



Bowles & Johnson

January 13, 2023

**By ECF**

Hon. Paul G. Gardephe  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, NY 10007

**Re: *Denson v. Donald J. Trump for President, Inc.*, No. 20 Civ. 4737 (S.D.N.Y.)  
Joint Letter Motion to Approve Settlement**

Dear Judge Gardephe:

We represent Lead Plaintiff Jessica Denson, along with a putative class of similarly situated individuals, in the above-referenced action. We write this letter jointly with Defendant Donald J. Trump for President, Inc. (the “Campaign”). We are pleased to inform the Court that the parties agreed to settle this action during their settlement conference before Magistrate Judge Figueredo on December 13, 2022. Accordingly, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the parties submit their agreement to the Court for approval.

As the Court will recall, Lead Plaintiff Jessica Denson commenced this putative class action alleging that all Campaign workers from the 2016 Presidential campaign signed a substantively identical contract containing invalid non-disclosure and non-disparagement provisions (the “Employment Agreement”). On March 30, 2021, the Court granted, in part, Ms. Denson’s motion for summary judgment, declaring the Employment Agreement’s non-disclosure and non-disparagement provisions invalid and unenforceable as to Ms. Denson only. ECF No. 48. Following the Court’s decision, Ms. Denson moved to amend her complaint to request injunctive relief on behalf of herself and the putative class. On March 30, 2022, the Court granted Ms. Denson’s motion and ordered the parties to proceed to class discovery. ECF No. 76.

The Campaign, as of June of 2021, stated in writing that it would cease any enforcement of the Employment Agreement’s non-disclosure and non-disparagement provisions against Ms. Denson. While the parties were conducting class discovery, the Campaign made another sworn declaration that it “shall not ever” enforce the non-disclosure and non-disparagement provisions and stated that it notified the putative class members in a signed writing that they are “no longer bound” by these provisions. ECF Nos. 83-1, 83-2. The Campaign voluntarily undertook these steps to release any putative class members on its own volition despite its asserted defense that any class action would have been barred by the arbitration clause contained in the Employment Agreement. Lead Plaintiff’s position was, and remains, that neither of these actions were sufficient to ensure these provisions would never be enforced by any party, and that the Campaign affirmatively waived any right to arbitrate class claims.

Class discovery closed on August 31, 2022, and Ms. Denson moved for class certification on October 6, 2022, which the Campaign opposed.

On October 7, 2022, Your Honor referred the parties to a settlement conference before Magistrate Judge Figueredo, which, as noted above, took place on December 13, 2022. At the conference, the parties agreed on a settlement in principle, subject to the Court's approval. The parties' proposed settlement agreement and mutual release (the "Proposed Agreement") is submitted herewith as Exhibit A, and it contains the following material terms:

- The parties will jointly submit two proposed stipulation and orders, pursuant to which (i) the proposed class consisting of all Campaign employees, contractors, and volunteers who executed the Employment Agreement, or any contract containing substantively identical non-disclosure and non-disparagement provisions, during the 2016 election would be provisionally certified for the purposes of settlement only, and (ii) enjoining the enforcement of those provisions by the Campaign or any third parties;
- Following the Court's entry of the above-referenced stipulation and orders, the Campaign will pay class counsel an aggregate total of \$ [REDACTED], which includes any and all attorneys' fees and costs (including notice-related costs) and an incentive fee of \$ [REDACTED] to Ms. Denson, amounts which the parties have agreed to keep confidential;
- Mutual releases, with two express carve-outs; and
- The Campaign will provide the contact information that it has in its possession custody, or control for the putative class members so that class counsel can provide notice to the class of the settlement.

The parties now submit this letter motion seeking the Court's approval of the Proposed Agreement pursuant to Rule 23(e).

### **Rule 23(e) Should Be Liberally Construed In The Instant Case**

Because class litigation has the potential to affect the rights of absent class members, Rule 23 puts in place various procedural safeguards so that the Court can ensure those absent parties' rights are adequately protected. Rule 23(e), which requires Court approval of any class settlement, is one of those safeguards – it “protects unnamed class members from unjust or unfair settlements affecting their rights when the representatives become fainthearted before the action is adjudicated or are able to secure satisfaction of their individual claims by a compromise.” *Amchem Prods. v. Windsor*, 521 U.S. 591, 623 (1997).

The application of Rule 23(e) to this action, however, is somewhat unique. Because Plaintiff and the class members seek *only* injunctive and declaratory relief, because the settlement provides Plaintiff and the class members with the relief that they could obtain through continued litigation, and because by virtue of the settlement the class stands only to *gain* rights, not lose them, the typical concerns animating the Court's Rule 23(e) inquiry are largely (if not entirely)

absent here. There is no danger that the settlement is the result of “faintheartedness,” since it provides the class with the relief sought in the Complaint. And there is no danger that Ms. Denson is putting her interests above those of the class, since she has already prevailed on her claim and has continued to litigate for two years to ensure class-wide relief. Moreover, the Campaign has already communicated to the putative class members that they are released from their non-disparagement and non-disclosure obligations to the Campaign. In light of these considerations, the parties respectfully suggest that the Court should take a liberal approach in its role safeguarding the rights of absent class members pursuant to Rule 23(e).

### **Provisional Class Certification for Settlement Purposes Is Necessary and Appropriate**

One of the critical components of the parties’ Proposed Agreement is that the Court enter an order provisionally certifying the class for purposes of settlement only. Until the class is provisionally certified, counsel has no authority to bind the class, and therefore the settlement cannot be effectuated without the class first being provisionally certified.

The parties have submitted a joint proposed stipulation and order provisionally certifying the class, which they respectfully request the Court “so-order.”

### **The Settlement Satisfies All Factors for Approval**

In this Circuit, there is a “strong judicial policy in favor of settlements, particularly in the class action context.” *In re Painewebber Ltd. Partnerships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998). In ordinary circumstances, the reviewing court should consider some combination of nine factors when considering whether to approve a settlement. These are referred to as the “*Grinnell* factors,” and include:

- (1) the complexity, expense and likely duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;
- (6) the risks of maintaining the class action through the trial;
- (7) the ability of the defendants to withstand a greater judgment;
- (8) the range of reasonableness of the settlement fund in light of the best possible recovery;
- (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

*Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005). Courts also review the reasonableness of any attorney fee award in a class action settlement. *Id.* at 120. Of course, certain of these factors – including 5, 7, 8, and 9 – are inapplicable here because this case does not involve monetary damages. To the extent they are applicable at all, the remaining factors all favor approval of the settlement.

The complexity, expense and likely duration of the litigation. This case certainly qualifies as complex and lengthy: it has a complicated history involving multiple other judicial and arbitral forums stretching over four years (ECF No. 77 ¶¶ 50–79), and it has already occupied two and one-half years of litigation before this Court. Moreover, continued litigation would likely result in multiple additional rounds of briefing centered on the arbitration clause of the Employment Agreement, mootness, the appropriate relief, and fees and costs. Resolution by settlement is therefore favored. *Wal-Mart Stores, Inc.*, 396 F.3d at 118.

The reaction of the class to the settlement. There has been no reaction of the class to the settlement as the class has not been notified of the settlement. Nevertheless, as the settlement merely releases the class members from contractual obligations without having to give up anything in return, it can be presumed the reaction would not be unfavorable. In fact, the Campaign has already informed the putative class members that they are released from these obligations, ECF No. 83; it has not reported that any putative class member objected or expressed reservations about that decision. “[T]he absence of substantial opposition is indicative of class approval.” *Wal-Mart Stores, Inc.*, 396 F.3d at 118.

The stage of the proceedings and the amount of discovery completed. Discovery is complete in this case. Where discovery has been completed and the parties are ready for trial, “the court obviously has sufficient evidence to determine the adequacy of settlement.” *Wal-Mart Stores, Inc.*, 396 F.3d at 118.

The risks of establishing liability and the risks of maintaining the class action through trial. Here, the parties are in an unusual posture in that the Court has already ruled that the Employment Agreement’s non-disclosure and non-disparagement provisions are invalid and unenforceable as to Ms. Denson but has not yet extended this ruling to the entire class. ECF No. 48. The Campaign has opposed class certification, arguing that this action has been mooted by, among other things, the Campaign’s voluntary cessation of enforcement of the Employment Agreement’s non-disclosure and non-disparagement provisions and that Employment Agreement’s arbitration provision precludes class treatment in any event. ECF No. 100 at 4–9. While Plaintiffs disagree with those arguments, there remains a risk as to whether a class would be certified. Thus, the parties agree that the certainty of a settlement is preferable to continued litigation.

Reasonableness of the attorney’s fee award. As discussed above, courts also review the reasonableness of any fee award. Here, the \$ [REDACTED] afforded to Ms. Denson’s counsel and Ms. Denson is certainly reasonable. Those fees are further reasonable given that (1) Lead Plaintiff (initially *pro se*) and her counsel litigated this case for more than three years; (2) the attorneys’

fees will be split between three entities: two law firms and one nonprofit organization, with at least seven experienced attorneys involved; (3) the fee award is a reduction from what counsel could be entitled under a pure lodestar calculation to date; and (4) the fee agreement was negotiated and reduced by agreement among the parties, under the guidance of Magistrate Judge Figueredo. Accordingly, the parties jointly and respectfully submit to the Court that the award is reasonable.

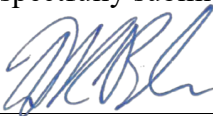
### **Hearing and Notice**

Rule 23(e)(1)(B) requires a hearing and a finding of fairness for any settlement that binds class members. While this settlement in some sense binds class members, insofar as no class member could bring similar claims in the future, that is not only because they have released any rights, but also because the settlement removes the predicate fact that would underlie such a claim – *i.e.*, the existence of a valid and enforceable Employment Agreement. The parties therefore submit that any fairness hearing can be conducted swiftly and simply.

Moreover, because this is a Rule 23(b)(2) class (meaning that the only relief sought is injunctive and declaratory), the Court is not required to direct notice to class members prior to a fairness hearing (or at all). Fed. R. Civ. P. 23(c)(2)(A). The parties respectfully submit that, given the unique factors of this case as described above, no Court-directed notice is necessary for final approval of the settlement. That said, because Ms. Denson and her counsel have an interest in letting class members know that they are no longer bound by the Employment Agreement's non-disclosure and non-disparagement provisions, the settlement contains provisions that will help them get the word out, including that the Campaign will provide all contact information for class members in its possession, custody, and control.

In summary, the parties agree that the proposed settlement is fair, and jointly submit the agreement to the Court for the Court's approval.

Respectfully submitted on behalf of all parties,



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David K. Bowles  
Bowles & Johnson PLLC

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release (the “Settlement Agreement”) is entered into among Jessica Denson (hereinafter “Ms. Denson” or “Class Representative”), individually and on behalf of a settlement class of similarly situated persons (hereinafter “Settlement Class”), and Donald J. Trump for President, Inc. (hereinafter “the Campaign”). The parties to this Agreement are collectively referred to as the “Parties.”

**WHEREAS**, Ms. Denson, individually and on behalf of the Settlement Class, and the Campaign, are parties to a civil action entitled *Denson v. Donald J. Trump for President, Inc.*, Case No. 20-cv-4737 (PGG), pending in the United States District Court for the Southern District of New York (hereinafter the “Litigation”);

**WHEREAS**, Ms. Denson, individually and on behalf of a class of similarly situated persons, alleged in her First Amended Class Action Complaint, dated April 5, 2022 (the “Complaint”), that Ms. Denson and the Campaign entered into a contract (the “Employment Agreement”) dated on or about August 18, 2016, and that certain provisions in the Employment Agreement – referred to herein as the “non-disclosure” and “non-disparagement” provisions – violate New York contract law, the New York Constitution, and the First Amendment to the United States Constitution;

**WHEREAS**, on March 30, 2021, the Court in the Litigation declared the non-disclosure and non-disparagement provisions contained in the Employment Agreement invalid and unenforceable as to Ms. Denson only;

**WHEREAS**, prior to this settlement, the Campaign voluntarily stated in writing that it was currently releasing all employees, contractors, and volunteers from any non-disclosure or non-

disparagement obligations to the Campaign contained in any agreements signed by them in connection with the 2016 election;

**WHEREAS**, prior to this settlement, the Campaign represents that on its own volition it notified all of these employees, contractors, and volunteers in a signed writing that they are “no longer bound” by these non-disclosure and non-disparagement provisions;

**WHEREAS**, the Court noted that the Employment Agreement purports to empower over 500 entities other than the Campaign to enforce its terms, ECF No. 76 at 10;

**WHEREAS**, the Parties and their counsel have determined that it is in their best interest to resolve the Litigation, and have concluded that the terms and conditions provided in this Settlement Agreement are fair, reasonable, adequate, and in their best interests;

**WHEREAS**, on the information available to Plaintiffs, Plaintiffs’ counsel understand there is no Settlement Class member who previously paid for the Campaign’s fees and costs in relation to any enforcement of the Employment Agreement’s non-disclosure and non-disparagement provisions;

**WHEREAS**, the Parties agree that the settlement reduced to writing in this Settlement Agreement was negotiated among the Parties in good faith and at arm’s length, and constitutes a fair, reasonable, and adequate resolution for Ms. Denson and the Settlement Class, pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure;

**NOW, THEREFORE**, the Parties stipulate and agree that the claims of Ms. Denson and the Settlement Class should be and are hereby compromised and settled, subject to the Court’s approval, upon the following terms and conditions:

1. **Settlement**. This Settlement Agreement is entered into, along with two simultaneously filed joint proposed stipulation and orders (the “Proposed Orders”), to fully and finally

resolve all claims against the Campaign by Ms. Denson and the Settlement Class that have been asserted in the Litigation regarding the validity of the Employment Agreement's non-disclosure and non-disparagement provisions. One of those proposed orders would provisionally certify the Settlement Class for the purposes of settlement only, and the second would permanently enjoin the Campaign and all third-parties from enforcing the non-disclosure and non-disparagement provisions of the Employment Agreement against any Settlement Class member. The assertions, statements, agreements, and representations made herein are for purposes of settlement only and the Parties expressly agree that, if the Proposed Orders are not approved by the Court, this Settlement Agreement shall be null and void and may not be used by any Party for any reason.

2. **Settlement Terms.** Pursuant to this Settlement Agreement, the Parties agree as follows:

i. Within 7 days of the Parties' execution of this Settlement Agreement, the Parties shall submit the Proposed Orders to the Court, substantially in the forms attached hereto as Exhibits A and B.

ii. Within 21 days of the Court's entering the Proposed Orders as orders (hereafter the "Orders") and approving this settlement, the Campaign will pay to Class Counsel an aggregate total of \$ [REDACTED], constituting the reasonable and stipulated fees and expenses of Class Counsel, a reasonable incentive award of \$ [REDACTED] for the benefit of Class Representative, and any costs incurred by Ms. Denson or Class Counsel in connection with any effort to notify the Settlement Class of the Orders and this Settlement Agreement.

Payment shall be wired to the account listed below:





**Note: Payor must indicate the client name and file number in the wire transfer description.**

iii. Within 21 days of the entry of the Orders and approving this settlement, the Campaign will provide to Class Counsel the contact information that it has in its possession, custody, or control for the Settlement Class so that Class Counsel may endeavor to notify class members of the Orders and this Settlement Agreement. In the event the Court orders that class notice be provided prior to approval of this Settlement Agreement, the Campaign will provide the contact information that it has in its possession, custody, or control for the Settlement Class so that Class Counsel may timely comply with any such court order.

iv. The Campaign, on behalf of itself and its past, present, and future owners, affiliates, related business entities, parents, subsidiaries, predecessors, successors, assigns, divisions, directors, officers, trustees, members, board members, employees, volunteers, stockholders, representatives, insurers, attorneys, in their individual and representative capacities, and each and every one of them and their heirs, executors, administrators, successors and assigns, and all persons acting through, under or in concert with it, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, forever, fully, irrevocably, and unconditionally release and discharge Ms. Denson and the Settlement Class from any and all claims, demands, debts, damages, costs, expenses,

actions, causes of action, suits, and liabilities of any kind and nature throughout the world, whether known or unknown, actual or potential, from the beginning of time to the Effective Date, arising out of or related to the non-disclosure and non-disparagement provisions of the Employment Agreement. For avoidance of doubt, this release includes a waiver of any appellate rights with respect to the Litigation.

v. Ms. Denson and the Settlement Class, on behalf of themselves, their heirs, successors, representatives, assigns, attorneys, agents, executors, and administrators, and all persons acting through, under or in concert with them, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, forever, fully, irrevocably, and unconditionally release and discharge the Campaign, its past, present, and future owners, affiliates, related business entities, parents, subsidiaries, predecessors, successors, assigns, divisions, directors, officers, trustees, members, board members, employees, volunteers, stockholders, representatives, insurers, attorneys, in their individual and representative capacities, and each and every one of them and their heirs, executors, administrators, successors and assigns from any and all claims, demands, debts, damages, costs, expenses, actions, causes of action, suits, and liabilities of any kind and nature throughout the world, whether known or unknown, actual or potential, from the beginning of time to the Effective Date, arising out of or related to the non-disclosure and the non-disparagement provisions of the Employment Agreement, including, without limitation, all claims that were asserted by Ms. Denson in the Litigation, excluding the matters set forth below in paragraph 2(vi). For avoidance of doubt, this release includes a waiver of any appellate rights with respect to the Litigation.

vi. Ms. Denson and the Campaign understand and agree that the release set

forth above in paragraph 2(v) specifically excludes claims arising out of or related to the non-disclosure and non-disparagement provisions of the Employment Agreement that were asserted prior to the execution of this Settlement Agreement and are currently pending in a judicial, arbitral, or other similar forum, as well as those causes of action and claims for damages, attorneys' fees and costs that Plaintiff is asserting against Defendant in the lawsuit pending in the Supreme Court of the State of New York, County of New York, entitled *Jessica Denson v. Donald J. Trump for President, Inc.*, Index No. 101616/2017.

3. **The Settlement Class.** For purposes of settlement, the Parties agree to the certification of the following Settlement Class: all Campaign employees, contractors, and volunteers who executed the Employment Agreement, or any agreement containing substantively identical non-disclosure and non-disparagement provisions, during the 2016 election.
4. **Confidentiality of Amount of Attorneys' Fees and Costs.** The Parties agree that neither party nor their counsel shall disclose the amount of attorneys' fees and costs (including the amount for an incentive fee) listed above in paragraph 2(ii). The parties understand that maintaining the confidentiality of the amount paid by the Campaign in connection with this settlement is a material aspect of the settlement. The parties will contemporaneously file a sealing motion with the Court along with this Settlement Agreement to ensure that the amount of the attorneys' fees and the incentive award remains confidential; should the Court deny that motion, this Settlement Agreement will be null and void.
5. **Exclusion of Other Litigation.** This Settlement Agreement shall have no effect, and shall in no way settle, any other pending litigation between Ms. Denson and the Campaign.
6. **Agreement Contingent Upon Entry of Final Approval.** This Settlement Agreement is contingent upon entry of the Proposed Orders. If the Court declines to enter

the Proposed Orders or enters one or more order(s) that materially differ from the Proposed Orders, then this Settlement Agreement shall be null and void and neither the fact that this Settlement Agreement was made nor any stipulation, representation, agreement or assertion made in this Settlement Agreement may be used against any Party.

7. **Notices.** Requests for exclusion, objections to the Settlement Agreement or settlement, and notices to the Parties or the Settlement Class shall be sent and/or copied to counsel for the Parties as follows:

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8. **Integration Clause.** This Settlement Agreement contains the full, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and supersedes any prior writings or agreements (written or oral) between or among the Parties, which prior agreements may no longer be relied upon for any purpose. This Settlement Agreement shall not be orally modified in any respect and can be modified only by the written agreement of the Parties supported by acknowledged written consideration.
9. **Headings.** Headings contained in this Settlement Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Settlement Agreement.
10. **Binding and Benefiting Others.** This Settlement Agreement shall be binding upon and inure to the benefit or detriment of the Parties and their respective agents, employees, representatives, trustees, officers, directors, shareholders, divisions, parent corporations, subsidiaries, heirs, executors, assigns, and successors in interest.
11. **Representations and Warranties.** The Parties each further represent, warrant, and agree that, in executing this Settlement Agreement, they do so with full knowledge of any and all rights that they may have with respect to the claims released in this Settlement Agreement and that they have received independent legal counsel from their attorneys with regard to the facts involved and the controversy herein compromised and with regard to their rights arising out of such facts. Each of the individuals executing this Settlement Agreement warrants that he or she has the authority to enter into this Settlement

Agreement and to legally bind the party for which he or she is signing.

12. **Governing Law.** The contractual terms of this Settlement Agreement shall be interpreted and enforced in accordance with the substantive law of the State of New York, without regard to its conflict of laws and/or choice of law provisions.
13. **Mutual Interpretation.** The Parties agree and stipulate that this Settlement Agreement was negotiated on an “arm’s-length” basis between parties of equal bargaining power. This Settlement Agreement has been drafted jointly by Class Counsel and counsel for the Campaign. Accordingly, this Settlement Agreement is not one of adhesion, is mutually created, and no ambiguity shall be construed in favor of or against any of the Parties.
14. **Incorporation of Recitals.** Each of the Recitals stated above are hereby incorporated into this Settlement Agreement as if stated fully herein.
15. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. Facsimile and electronic signatures shall bind the Parties to this Settlement Agreement as though they are original signatures.
16. **Severability.** In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions if the Parties and their counsel mutually elect by written stipulation to be filed with the Court within 20 days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Settlement Agreement.
17. **No Waiver of Breach.** No breach of any provision hereof can be waived unless in writing.

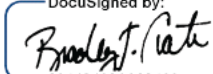
Waiver of any one breach of any provision hereof shall not constitute waiver of any other breach of the same or any other provision hereof.

- 18. **Continuing Jurisdiction.** The Honorable Paul Gardephe shall retain exclusive jurisdiction over this Settlement Agreement, including over any alleged breaches thereof.


IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed on the date set forth beside their respective signatures.

Dated: January 13, 2023

  
\_\_\_\_\_  
Jessica Denson  
Lead Plaintiff

DocuSigned by:  
  
\_\_\_\_\_  
Bradley Crate  
Treasurer for the Campaign

  
\_\_\_\_\_  
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/s/ Joseph Slaughter  
\_\_\_\_\_  
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*Counsel for Plaintiffs*



# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JESSICA DENSON, Individually and on  
Behalf of All Others Similarly Situated,

*Plaintiffs,*

v.

DONALD J. TRUMP FOR PRESIDENT, INC.,

*Defendant.*

No. 20 Civ. 4737 (PGG)

**[JOINT PROPOSED] STIPULATION AND ORDER  
PROVISIONALLY CERTIFYING A SETTLEMENT CLASS**

WHEREAS, Lead Plaintiff Jessica Denson filed a putative class action to challenge the validity and enforceability of the non-disclosure and non-disparagement provisions contained in the agreements entered between defendant Donald J. Trump for President, Inc. (the “Campaign”) and its employees, contractors, and volunteers during the 2016 election cycle (the “Employment Agreement”);

WHEREAS, on March 31, 2021, the Court declared the Employment Agreement’s non-disclosure and non-disparagement provisions invalid and unenforceable as to Ms. Denson only;

WHEREAS, on March 30, 2022, the Court permitted Ms. Denson to file an amended complaint to add a request for injunctive relief and directed the parties to proceed to class discovery;

WHEREAS, the Campaign confirmed in class discovery that at least 422 Campaign employees, contractors, and volunteers signed agreements in connection 2016 election containing substantively identical non-disclosure and non-disparagement provisions;

WHEREAS, prior to this settlement, the Campaign voluntarily stated in writing that it was currently releasing all employees, contractors, and volunteers from any non-disclosure or non-disparagement obligations contained in any agreements signed by them in connection with the 2016 election;

WHEREAS, prior to this settlement, the Campaign represents that on its own volition it notified all of these employees, contractors, and volunteers in a signed writing that they are “no longer bound” by these non-disclosure and non-disparagement provisions;

WHEREAS, class discovery concluded on August 31, 2022;

WHEREAS, on October 7, 2022, the Court referred the parties to a settlement conference before Magistrate Judge Valerie Figueredo, which took place on December 13, 2022;

WHEREAS, the parties conditionally agreed to resolve this matter on certain terms;

WHEREAS, in connection with their settlement, the parties have submitted this proposed stipulation and order and a fully executed settlement agreement and mutual release;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel, and subject to endorsement by the Court, that:

1. For purposes of settlement only, the proposed class consists of all Campaign employees, contractors, and volunteers who executed the Employment, or any agreement containing substantively identical non-disclosure and non-disparagement provisions in connection with the 2016 election, is provisionally certified pursuant to Rule 23 of the Federal Rules of Civil Procedure (the “Proposed Settlement Class”);

2. Specifically, the Court finds, for purposes of settlement only, that the class meets the requirements of Federal Rule of Civil Procedure 23 because:

a. the class is sufficiently numerous such that joinder of all members is impracticable;

- b. common issues of fact and law exist and they affect all class members;
- c. Lead Plaintiff Jessica Denson's claims arise from the same factual and legal circumstances that provide the basis for the class members' claims
- d. Lead Plaintiff Jessica Denson's interests are not antagonistic to the interests of other members of the class, and Lead Plaintiff's attorneys are qualified, experienced and able to conduct the litigation; and
- e. the class meets one or more of Federal Rule of Civil Procedure 23(b)'s requirements.

3. In the event the Court declines to approve the parties' proposed settlement, the Proposed Settlement Class will be decertified automatically and the Court may take up Plaintiffs' fully-briefed motion to certify a class. *See* ECF Nos. 85–92, 99–101. The existence of this certification, this stipulation, or the Court's order of this stipulation may not be used as a basis by any parties or members of the any putative class to justify or oppose the certification of a class for non-settlement purposes.

4. The Court retains jurisdiction over the Settlement Agreement, and any disputes arising from purported violations thereof.

Dated: January 13, 2023

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*Counsel for Defendant*

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Hon. Paul G. Gardephe  
United States District Judge

# **EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JESSICA DENSON, Individually and on  
Behalf of All Others Similarly Situated,

*Plaintiffs,*

v.

DONALD J. TRUMP FOR PRESIDENT, INC.,

*Defendant.*

No. 20 Civ. 4737 (PGG)

**[JOINT PROPOSED] STIPULATION AND  
ORDER PROVIDING CLASS-WIDE RELIEF**

WHEREAS, Lead Plaintiff Jessica Denson filed a putative class action to challenge the validity and enforceability of the non-disclosure and non-disparagement provisions contained in the agreements entered between defendant Donald J. Trump for President, Inc. (the “Campaign”) and its employees, contractors, and volunteers during the 2016 election cycle (the “Employment Agreement”);

WHEREAS, on March 31, 2021, the Court declared the Employment Agreement’s non-disclosure and non-disparagement provisions invalid and unenforceable as to Ms. Denson only;

WHEREAS, on March 30, 2022, the Court permitted Ms. Denson to file an amended complaint to add a request for injunctive relief and directed the parties to proceed to class discovery;

WHEREAS, the Campaign confirmed in class discovery that at least 422 Campaign employees, contractors, and volunteers signed agreements in connection with the 2016 election containing substantively identical non-disclosure and non-disparagement provisions;



WHEREAS, prior to this settlement, the Campaign voluntarily stated in writing that it was currently releasing all employees, contractors, and volunteers from any non-disclosure or non-disparagement obligations contained in any agreements signed by them in connection with the 2016 election;

WHEREAS, prior to this settlement, the Campaign represents that on its own volition it notified all of these employees, contractors, and volunteers in a signed writing that they are “no longer bound” by these non-disclosure and non-disparagement provisions;

WHEREAS, class discovery concluded on August 31, 2022;

WHEREAS, on October 7, 2022, the Court referred the parties to a settlement conference before Magistrate Judge Valerie Figueredo, which took place on December 13, 2022;

WHEREAS, the parties conditionally agreed to resolve this matter on certain terms;

WHEREAS, on \_\_\_\_\_, 2023, the Court entered an Order provisionally certifying a class for purposes of settlement only, consisting of all Campaign employees, contractors, and volunteers who executed the Employment Agreement, or any agreement containing substantively identical non-disclosure and non-disparagement provisions in connection with the 2016 election (the “Settlement Class”);

WHEREAS, in connection with their settlement, the parties have submitted this proposed stipulation and order and a fully executed settlement agreement and mutual release;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel, and subject to endorsement by the Court, that:

1. The non-disclosure and non-disparagement provisions contained in the Employment Agreement, or any other agreement containing substantively identical non-disclosure

and non-disparagement provisions in connection with the 2016 election, are invalid and enforceable as to each and every member of the Settlement Class;

2. The Campaign, including its successor(s) in interest, is permanently enjoined from threatening to enforce, attempting to enforce, or enforcing any such invalid or unenforceable non-disclosure or non-disparagement provisions against any member of the Settlement Class in any forum;

3. All third-party beneficiaries under the Employment Agreement are permanently enjoined from threatening to enforce, attempting to enforce, or enforcing any such invalid or unenforceable non-disclosure or non-disparagement provisions against any member of the Settlement Class in any forum; and,

4. Final judgment shall be entered 28 days from the date this order is entered, unless either party notifies the Court that a party materially breached the separate settlement agreement and mutual release entered between the parties.

Dated: January 13, 2023

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*Counsel for Plaintiffs*

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Hon. Paul G. Gardephe  
United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JESSICA DENSON, Individually and on  
Behalf of All Others Similarly Situated,

*Plaintiffs,*

v.

DONALD J. TRUMP FOR PRESIDENT, INC.,

*Defendant.*

No. 20 Civ. 4737 (PGG)

**[JOINT PROPOSED] STIPULATION AND ORDER  
PROVISIONALLY CERTIFYING A SETTLEMENT CLASS**

WHEREAS, Lead Plaintiff Jessica Denson filed a putative class action to challenge the validity and enforceability of the non-disclosure and non-disparagement provisions contained in the agreements entered between defendant Donald J. Trump for President, Inc. (the “Campaign”) and its employees, contractors, and volunteers during the 2016 election cycle (the “Employment Agreement”);

WHEREAS, on March 31, 2021, the Court declared the Employment Agreement’s non-disclosure and non-disparagement provisions invalid and unenforceable as to Ms. Denson only;

WHEREAS, on March 30, 2022, the Court permitted Ms. Denson to file an amended complaint to add a request for injunctive relief and directed the parties to proceed to class discovery;

WHEREAS, the Campaign confirmed in class discovery that at least 422 Campaign employees, contractors, and volunteers signed agreements in connection 2016 election containing substantively identical non-disclosure and non-disparagement provisions;

WHEREAS, prior to this settlement, the Campaign voluntarily stated in writing that it was currently releasing all employees, contractors, and volunteers from any non-disclosure or non-disparagement obligations contained in any agreements signed by them in connection with the 2016 election;

WHEREAS, prior to this settlement, the Campaign represents that on its own volition it notified all of these employees, contractors, and volunteers in a signed writing that they are “no longer bound” by these non-disclosure and non-disparagement provisions;

WHEREAS, class discovery concluded on August 31, 2022;

WHEREAS, on October 7, 2022, the Court referred the parties to a settlement conference before Magistrate Judge Valerie Figueredo, which took place on December 13, 2022;

WHEREAS, the parties conditionally agreed to resolve this matter on certain terms;

WHEREAS, in connection with their settlement, the parties have submitted this proposed stipulation and order and a fully executed settlement agreement and mutual release;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel, and subject to endorsement by the Court, that:

1. For purposes of settlement only, the proposed class consists of all Campaign employees, contractors, and volunteers who executed the Employment, or any agreement containing substantively identical non-disclosure and non-disparagement provisions in connection with the 2016 election, is provisionally certified pursuant to Rule 23 of the Federal Rules of Civil Procedure (the “Proposed Settlement Class”);

2. Specifically, the Court finds, for purposes of settlement only, that the class meets the requirements of Federal Rule of Civil Procedure 23 because:

a. the class is sufficiently numerous such that joinder of all members is impracticable;

- b. common issues of fact and law exist and they affect all class members;
- c. Lead Plaintiff Jessica Denson's claims arise from the same factual and legal circumstances that provide the basis for the class members' claims
- d. Lead Plaintiff Jessica Denson's interests are not antagonistic to the interests of other members of the class, and Lead Plaintiff's attorneys are qualified, experienced and able to conduct the litigation; and
- e. the class meets one or more of Federal Rule of Civil Procedure 23(b)'s requirements.

3. In the event the Court declines to approve the parties' proposed settlement, the Proposed Settlement Class will be decertified automatically and the Court may take up Plaintiffs' fully-briefed motion to certify a class. *See* ECF Nos. 85–92, 99–101. The existence of this certification, this stipulation, or the Court's order of this stipulation may not be used as a basis by any parties or members of the any putative class to justify or oppose the certification of a class for non-settlement purposes.

4. The Court retains jurisdiction over the Settlement Agreement, and any disputes arising from purported violations thereof.

Dated: January 13, 2023

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*Counsel for Defendant*

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Hon. Paul G. Gardephe  
United States District Judge



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JESSICA DENSON, Individually and on  
Behalf of All Others Similarly Situated,

*Plaintiffs,*

v.

DONALD J. TRUMP FOR PRESIDENT, INC.,

*Defendant.*

No. 20 Civ. 4737 (PGG)

**[JOINT PROPOSED] STIPULATION AND  
ORDER PROVIDING CLASS-WIDE RELIEF**

WHEREAS, Lead Plaintiff Jessica Denson filed a putative class action to challenge the validity and enforceability of the non-disclosure and non-disparagement provisions contained in the agreements entered between defendant Donald J. Trump for President, Inc. (the “Campaign”) and its employees, contractors, and volunteers during the 2016 election cycle (the “Employment Agreement”);

WHEREAS, on March 31, 2021, the Court declared the Employment Agreement’s non-disclosure and non-disparagement provisions invalid and unenforceable as to Ms. Denson only;

WHEREAS, on March 30, 2022, the Court permitted Ms. Denson to file an amended complaint to add a request for injunctive relief and directed the parties to proceed to class discovery;

WHEREAS, the Campaign confirmed in class discovery that at least 422 Campaign employees, contractors, and volunteers signed agreements in connection with the 2016 election containing substantively identical non-disclosure and non-disparagement provisions;

WHEREAS, prior to this settlement, the Campaign voluntarily stated in writing that it was currently releasing all employees, contractors, and volunteers from any non-disclosure or non-disparagement obligations contained in any agreements signed by them in connection with the 2016 election;

WHEREAS, prior to this settlement, the Campaign represents that on its own volition it notified all of these employees, contractors, and volunteers in a signed writing that they are “no longer bound” by these non-disclosure and non-disparagement provisions;

WHEREAS, class discovery concluded on August 31, 2022;

WHEREAS, on October 7, 2022, the Court referred the parties to a settlement conference before Magistrate Judge Valerie Figueredo, which took place on December 13, 2022;

WHEREAS, the parties conditionally agreed to resolve this matter on certain terms;

WHEREAS, on \_\_\_\_\_, 2023, the Court entered an Order provisionally certifying a class for purposes of settlement only, consisting of all Campaign employees, contractors, and volunteers who executed the Employment Agreement, or any agreement containing substantively identical non-disclosure and non-disparagement provisions in connection with the 2016 election (the “Settlement Class”);

WHEREAS, in connection with their settlement, the parties have submitted this proposed stipulation and order and a fully executed settlement agreement and mutual release;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel, and subject to endorsement by the Court, that:

1. The non-disclosure and non-disparagement provisions contained in the Employment Agreement, or any other agreement containing substantively identical non-disclosure

and non-disparagement provisions in connection with the 2016 election, are invalid and enforceable as to each and every member of the Settlement Class;

2. The Campaign, including its successor(s) in interest, is permanently enjoined from threatening to enforce, attempting to enforce, or enforcing any such invalid or unenforceable non-disclosure or non-disparagement provisions against any member of the Settlement Class in any forum;

3. All third-party beneficiaries under the Employment Agreement are permanently enjoined from threatening to enforce, attempting to enforce, or enforcing any such invalid or unenforceable non-disclosure or non-disparagement provisions against any member of the Settlement Class in any forum; and,

4. Final judgment shall be entered 28 days from the date this order is entered, unless either party notifies the Court that a party materially breached the separate settlement agreement and mutual release entered between the parties.

Dated: January 13, 2023

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*Counsel for Plaintiffs*

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Hon. Paul G. Gardephe  
United States District Judge