forth hereinafter in this settlement agreement (hereinafter referred to as "Settlement Agreement" or "Agreement"):

1. **Consideration.** The foregoing statements are true and correct. The consideration for this Agreement is the mutual promises contained herein.

2. **Execution and Joinder.** Amadeo Saenz, Jr., in his official capacity as Executive Director of the Texas Department of Transportation, on behalf of the Texas Department of Transportation, and on behalf of the State of Texas, by the execution hereof consent to: 1) the terms and conditions contained herein; and 2) position as party defendants in this action.

Helen Elkin, John D. Hodges, John C. Hart, and Richard Gravett as Representative Plaintiffs, on behalf of themselves and all others similarly situated, by the execution hereof consent to: 1) the terms and conditions contained herein; and 2) position as Representative Plaintiffs in this action.

3. **Benefits of Settlement to Class Members.** The Representative Plaintiffs and the attorneys for the Plaintiffs (hereinafter referred to as "Class Counsel") recognize: a) the expense and duration of continued litigation and the difficulties and delays related

thereto; b) the uncertainty of the outcome of further litigation; c) the primary objective of this action as being declaratory and injunctive relief, the State's cessation of charges for Placards on July 7, 2008, and the objective of this action to secure a refund of fees paid for Placards by Class Members. Representative Plaintiffs and Class Counsel have thoroughly considered the developing decisional authorities and the well reasoned arguments made by the State, both in court and in settlement discussions. Based on the foregoing, the Representative Plaintiffs and Class Counsel have determined the Settlement Agreement set forth herein is fair, reasonable and adequate and in the best interest of Class Members. Plaintiffs continue to believe strongly in their position.

4. **Benefits of Settlement to State.** The State recognizes a) the expense and duration of continued litigation and the difficulties and delays related thereto; b) the uncertainty of the outcome of further litigation; c) the primary objective of this action as being declaratory and injunctive relief, the State's cessation of charges for Placards on July 7, 2008, and the objective of this action to secure a refund of fees paid for Placards by Class Members. Based on the foregoing, the State has determined the settlement set forth herein is fair, reasonable and adequate and in the best interest of State. However, this settlement does not constitute an admission of liability on behalf of the State or its agents, servants, employees, attorneys, or representatives, both individually and in their official capacities.

5. **Settlement Does Not Admit Liability.** Nothing contained herein shall be considered as an admission by either party.

6. **Class Certification.** For purposes of this Settlement Agreement, the parties concur with, and stipulate to, the Rule 23(b)(2) certification of the Plaintiff class as set forth in Order as follows:

All purchasers of disabled parking placards for persons with permanent disabilities, pursuant to Tex. Rev. Stat. art. 667a-5E.1 et seq. (recodified at Tex. Transp. Code §§502.253, 681.001 et seq.) since August 11, 1995, and all persons who will in the future be required to pay money for such placards until and unless declaratory and injunctive relief protects against the requirement of payment as a condition of access to parking accommodations reserved for persons with disabilities.

7. **Effective Date and Required Approvals.** This Settlement Agreement shall not be binding and valid against the State until it has been approved for funding by the legislature in a manner and through a procedure the State deems appropriate. The Parties recognize that the Settlement Fund established herein, and defined hereinafter, is dependent upon legislative appropriation and is dependent upon approval of the appropriate State entities before payment. If such approvals are not obtained within the timeframe provided in this agreement, the Parties may proceed as they deem appropriate and either party shall have the right to resume litigation.

8. **Termination of Charges for Placards.** The Federal District Court ruled in favor of the Plaintiffs on July 7, 2008, enjoining collection of placard fees. State agrees it will not collect fees for original, renewal or replacement placards allowing use of accessible parking by persons with permanent disabilities and that State shall be enjoined from imposing or collecting the same or similar fee in the future.

9. **The Settlement Fund.**

A. **The Fund.** The class shall have and recover from State the sum of \$20,200,816.19 as full and complete settlement and the fund is for all damages, costs, and expenses and any and all administrative fees and administrative costs, litigation costs and litigation expenses, and any other expenses, without limitation, in administering the fund or the class action or giving notice to claimants (hereinafter "The Settlement Fund").

The Settlement Fund shall cover all reimbursements to Class Members, all litigation costs and expenses, all administrative costs and administrative fees, and all expenses for the class action (see above). The Settlement Fund does not include attorneys' fees and no part of the Settlement Fund shall be paid for attorneys' fees. The State has agreed to pay Plaintiffs attorneys' fees in an amount awarded by the Court, but not greater than \$3,900,000.00 as set forth in greater detail at paragraph 23 below.

B. **Delivery of Monies.** Within 30 days of the preliminary approval of this Settlement Agreement by the Court, State shall deliver the sum of \$20,200,816.19 to Class Counsel or directly to "The Settlement Fund" bank account as established by Class Counsel. (hereinafter "Fund Account")

10. **Notice to Class Members.**

A. **Background.** Geographically the State of Texas consists of 254 counties. From County to County there exists no uniform, systematic or consistent means of creating records nor retaining records of Placard purchasers. Of the 254 Counties surveyed by State, differences exist as to the length of time records are kept ranging from 2 years or less in the Counties of Hays, Edwards, Brooks, Deaf Smith,

Gray, King, Lynn, Rodell, Oldham and Wilson, to an indefinite period of time in the Counties of Anderson, Andrews, Bailey, Baylor, Camp, Carson and others. Some counties never created or kept records at all, but followed the practice of selling Placards to persons who presented doctors' notes, without any record being made. Approximately 54 of the 254 counties have Placard records in an electronic format while all of the other counties have no electronic records of Placard purchasers. Of those counties with electronic database records the format of each is not consistent with each other, thus various and different mediums are involved. An inventory of the records available at each county is at Exhibit "A" attached hereto and made a part hereof. Of the 200 Counties that have no electronic records of Placard purchasers most, if not all, keep manual or paper records of Placard purchasers with said records consisting of a non-formatted unassembled inventory of Placard purchasers. Typically these non-electronic records are kept in boxes and consist of a copy of a handwritten Placard application incapable of scanning to a database format with any reliable, consistent or predictable degree of accuracy in the electronic transformation from the handwritten document to an electronic format.

The Parties concur that the non-electronic records are inadequate to identify Class Members through reasonable efforts as contemplated by Rule 23(b)(3) of the Federal Rules of Civil Procedure and further remain mindful this class is certified pursuant to Rule 23(b)2. However, the Parties agree said non-electronic records may serve as a tool to spot check claims filed or to otherwise verify entitlement of claims filed, provided a minimum amount of information is provided by the claimant.

B. Notice to Class Members. Upon approval of funding for this Settlement Agreement by the appropriate State entities and preliminary approval of this Settlement Agreement by the Court with proposed notices related hereto, Representative Plaintiffs and Class Counsel, through its designated Administrator, as hereinafter defined, shall, with monies from the Settlement Fund, cause: i) a Notice, approximately one-quarter page in size, substantially similar to the Notice attached hereto as Exhibit "B", to be published, in a newspaper of general circulation in areas of varying population of the State of Texas, which shall include, to the extent possible, not less than the following:

Amarillo Globe-News (Amarillo, Texas)
Austin American-Statesman (Austin, Texas)
Austin Chronicle (Austin, Texas)
Del Rio News-Herald (Del Rio, Texas)
Corsicana Daily Sun (Dallas-Ft. Worth, Texas)
Denton Record-Chronicle (Dallas-Ft. Worth, Texas)
Palestine Herald-Press (Dallas-Ft. Worth, Texas)
El Paso Times (El Paso, Texas)
El Nuevo Herald (Harlingen, Texas)
McAllen Monitor (McAllen, Texas)
La Subasta Houston (Houston, Texas)
Laredo Morning Times (Laredo, Texas)
Lubbock Avalanche-Journal (Lubbock, Texas)
Houston Chronicle (Houston, Texas)
San Antonio Express-News (San Antonio, Texas)
Fort Worth Star-Telegram (Fort Worth, Texas)
Snyder Daily News (Lubbock, Texas)
Midland Reporter-Telegram (Odessa-Midland, Texas)
Herald Democrat (Sherman, Texas)
Mt. Pleasant Daily Tribune (Mount Pleasant, Texas)
Texarkana Gazette (Texarkana, Texas)
Henderson Daily News (Tyler-Longview, Texas)
Jacksonville Daily Progress (Tyler-Longview, Texas)
Eagle (Waco, Texas)
Killeen Daily Herald (Waco, Texas)

and ii) a Notice, substantially similar to the Notice attached hereto as Exhibit "C", to be mailed to all Placard purchasers whose names and addresses are adequately listed, for such a mailing, on the electronic medium of the counties identified at Exhibit "A" as having electronic medium of such information. Plaintiffs shall have the authority to consider and determine substantially equivalent alternative means of notice in the event unexpected circumstances develop with regard to the above; and iii) a website to be set up to post case information, to allow for the submittal of claims and to provide such other service as Plaintiffs, Class Counsel and Administrator deem appropriate.

C. Notice Dissemination Deadline. All notice required hereinabove shall be completed at least 5 days prior to the Fairness Hearing. Class Counsel shall file with the Court on or before the date of the Fairness Hearing an affidavit from the appropriate person certifying compliance with the Notice requirements stated above.

D. Changes to Notices. The Notices proposed by the Parties as part of this Settlement Agreement are attached hereto as Exhibits "B" and "C". The proposed Notices are subject to the insertion of the appropriate dates and addresses referenced in the Notice as the Parties arrange between them and as further approved as to substantive content. The Parties are permitted to make minor substantive changes to the Notices as they agree between them without Court Order. The Plaintiffs and Class Counsel are authorized to provide additional notice, through its Administrator, as Plaintiffs and Class Counsel deem appropriate with the costs and expenses of same being paid from the Settlement Fund.

11. **Administration.**

Plaintiffs and Class Counsel shall be responsible for administering the Settlement Fund, notice and reimbursement as contemplated in this Settlement Agreement, with all of these expenses, excluding attorneys' fees, to be paid from the Settlement Fund. For purposes of performing the Plaintiffs' and Class Counsel's administrative duties hereunder, the Parties approve the following plan:

A. The administration and processing of the Notice, Claims Form and Reimbursement to putative Class Members will be facilitated and accomplished by Divdat, a Michigan corporation ("Administrator"). Administrator shall perform in accordance with its agreement with the Representative Plaintiffs ("Administrator Agreement"). (See copy of Administrator Agreement at Exhibit "D" attached hereto and made a part hereof.) To secure Administrator's performance, and to protect against malfeasance and misfeasance, Administrator shall, through Class Counsel, submit proof of errors and omissions insurance coverage in the amount of not less than \$20,000,000.00. The Representative Plaintiffs and Class Counsel shall be named as a loss payee of said policy in their capacity as class representatives.

The State shall, within 15 days from the date of Preliminary Approval of this Settlement Agreement by the Court, assist and cooperate with Administrator to secure copies of all electronic databases available and needed for individualized notices (hereinafter "Electronic Records") and to secure such other records as may be reasonable and necessary to verify claims submitted. In no event will the State

or the counties be required to hire personnel to provide said assistance and cooperation.

Upon Administrator's receipt of Electronic Records from the Counties, Administrator shall determine how many individual mailings will be performed. Thereafter Administrator shall perform the Notice requirements as otherwise contemplated in this Settlement Agreement.

Upon the completion of the period to file a claim, Administrator shall review and consider all claims filed and prepare an electronic database of all claims filed and issue reimbursement checks to Class Members submitting valid claims. Said checks shall not exceed the amount each Class Member paid for Placards and in aggregate shall not exceed the amount in the Settlement Fund less administration costs and expenses and litigation costs and expenses. In the event the distribution results in a mathematical computation involving a fraction of a penny, then Administrator shall round down to the closest penny unless Class Counsel, in writing, authorizes, otherwise. The check for reimbursement must be preapproved by the Banking institution holding the Settlement Fund ("Depository") and in a format acceptable to the Depository. Prior to commencement of Notice and distribution of funds, Administrator shall provide Class Counsel, State counsel, and the Depository with a proof copy of the Notice and the reimbursement check for review. At a minimum the proof copy of the reimbursement check shall set forth a preprinted maximum value and an expiration date of not more than 30 days. If Class Counsel, State counsel, or

Depository does not respond to the proof copy within 10 days of receipt, the proof copy submitted by Administrator shall be deemed acceptable by the non-responding party. On a daily basis, Administrator shall provide Depository a data source of information which indicates the number of the check issued, the name and address of the payee and the amount of the check for each check mailed on a given day.

Administrator's denial of any claim submitted must be reviewed by Class Counsel for consideration. If Class Counsel agrees with the Administrator's denial of the claim, a letter of denial must be sent to the putative Class Member submitting the claim, unless claimant has failed to provide an appropriate address. A putative Class Member who has had a claim denied shall be deemed excluded from the class and shall not be affected by this settlement.

B. The Parties agree to have the Court designate Omni Bank, N.A., 4328 Old Spanish Trail, Houston, Texas 77021, as the Court designated depository ("Depository") for this case, to receive the Settlement Fund to which Plaintiffs are entitled by virtue of this Settlement Agreement.

Upon the receipt of Settlement Fund the Depository shall immediately thereafter establish an account with said funds ("Fund Account"). Upon receipt of the Settlement Fund from State, Depository shall file with the Court, through Class Counsel, a statement acknowledging the receipt of the Settlement Fund and the establishment of the Fund Account. The Depository shall handle the Fund Account just like any other checking account at Depository and provide normal, customary

and agreed upon services related thereto. Depository shall perform in accordance with its agreement with Representative Plaintiffs ("Depository Agreement") and the expense thereof shall be a permitted cost of administration. With the exception of its fee, the Depository shall not release any funds from Fund Account until it has received written confirmation from Class Counsel that Administrator's errors and omissions coverage has been delivered to Class Counsel. Upon receiving the receipt of said confirmation from Class Counsel, Depository shall disburse to Administrator one-half of its charge for performing services as Administrator pursuant to the Administrator's Agreement.

C. The parties hereto concur the placard purchase records held by each County may contain information that is not otherwise available to the public, such as social security numbers and medical information. To the extent permitted by law, all parties, and the Administrator, agree to keep confidential all information received from the Counties except the amount paid by the placard purchaser, date of placard purchase and issuing numbers for the placard. The parties will request, in conjunction with the signing of this settlement agreement, that the court enter an order mandating that the Counties release the placard purchase records to the Plaintiffs, including those that may contain personal and medical information. Additionally, any person receiving, reviewing, or utilizing such information on behalf of Plaintiff, including any employees or representatives of the Administrator, shall sign a Confidentiality Agreement as to the personal

information supplied by the Counties for those persons that purchased an applicable placard, such agreement attached as Exhibit "E".

12. **Procedure for Objecting to or Requesting Exclusion from Class Action**

Settlement.

A. Objections. Any Class Member who does not request exclusion from the class and who wishes to object to the Settlement Agreement may appear in person or through counsel, at his or her own expense, at the Fairness Hearing only if that Class Member files with the Court and serves on counsel for the parties no later than the date set by the Court, a written objection setting forth the specific grounds for the objection and copies of all documents the person desires the Court to consider. Class Members who fail to file and serve timely written objections in this manner shall be deemed to have waived the right to object and shall be foreclosed from making any objection, whether by appeal or otherwise, to this Settlement Agreement. Plaintiffs or State shall have the right to submit a written reply to the objections in advance of the Fairness Hearing. If necessary, any disagreement will be resolved at the Fairness Hearing.

B. Exclusions. Class Members who wish to exclude themselves ("opt out") from the Class must submit a written statement to the Court Clerk requesting such exclusion, signed by the Class Member, and postmarked on or before a date set by the Court. Class Members who fail to submit a valid and timely request for exclusion on or before that date shall be bound by all terms of the Settlement Agreement and Order of Dismissal entered in this Class Action

after the Settlement Agreement is finally approved by the Court. Plaintiffs and State shall have the right to file a written objection to the request to be excluded. If necessary, any disagreement will be resolved at the Fairness Hearing.

13. **Final Approval of Settlement Agreement.** Upon approval of this agreement by the parties and appropriate State entities and upon preliminary approval of this Settlement Agreement by the Court, the parties shall apply to the Court to schedule a Final Settlement Hearing (“Fairness Hearing”). Upon final approval of the Settlement Agreement by the Court, disbursement of the Settlement Fund, and payment of attorneys’ fees as provided herein, the Court shall enter an order dismissing this case with prejudice, reserving jurisdiction to carry out the intent of this Settlement Agreement and to enforce the terms and conditions hereof.

14. **Refund/Attorney Fee/Settlement Date.**

A. **Refund.**

i) **Individual.**

a) The only way Class Members may secure a refund of fees paid for Placards purchased is to submit a claim form within thirty (30) days after the Fairness Hearing. The Parties hereto reserve the right to extend this date if the Parties agree and a reasonable basis exists to do so. Disbursement of refunds will be mailed as promptly as possible and is expected to be within 90 days after the deadline to submit a claim form. The claim form shall be in form and in content

acceptable to the Parties. The claim form is contemplated, but shall not be required, to be provided to Class Members with the Notice at Exhibit "C", will be available upon request of a potential claimant and available at the website to be established for this case.

b) The amount of the refund will be based on the number of valid claims to be paid and the availability of funds in the Settlement Fund after the payment of all costs and expenses of administration of this settlement and costs and expenses of litigation: however refunds will not exceed the amount paid for Placards by Class Members. Refunds will not include interest. The Plaintiff representatives and Class Counsel for Plaintiffs expect Class Members filing claims will receive 85% - 100% of the amount paid for Placards.

ii) Unclaimed Funds / *Cy Pres*

a) The Parties recognize there likely will be some amount of unclaimed funds after disbursement of the Settlement Fund for the payment of valid claims, payment of costs and expenses of administration and payment of costs and expenses of litigation. The Parties agree the unclaimed funds resulting from the failure to file claims and from the denial of claims filed by Class Members will be split equally,

whereby one-half of said unclaimed funds shall be distributed to the State and one-half of said unclaimed funds shall be distributed to *Cy Pres* recipients as set forth hereinafter.

b) The portion of the Settlement Fund distributed to *Cy Pres* recipients (hereinafter "Recipient") shall be referred to as "Recipient's Share." The parties have agreed the unclaimed funds available for *Cy Pres* recipients shall be divided among the following organizations who agree to the conditions enumerated below in this paragraph. As well if other organizations request funds up to five (5) days prior to the Fairness Hearing, the parties can include said organization if the parties so agree and same is approved by the Court. If for any reason any of the approved organizations are not eligible to receive money from the class fund, that organization's share may be distributed upon the agreement of the parties.

Recipients

Texas Access to Justice Foundation, Austin, TX	10%
Advocacy, Inc., Austin, TX	10%
Texas Civil Rights Project, Austin, TX	4%
Texas Legal Services Center, Austin, TX	4%
Texas Rio Grande Legal Aid, Weslaco, TX	3.5%
Legal Hospice of Texas, Dallas, TX	1%
Texas Association of Centers for Independent Living, Inc. Lubbock, TX	12.5%
ABLE Center for Independent Living, Odessa, TX	2.5%

Austin Resource Center for Ind. Living, Austin, TX	2.5%
ARCIL – San Marcos, San Marcos, TX	2.5%
ARCIL – Round Rock, Round Rock, TX	2.5%
Coastal Bend Center for Ind. Living, Corpus Christi, TX	2.5%
Coalition for Barrier Free Living/Houston Center for Independent Living	2.5%
Coalition for Barrier Free Living/Brazoria County Center for Independent Living, Angleton, TX	2.5%
Coalition for Barrier Free Living/Fort Bend Center for Independent Living, Sugar Land, TX	2.5%
Crockett Resource Center of Ind. Living, Crockett, TX	2.5%
Palestine Resource Center for Ind. Living, Palestine, TX	2.5%
East Texas Center for Ind. Living, Tyler, TX	2.5%
Heart of Central Texas IL, Belton, TX	2.5%
Lifetime Independence for Everyone, Lubbock, TX	2.5%
Not Without Us!, Abilene, TX	2.5%
Panhandle Independent Living Center, Amarillo, TX	2.5%
Rehabilitation, Education, & Advocacy for Citizens With Handicaps, Dallas, TX	2.5%
REACH – Fort Worth, Fort Worth, TX	2.5%
REACH – Denton, Denton, TX	2.5%
San Antonio Independent Living Services, San Antonio, TX	2.5%
Valley Association for Ind. Living, McAllen, TX	2.5%
South Texas Advocacy & Accessibility Resource Services, Laredo, TX	2.5%
Volar Center for Independent Living, El Paso, TX	2.5%

Each Recipient shall be given its portion of the Settlement

Fund on condition that it agrees in writing to the following:

- (1) to use its share for the benefit of persons with permanent disabilities and meritorious issues related to access to public places and services, (2) to provide the parties' counsel with an accounting and a written statement detailing the manner in which the Recipient's Share will be spent (hereinafter, "Recipient's Report"), (3) to provide the Recipient's Report

to parties' counsel at intervals of six months after receipt of the Recipient's Share until such time as the Recipient's Share is fully spent, (4) to spend no more than 15% of Recipient's Share on administrative expenses, including Recipient's Report, (5) Recipient's share shall not be used for purposes of litigation against, or advocacy in connection with litigation against, the State of Texas or any agency, department or other political subdivision thereof or against any state official or employee in connection with his or her official duties, (6) if any Recipient's Report is not timely submitted, the Recipient shall not expend any remaining portion of Recipient's Share after the due date of Recipient's Report and until the State has received and approved the Recipient's Report, (7) Any portion of a Recipient's Share spent in violation of the Settlement Agreement and the written agreement with said Recipient shall be subject to imposition of a constructive trust in favor of the State, and the State shall have the right to undertake any action necessary for imposition of such constructive trust.

B. Distribution of Settlement Funds and Other Monies.

i) Within 30 days of the preliminary approval of this Settlement Agreement by the Court, State shall deliver to Class

Counsel or directly to “The Settlement Fund” bank account as established by Class Counsel the sum of \$20,200,816.19.

ii) State shall pay attorneys’ fees awarded by the Court, said amount not to exceed \$3.9 million, to Class Counsel within 30 days after the Court enters an Order determining the amount of said attorneys’ fees. This determination will occur at the Fairness Hearing, and said payment of attorneys’ fees will not occur until after the Fairness Hearing.

iii) Class Counsel shall direct, through the Administrator or Depository as necessary, the payment of the unclaimed funds consistent with this Settlement Agreement 30 days after the amount due the State is determined and 30 days after receipt of a written statement from the receiving Recipient committing itself to comply with its obligation to use of *Cy Pres* funds as set out in this Settlement Agreement.

The Parties shall cooperatively file and serve a written certification from the appropriate persons or entity when all monies required to be paid hereunder have been fully distributed and paid.

15. **Release.** Plaintiffs and State, for themselves and their officers, directors, principals, attorneys, representatives, and employees, forever release and discharge each other from any and all claims, debts, demands, actions, suits, causes of action, damages, attorneys’ fees, expenses and costs, in law or in equity, whenever or however incurred,

whether known or unknown, that relate in any way to any acts, omissions, or conduct of any nature whatsoever that arose out of the subject matter of this dispute or the action, and that occurred prior to the execution of this Settlement Agreement. This release shall extend, as to Representative Plaintiffs, HELEN ELKIN, JOHN D. HODGES, JOHN C. HART, and RICHARD GRAVETT, for and on behalf of themselves and their past, present, and future heirs, personal representatives, executors, trustees, administrators, agents, servants, attorneys, insurers, reinsurers, representatives, predecessors and successors in interest, assigns, and any other successors or interested parties, and as to State, and their past, present, and future officers, directors, attorneys, insurers, reinsurers, agents, employees, subsidiaries, affiliates, predecessors, successors in interest, officials, and any other successors or interested parties.

As of the date this Settlement Agreement is approved in finality, all Class Members, who have not validly and timely requested exclusion, or who are otherwise deemed excluded pursuant to the terms hereof, release State, its employees, agents, attorneys, executives, officials, Department Representatives, successors, and predecessors in interest, from any and all claims, debts, obligations, causes of action and liabilities that are asserted in the Complaint or that may be based on the claim that State improperly or illegally charged Placard fees. It is agreed between the Parties that the aforementioned Release is limited to claims arising from State's past actions of charging for Placards or that may be based on the claim that the State improperly or illegally charged for Placards fees related to said claims, and not with respect to any claims based upon any future charges for Placards.

16. **Warranties And Representations.** Class Members through the Representative Plaintiffs represent and warrant they are the sole owner of all claims purported to be released hereby, and they have not assigned or transferred any claim arising from or related to the Litigation to any third party. Further, Class Members through Representative Plaintiffs represent and warrant that no third party has been subrogated to its interest in claims purported to be released hereby, or if any third party has been subrogated to Class Members' interest, the interest of any subrogee has been settled, compromised, and extinguished.

17. **Integration.** This Settlement Agreement constitutes the entire agreement of the Parties regarding the subject matter hereof. The terms of this Settlement Agreement are contractual in nature and not mere recitals. As such, the Parties understand, acknowledge and agree that this Settlement Agreement is fully integrated and supersedes all previous oral or written agreements of the Parties.

18. **Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the heirs, successors, assigns and legal representatives of the Parties and any third party beneficiaries.

19. **Governing Law.** This Agreement is entered into in the State of Texas, and shall be governed by federal and state law applicable in the State of Texas.

20. **Nullification of Settlement Agreement/Exhaustion of Appeals.** In the event the Court enters a final order that is not consistent with this Settlement Agreement, in that such inconsistency creates a material burden to either party, then the burdened

party may seek appellate review to the extent provided by law. If the order is affirmed or no appeal taken, either Party may accept the burden imposed and this Settlement Agreement shall remain in full force and effect, otherwise the burdened party may declare this Agreement null and void and resume litigation.

In the event the Settlement Agreement is rejected by the Court in its entirety, the Parties hereto agree to remain bound and obligated to the terms and conditions hereof until all opportunities to appeal have been exhausted.

21. **Fairness, Adequacy and Reasonableness of Settlement Agreement.** The Parties and their counsel believe the Settlement Agreement is fair, adequate, and reasonable and have arrived at this settlement in an arms length negotiation, utilizing the services of professional mediator Alice Oliver-Parrott and taking into account all relevant factors, present and potential.

22. **Cooperation and Drafting.** For the purposes of construing or interpreting this Settlement Agreement, each of the parties has cooperated in the drafting and preparation of it.

23. **Attorneys' Fees.** The Plaintiffs, through Class Counsel, shall make application to the Court for an award of reasonable attorneys' fees, costs and expenses with supporting affidavits and memorandum as Plaintiffs and Class Counsel deem appropriate for consideration by the Court at the Fairness Hearing. The Parties agree to settle all claims by Plaintiffs against State for attorneys' fees and litigation expenses incurred by Class Counsel and themselves during the pendency of this litigation from its inception to the present and which may be incurred or claimed in the future on the

following terms: the State agrees to pay the Plaintiff Class Counsel three million nine hundred thousand (\$3,900,000.00) dollars in full settlement of all claims for attorneys' fees claimed in this litigation and State further agrees not to object to the application for same. The attorneys' fees shall not be paid from the Settlement Fund. The Plaintiffs and Class Counsel agree to accept the settlement amount in full satisfaction of all claims for attorneys' fees incurred during the pendency of this litigation accruing or claimed at any time. Costs and litigation expenses shall be subject to the approval of the Court at the Fairness Hearing and within 30 days of the Court's award shall be paid from the Settlement Fund.

24. **Headings.** The headings used in this Settlement Agreement are for the convenience of the parties only. As such, these headings shall not have any legal effect whatsoever or, in any other way alter or modify the meaning or interpretation of this Settlement Agreement.

25. **Execution In Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall have full force and effect upon execution by all parties to this Settlement Agreement.

26. **Adequate Consideration.** The Parties agree, covenant, represent, and warrant there is sufficient and adequate consideration being received and fair value being provided by the Parties for entering into this Settlement Agreement, and that this Settlement Agreement is being entered into knowingly, voluntarily, without mental reservation, with no purpose of evasion, and with the intent to be legally bound hereby, without coercion of any kind, in part to remove the uncertainty and expenses of

additional negotiations and future litigation, and with an adequate opportunity for and the actual benefit of the assistance and advice of legal counsel.

27. **Waiver and Amendment.** No breach of any provision of this Settlement Agreement can be waived unless done in writing. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Settlement Agreement. This Settlement Agreement may be amended only by written agreement executed by all of the Parties.

28. **Change in Law or Facts.** The Parties expressly assume any and all risks that the facts and law may be different from the facts and law as known to, or believed to be, by each such party as of the date of this Settlement Agreement, and agree and understand that this Settlement Agreement shall be effective and enforceable according to its terms even if the facts and/or law turn out to be different than each party hereto knows or believes them to be as of the date hereof.

29. **Signatures.** The signatories below declare, warrant and represent that they have the authority to enter into this Settlement Agreement on behalf of their respective party to the extent of the terms herein.

Date: Oct. 2, 2009

John D. Hodges by permission
Representative Plaintiff, John D. Hodges JDS

Date: Oct. 2, 2009

John C. Hart by permission
Representative Plaintiff, John C. Hart JDS

Date: Oct 2, 2009

Richard Gravett by permission
Representative Plaintiff, Richard Gravett JDS

Date: Oct. 2, 2009

Class Counsel:

ROBERT G. FEGERS, P.L.

By: J. Hampton Skelton

Robert G. Fegers

Florida Bar No. 0379719

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Winter Haven, Florida 33883-7692

Telephone (863) 294-3600

PETERSON & MYERS, P.A.

Stephen R. Senn

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Post Office Box 24628

Lakeland, Florida 33802-4628

Telephone: 863-683-6511

SKELTON & WOODY

J. Hampton Skelton, Esquire

State Bar No. 18457700

P.O. Box 1609

Austin, Texas 78767-1609

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Facsimile: 512-651-7001

LEWIS SAUL & ASSOCIATES P.C.

Lewis J. Saul

Jon Hinck

183 Middle Street, Suite 200

Portland, ME 04101

Tel: (207) 874-7407

Legal review for Texas Department of
Transportation:

Date: 10/1/09

By: Walter C. Brocato

Walter C. Brocato, Esquire
Assistant Attorney General of Texas
Texas Bar No. 03039050
Attorney-in-Charge
Transportation Division
Post Office Box 12548
Austin, Texas 78711-2548
Attorneys for Defendants,
The State of Texas
Texas Department of Transportation

Date: 10/1/09

By: Amadeo Saenz, Jr.

Amadeo Saenz, Jr.
Executive Director of the Texas
Department of Transportation

State of Texas

settlement, including attorney fees and costs; having provided all parties in interest reasonable notice and opportunity to object or opt out of the class and proposed settlement; having considered the presentation of all parties in interest during the fairness and final settlement hearing; the Court enters the following findings of fact, conclusions of law, and orders.

FINDINGS AND CONCLUSIONS:

1. This Court has jurisdiction of this matter.
2. The prerequisites and requirements for a class action under Federal Rules of Civil Procedure, have been satisfied;
3. The class previously certified in the Order Granting Preliminary Approval is adjudicated to be the final class for purposes of this class action and the final settlement:

All purchasers of disabled parking placards for persons with permanent disabilities, pursuant to Tex. Rev. Stat. art. 667a-5E.1 et seq. (recodified at Tex. Transp. Code §§502.253, 681.001 et seq.) since August 11, 1995, and all persons who will in the future be required to pay money for such placards until and unless declaratory and injunctive relief protects against the requirement of payment as a condition of access to parking accommodations reserved for persons with disabilities.

4. The terms and provisions of the **Settlement Agreement, see Exhibit A to Joint Stipulated Motion for Entry of Order Granting Preliminary Approval of Settlement Agreement, and Scheduling Fairness Hearing** filed October 2, 2009, are fair, reasonable and adequate;
5. The notice given satisfies the requirements of Federal Rules of Civil

Procedure;

6. Some class members have elected to be excluded, i.e., to opt out of the class;

7. Some class members filed an objection to an issue or matter considered by this Court at the Fairness Hearing held January 29, 2010;

8. The plan for reimbursement and the proposed creation and use of a *cy pres* fund is fair, equitable, and necessary considering the totality of relevant circumstances;

9. The parties' identification and nomination of entities to receive *cy pres* distributions and funds should be approved as fair, equitable and, necessary given the circumstances;

10. The plan of *cy pres* allocation and distribution proposed by the parties in the **Settlement Agreement**, as amended as contemplated within the Settlement Agreement, should be approved as fair, equitable, and necessary given the circumstances;

11. The Plaintiffs' Motion and Memorandum for Attorney Fees and Costs should be granted. Given the fund value of \$20,200,815.17 and the value of the injunctive relief secured by the attorneys for the Plaintiff Class, an attorney fee of \$3,900,000.00 is deemed by the Court as fair and reasonable, and should be paid by the Defendants in the manner prescribed in the **Settlement Agreement**.

12. Class Counsel's cost in the aggregate amount of \$31,255.03 is deemed fair and reasonable and should be paid in the manner prescribed in the **Settlement Agreement**.

13. The notice requirements set forth in the **Settlement Agreement** and the **Order Granting Preliminary Approval** entered October 19, 2009, have been satisfied; and

14. The proposed settlement is fair, reasonable, and adequate and should be approved in all respects.

THEREFORE, IT IS ORDERED as follows:

1. That the plaintiffs' class is confirmed and is **CERTIFIED** as follows:

All purchasers of disabled parking placards for persons with permanent disabilities, pursuant to Tex. Rev. Stat. art. 667a-5E.1 et seq. (recodified at Tex. Transp. Code §§502.253, 681.001 et seq.) since August 11, 1995, and all persons who will in the future be required to pay money for such placards until and unless declaratory and injunctive relief protects against the requirement of payment as a condition of access to parking accommodations reserved for persons with disabilities.

2. That the **Settlement Agreement**, *see Exhibit A to Joint Stipulated Motion for Entry of Order Granting Preliminary Approval to Settlement Agreement, and Scheduling Fairness Hearing* filed October 2, 2009, which has been found to be fair, adequate, and reasonable, is **APPROVED** and its terms **IMPLEMENTED** effective immediately, with each party in interest **TO PERFORM** all relevant terms thereof.

3. That the settlement payment **SHALL BE USED** and **DISTRIBUTED** to claimants, and the unclaimed funds, to *cy pres* Recipients as provided in the **Settlement Agreement**. The plan of *cy pres* allocation and distribution to the recipients proposed by the parties in their **Joint Stipulated Motion for Entry of Order Granting Preliminary Approval of Settlement Agreement, and Scheduling Fairness Hearing**, filed October 2, 2009, as amended as to recipients and allocations, at the Fairness Hearing, is **APPROVED** as fair, equitable, and necessary in the circumstances, and its terms are **IMPLEMENTED**. Those Class Members having timely filed an exclusion with the Clerk of the Court are deemed excluded from the class. Objections asserted by Class Members have been considered by the Court and are **OVERRULED**.

4. That attorney fees in the amount of \$3,900,000.00, are **AWARDED** to the respective law firms of Skelton & Woody, Peterson & Myers, P.A., and

Robert G. Fegers, P.L., by payment no later than April 29, 2010, to Attorney J. Hampton Skelton Trust Account, c/o Skelton & Woody, P.O. Box 1609, Austin, Texas 78767-1609, and divided as the law firms have agreed among them.

5. That pursuant to **Settlement Agreement**, this action is **DISMISSED** with prejudice *eo instante* upon Defendants performance as described hereinabove.

Done in chambers January 29, 2010, to confirm, expatiate, and supplement the findings of fact, conclusions of law, and orders entered from the bench in open court on January 29, 2010.

BY THE COURT:

Sam Sparks
United States District Judge

Conformed copies to:
J. Hampton Skelton, Esq.
Co-Counsel for Plaintiffs
Skelton & Woody
P.O. Box 1609
Austin, Texas 7767-1609

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Kristina Silcocks
Walter C. Brocato, Esq.
Counsel for Defendants
Office of Attorney General
P.O. Box 12548
Capitol Station
Austin, TX 78711-2528

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARJORIE MEYERS, by Next Friend §
EDGAR C. BENZING, HELEN ELKIN, §
RUTH H. DAVIS, and PHILLIP §
GREENBERG, on behalf of themselves §
and all others similarly situated, §

Plaintiffs, §

vs. §

Civil Action No. 00 CA 430 SS

STATE OF TEXAS, DEPARTMENT §
OF TRANSPORTATION, and §
AMADEO SAENZ, JR., in his capacity §
as Executive Director of the Texas §
Department of Transportation; §

Defendants §

PLAINTIFFS' AMENDED NOTICE OF FILING
AMENDED LIST OF *CY PRES* RECIPIENTS

Comes now Plaintiffs' counsel and files this, its Amended Notice of Filing Amended List of *Cy Pres* Recipients, and in support states:

Pursuant to the terms of the Settlement Agreement entered into by the parties hereto, specifically paragraph 14. A. ii) b), the parties are able to include other organizations that have made requests for funds five (5) days prior to the Fairness Hearing. In accordance therewith, five (5) organizations have requested inclusion. For the Court's consideration, Plaintiffs' counsel does hereby submit and provide notice of the Amended List of *Cy Pres* Recipients (attached as Exhibit A) with an adjusted allocation.

PETERSON & MYERS, P.A.
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(863) 299-7166 (FAX)

Respectfully submitted,

SKELTON & WOODY
J. Hampton Skelton
State Bar No. 18457700
hskelton@skeltonwoody.com
248 Addie Roy Road, Suite B-302
Austin, Texas 78746
(512) 651-7000
(512) 651-7001 (FAX)

s/ J. Hampton Skelton

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on this **27th** day of January, 2010, I am electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

William C. Brocato
Assistant Attorney General
Transportation Division
Office of the Attorney General
300 West 15th Street, 14th Floor
Austin, Texas 78701

And I hereby certify on this 27th day of January, 2010, that I am serving the document by electronic mail to the following non-CM/ECF participants to date in this case:

Kristina Silcocks
Assistant Attorney General
Transportation Division
Office of the Attorney General
300 West 15th Street, 14th Floor
Austin, Texas 78701

/s/ J. Hampton Skelton

AMENDED LIST OF *CY PRES* RECIPIENTS

<u>Entity</u>	<u>Allocation</u>
Texas Access to Justice Foundation, Austin, TX	8.5%
Advocacy, Inc., Austin, TX	8.5%
Texas Civil Rights Project, Austin, TX	3.5%
Texas Legal Services Center, Austin, TX	3.5%
Texas Rio Grande Legal Aid, Weslaco, TX	3.0%
ADAPT, Austin, TX	2.0%
Brain Injury Association of Texas, Austin, TX	0.5%
Coalition of Texas with Disabilities, Austin, TX	3.5%
Community NOW, San Marcos, TX	0.75%
CORE Foundation, Dripping Springs, TX	0.75%
Texas Chapter PVA, Houston, TX	1.0%
Legal Hospice of Texas, Dallas, TX	1.0%
Texas Association of Centers for Independent Living, Inc., Lubbock, TX	8.5%
ABLE Center for Independent Living, Odessa, TX	2.5%
Austin Resource Center for Ind. Living, Austin, TX	2.5%
ARCIL – San Marcos, San Marcos, TX	2.5%
ARCIL – Round Rock, Round Rock, TX	2.5%
Coastal Bend Center for Ind. Living, Corpus Christi, TX	2.5%
Coalition for Barrier Free Living/Houston Center for Independent Living	2.5%
Coalition for Barrier Free Living/Brazoria County Center for Independent Living, Angleton, TX	2.5%
Coalition for Barrier Free Living/Fort Bend Center for Independent Living, Sugar Land, TX	2.5%
Crockett Resource Center of Ind. Living, Crockett, TX	2.5%
Palestine Resource Center for Ind. Living, Palestine, TX	2.5%
East Texas Center for Ind. Living, Tyler, TX	2.5%
Heart of Central Texas IL, Belton, TX	2.5%
Lifetime Independence for Everyone, Lubbock, TX	2.5%
Not Without Us!, Abilene, TX	2.5%
Panhandle Independent Living Center, Amarillo, TX	2.5%
Rehabilitation, Education, & Advocacy for Citizens With Handicaps, Dallas, TX	2.5%
REACH – Fort Worth, Fort Worth, TX	2.5%
REACH – Denton, Denton, TX	2.5%
San Antonio Independent Living Services, San Antonio, TX	2.5%
Valley Association for Ind. Living, McAllen, TX	2.5%
South Texas Advocacy & Accessibility Resource Services, Laredo, TX	2.5%
Volar Center for Independent Living, El Paso, TX	2.5%

EXHIBIT

A